Court of Appeal, Lord Denning M.R., Diplock, Russell, JJ., 16 gennaio 1967 [Snook v London and West Riding Investments Ltd.]

By his particulars of claim, the plaintiff, Alan Snook, claimed against the defendants, London and West Riding Investments Ltd., inter alia, that in January, 1964, he was the hirer under a hire-purchase agreement with Totley Investments Ltd. ("Totley") of a 1963 M.G.B. motor car and wishing to raise a loan of £300 thereon, he negotiated such a loan with Auto Finance Services (Hallamshire) Ltd. ("Auto Finance"); that the defendants were industrial bankers and the loan of £300 was obtained from them on the security of the car; that for the purpose of securing the loan the plaintiff, Auto Finance and the defendants executed various documents which purported to effect or evidence a purchase from the plaintiff by Auto Finance of the plaintiff's rights in the car, the settlement of the outstanding balance of the hire-purchase agreement with Totley, the invoicing of the car to the defendants by Auto Finance and the hiring back of the car to the plaintiff by a hire-purchase agreement dated January 27, 1964; that these documents were a sham and misrepresented the transaction which had taken place in which, inter alia, all the assertions in the invoice of the car to the defendants were untrue, the alleged cash price and the initial payment being entirely bogus and the car not being Auto Finance's absolute property; that the transaction was not a hire-purchase agreement but a loan of £300 on the security of the plaintiff's car and within the Bills of Sale Act, but the purported hire-purchase agreement was not registered as a bill of sale; that on June 6, 1964, when the plaintiff owed the defendants about £325 10s., they, by their servants or agents, wrongfully seized and converted the car which they wrongfully sold for about £800. The plaintiff claimed £474 10s. as damages for conversion, alternatively as money had and received by the defendants to the plaintiff's use.

In their defence, the defendants alleged that the plaintiff's contract of hire-purchase with Totley was terminated on or about January 24, 1964, by the payment of £160 by Auto Finance to Totley and that thereafter Auto Finance became the owners of the car; that by agreements on or about January 27, 1964, Auto Finance sold the car to the defendants and the plaintiff and the defendants entered into a contract of hire-purchase in respect thereof; that in breach of that contract of hire-purchase the plaintiff paid only one monthly instalment and that in June, 1964, the defendants repossessed and sold the car; and that in the premises the defendants never lent the plaintiff £300 or any sum and never wrongfully converted the car.

On May 26, 1966, at Sheffield County Court, Judge Ould gave judgment for the plaintiff for £449 10s.

The defendants appealed. The grounds of appeal were, inter alia, that the judge was wrong in holding that there had been no transfer of ownership of the car from Totley to Auto Finance; that the ownership of the car was transferred from Totley to the plaintiff; that Auto Finance did not transfer ownership in the car to the defendants and that the defendants did not acquire title thereto; that there was a breach of the relevant hire-purchase regulations in relation to the contract of hire-purchase between the plaintiff and the defendants and that that contract was illegal and void; that the said contract was a sham and that the transaction was a loan of money upon the security of the car which was unenforceable as an unregistered bill of sale; that the defendants were guilty of converting the car.

The facts are fully stated in the judgments.

(*omissis*)

LORD DENNING M.R. In September, 1963, Mr. Snook, the plaintiff, got from a dealer a brand new M.G. car. The cash price was £935 19s. 8d. He paid most of it cash down, £735 19s. 8d., leaving only £200 outstanding. He arranged to pay off this £200 on hire-purchase terms. The dealer introduced him to a finance company called Totley Investments Ltd. (which I will call Totley). On September 16, 1963, Totley lent him the car on these hire-purchase terms:

Balance outstanding	£200
Finance charge	15
Option fee	1

	£216

payable by 12 monthly instalments of £17 18s. 4d., the first payable on October 16, 1963.

Mr. Snook duly paid to Totley the first three instalments due in October, November and December, 1963, coming to £53 15s., leaving £161 5s. outstanding. But then he wanted to raise some money on the car. He saw an advertisement by another finance company called Auto Finance (Hallamshire) Ltd. ("Auto Finance") which said:

"Auto Finance puts common sense into credit. We can help you. Refinance: We pay off your existing hire-purchase debt and refinance this over a further period of 12 to 36 months, thus reducing monthly payments."

Mr. Snook went to Auto Finance. He saw a Mr. Hukins, who in his presence telephoned Totley and asked for the "settlement figure." Totley said that they would accept £160 in settlement if paid within seven days. Mr. Hukins then told Mr. Snook that they would pay out Totley and allow him a further £100.

In order to carry out this refinancing operation, Auto Finance put before Mr. Snook a number of documents for

signature. Mr. Snook signed them believing that they would produce the desired result. They turned out to be a sham. The judge so found. They dressed up the "refinancing operation" to look like a new hire-purchase transaction: whereas it was really a loan on the security of goods. The first document was a letter addressed to Totley. It said:

"I have sold my rights in the above vehicle to Auto Finance Ltd., subject only to your lien which they will discharge. Will you please inform Auto Finance how much you require to settle my obligations to you and to pass title absolutely to them in the vehicle."

On the bottom half there was a reply ready for Totley to sign. It was addressed to Auto Finance and said: "We are prepared to sell title in the above vehicle to you absolutely for the sum of £ ..., this amount to be received within 7/14/21 days of this date." Mr. Snook signed the top half, and left the paper with Auto Finance. But it does not appear that they ever forwarded it to Totley. They seem to have kept it in their office. The bottom half was never signed by Totley. The blank figure was never filled in. Most important of all, the statement in the top half, "I have sold my rights ... to Auto Finance," was not true. The judge found it was not true. Mr. Snook had not sold his rights to them. They were worth £700 or £800 and they did not pay him a penny for them. He was in sole possession of the vehicle and had never parted with it to anyone.

It is equally important to note that Totley never sold their interest to Auto Finance. Nevertheless, thenceforward, in spite of having no title, Auto Finance treated themselves as if they were owners of the car. They acted as if they were dealers disposing of it on hire-purchase terms to Mr. Snook. They put before Mr. Snook a second document, which was a hire-purchase form. It was not with Auto Finance but with another finance company called London and West Riding Investments Ltd., the defendants. It appears to be a company for whom Auto Finance act as agents. They stock its forms and get them filled in. On this form Auto Finance filled it in as a hire-purchase transaction for the M.G. car. They invented the figures. The cash price was filled in as £800 when it was not the price. The initial payment was put as £500 when nothing had been paid. The finance charge was put at £54. Option fee £1. The balance payable was put at £355, payable by Mr. Snook over two years by monthly instalments of £14 15s. On the same form there was also a printed delivery receipt. Mr. Snook signed it, as he did the others. By it he acknowledged that he had accepted delivery of the car and he understood it was the property of the West Riding company.

When Auto Finance had got Mr. Snook to sign these documents, they themselves signed another form by which they invoiced the car to the defendants. They filled in the same fictitious figures, the cash price £800, initial payment of £500, balance £300. In this form they warranted that the car was their absolute property. That was not true. It was not their property. They had not bought it, nor paid a penny for it.

Auto Finance then sent all these documents to the defendants. That company knew that Auto Finance dealt in these refinancing transactions. They had had many previous deals with Auto Finance. But there was no evidence that they knew of any of the irregularities in the conduct of the deal. On receiving the documents, the defendants paid £300 to Auto Finance. Auto Finance paid £160 to Totley, who accepted it in full discharge and acknowledged that they had no further interest in the vehicle. Auto Finance paid £125 to Mr. Snook and kept £15 for themselves for their services.

Mr. Snook paid the defendants the instalments of £14 15s. due on February 27 and March 27, 1964, but then he was out of work and fell into arrear for the two months of April and May, 1964. On June 6, 1964, whilst Mr. Snook had parked the car for a little while, some men seized the car and took it off. They were men from Auto Finance acting as agents for the defendants. When Mr. Snook discovered that they had taken it, he went to Auto Finance and offered to pay off the arrears. He took the money down to them, but they refused to accept it. They resold the car, The judge found that at that time it was worth £775, but they sold it for £575. They paid off the defendants £280 (which satisfied them) and kept the balance of £295 for themselves. It was, they said, their "profit" in the transaction.

Mr. Snook now sues the defendants for damages for conversion of the car. The defendants in their defence claim that it is their car. They say that, after the "settlement figure" was paid, Auto Finance became the owners; that Auto Finance sold it to them; that they let it on hire-purchase to Mr. Snook; that he failed to pay the instalments, whereupon "the defendants repossessed the car and sold the same."

In considering this case there are two cardinal facts to be remembered: first, that Mr. Snook was at all times in possession of the car and entitled to it as against all the world save he who could prove a better title; second, that the defendants, by their agents, Auto Finance, took possession of the car and sold it and took the proceeds. Those two facts are sufficient to give Mr. Snook a prima facie case for damages for conversion. It is for the defendants to show that they were entitled to retake it, as they did.

The judge decided in favour of Mr. Snook on three grounds, which I will take in the same order as he did.

First, the defendants did not prove a title to the car

The defendants claim that they bought the car from Auto Finance: but they have failed to prove any title in Auto Finance. Immediately prior to the refinancing operation, there were two persons entitled to an interest in the car: Totley, who were the owners, and had let it out to Mr. Snook on hire-purchase; and Mr. Snook, who had the right to acquire the title by paying the "settlement figure" of £161: see the recent case of *Wickham Holdings* v *Brook House*([1]), of November 8, 1966. Seeing that the car was worth some £900, Mr. Snook's contractual right (or "equity," as it is sometimes called) was worth about £740.

In the course of the refinancing operation, Auto Finance paid to Totley the "settlement figure" of £161: but that did not give Auto Finance the title to the car. The only person who had the right to pay that "settlement figure" was Mr. Snook. Auto Finance must be presumed to have paid it on behalf of Mr. Snook, with the result that Mr. Snook became the

owner of the car: see the recent case of *Bennett* v *Griffin Finance*([2]). Auto Finance never bought the car from Mr. Snook, nor his interest in it. They never paid him a penny for his contractual right. They did not become the owners of the car. The title was in Mr. Snook.

Seeing that Auto Finance were not owners, they had nothing to transfer to the defendants. So the defendants did not become the owners. It was suggested in the course of the argument before us that they acquired a title by estoppel similar to that which the finance company acquired in *Eastern Distributors Ltd.* v *Goldring (Murphy, Third Party)*([3]) and *Stoneleigh Finance* v *Phillips*([4]). I do not think this point is open to the defendants. Estoppel was not pleaded, nor was it raised in the county court, nor found by the judge. It is not even mentioned in the notice of appeal. Even if it were open, no evidence was given by the defendants to support an estoppel. They do not say that they relied on any representation by Mr. Snook or on his conduct or on his signing the documents. They relied on a sale by Totley to Auto Finance and on a sale by Auto Finance to them. Their director said: "We acquired title from Auto Finance and paid them for it." They repeated this in their defence. I would not allow them now to change their ground.

Second, the defendants were seeking to enforce an illegal transaction

The judge held that the hire-purchase documents were in breach of the statutory regulations and could not be relied upon by the defendants. I think he was quite right. The regulations require that there should be "a statement of the cash price of the goods." There was here no cash price. The figure of £800 was fictitious. So there could be no statement of the cash price. The regulations also require that there should be "actual payment" of the deposit. There was no deposit here, and no payment of it, actual or otherwise. The figure of £500 was fictitious. The defendants relied on the recent case of *Kingsley* v *Sterling Industrial Securities Ltd.*([5]). But that is clearly distinguishable. The headnote accurately states the effect of the decision. It is that the "actual payment" need not be made in currency, but it must be a real and genuine payment. It was held that a credit in account of £600 was real and genuine, and ranked as "actual payment." But in this case, as the judge found,

"no deposit was paid and no allowance by way of credit or any other thing which by the remotest stretch of imagination could be called a deposit was allowed for. The sum of £500 supposed to have been paid as a deposit was purely fictitious."

That finding is decisive. This hire-purchase transaction was illegal and cannot form the basis of any claim by the defendants: see *Snell* v *Unity Finance Co. Ltd.*([6]) and the recent unreported case of *Viking Hire-Purchase Co. Ltd.* v *Jordan*([7]).

Test it in this way: If the defendants had not taken possession of the car of their own motion, but had recourse to the courts to recover it, it is plain that the courts would not have assisted them. They had never been in possession and would have perforce to rely on the illegal transaction. Lord Mansfield said long ago that "No court will lend its aid to a man who founds his cause of action upon an illegal or immoral act": see *Holman* v Johnson([8]), applied in *Palaniapper Chettiar* v *Arunasalam Chettiar*([9]).

In view of this illegality, the defendants could not have recovered this car by action in the courts. It follows that they cannot justify taking it without action. They cannot better their position by taking the law into their own hands.

Third, the defendants were seeking to enforce documents which were a sham

The judge held that this refinancing operation was a loan: and that the documents were a sham to cover up the loan. He said that "The whole thing is obviously a sham and to my mind falls clearly on the side of the line represented by the *Polsky* v *S. & A. Services Ltd.*([10]) line of cases." The transaction, though taking the form of a sale and reletting, was "nothing more than a loan of money on the security of the goods," and therefore illegal under the Bills of Sale Acts. I think there was ample evidence on which he could so find. The essence of the matter was that Auto Finance got the defendants to advance £300 on the security of the goods, which was applied on behalf of Mr. Snook as to £160 in paying off Totley, as to £125 in making an additional loan to Mr. Snook, and as to £15 in commission to Auto Finance. The documents were filled with fictitious figures and statements - all of which are badges of sham: see *Polsky's* case([11]). There is this difference, however, from *Polsky's* case. The defendants did not themselves negotiate the transaction. They were, as the judge said, innocent of any irregularity by which the deal was carried through. Nevertheless, he thought that they could not take advantage of it. I agree with him, and for this simple reason: the real transaction, as he found, was a loan on the security of goods. I ask: who was it made this loan? The answer is plain. The defendants made it. No one else lent any money at all. How did the defendants make it? The answer again is plain. By means of Auto Finance, who were their agents for this purpose. There were no other means by which the loan was made. Once it is seen that Auto Finance were the agents of the defendants to make the loan, it follows inexorably that the defendants are responsible for the manner in which their agents conducted themselves therein, including the preparation of fictitious documents: see *Lloyd* v *Grace Smith & Co*([12]).

It was argued that the defendants are not to be affected by this sham transaction unless they were themselves parties to it. I cannot agree with this. Although the defendants were not parties to the sham, their agents were: and that is the end of it. Every principal is answerable for the conduct of his agent in the course of his agency. The case of *Stoneleigh Finance* v *Phillips*([13]) is distinguishable because there was no agency.

On each of those three points the judge held that the defendants were not entitled to seize the car. As he said, any one of them is sufficient. I agree with him on all three. His judgment convinces me. The defendants are liable in damages for conversion.

Damages
The judge held that the value of the car at the date of conversion was £775. But he did not award the plaintiff that sum. He deducted the sum which the defendants would have received if the refinancing operation had been completed, that is, £325 10s. In other words, he allowed them credit for their loan and finance charges. So he only gave judgment for £449 10s. I think this was right. A finance company are entitled to recoup themselves the amount owing to them, but not to take additional profit for themselves: see *Wickham Holdings* v *Brook House*([14]) and this applies not only when they sue for conversion, but also when they retake the car and sell it.

Conclusion
Viewing the matter broadly, it comes to this: Mr. Snook paid about £800 towards the purchase of this new car. It was more than three-fourths of the price. Yet after he had only had it nine months, a finance company took it from him. All because he was £30 in arrears. He offered to pay off those arrears. But they would not accept it. They insisted that the car belonged absolutely to them: and that his valuable equity was forfeited. They sold the car at a high price, recouped themselves the money they had lent, and took a large profit of £300. Seeing that he was in possession, this conduct was a plain conversion unless they could show a good title in themselves to warrant it. All they have done is to produce documents full of fictitious entries, which the judge has found to be illegal and a sham. I do not see how the defendants can justify a conversion by reliance on illegal and sham documents. I would dismiss this appeal.

DIPLOCK L.J. (read by RUSSELL L.J.). It is not a presumption of law that a hire-purchase finance company cannot be innocent. It is not even a prima facie presumption of fact. It was thus open to the county court judge to find as he did that the defendants were innocent in that they were unaware of any irregularity in the way that the deal was carried through. This finding is, in my view, crucial to the present appeal.
My sympathy, like that of the Master of the Rolls, is for the plaintiff. My judgment, like that of Russell L.J., must be for the defendants. What happened to the plaintiff was, until the Hire-Purchase Act, 1965, liable to happen to any hire-purchaser who defaulted on instalments due in respect of goods upon which he had made a large initial payment. He says that it ought not to happen to him for three reasons: (1) the defendants never acquired title to the car; (2) he, the plaintiff, and Auto Finance, at any rate, intended the transaction to be a sham in order to mask a loan of £300 on the security of the car; (3) the hire purchase agreement was void under the Hire Purchase and Credit Sale Agreements (Control) Order, 1960 (S.I. 1960 No. 762).
The plaintiff's object was to raise £100 if he could by making use of his rights in respect of a car worth about £800 which he had on hire-purchase from Totley under an agreement under which instalments amounting in all to £161 5s. remained to be paid. To do this without running foul of either the Bills of Sale Act, 1878, or the Hire Purchase and Credit Sale Agreements (Control) Order, 1960, it was necessary to transfer the title to the car to another hire-purchase finance company and for the plaintiff to enter into a fresh hire-purchase agreement with that company and to make to that company actual payment of 25 per cent. of the cash price of the car. He was advised by Auto Finance to do this. He took that advice and he did.
As regards transfer of the title, I do not think that it matters whether, upon the true analysis of the transaction with Totley, the title to the car passed from Totley to Auto Finance on their own behalf or as trustees for the plaintiff or passed to the plaintiff himself. In so far as the beneficial or legal title was in him, he clearly authorised Auto Finance to transfer it on his behalf to the defendants. That Auto Finance purported to act as principals in the sale of the car to the defendants, whereas they may have been acting as agents for the plaintiff as undisclosed principal, does not in my view matter. In any event I agree with Russell L.J. that the plaintiff is estopped by his conduct from denying the defendants' title to the car. As the defendants were unaware that he intended a sham, it would be a travesty of justice if he were not, and in view of the terms in which his claim is pleaded, I do not think that the defendants are debarred from relying, if it be necessary, on this estoppel, although it is not expressly pleaded as such in the defence. All the facts necessary to establish it were proved.
As regards the contention of the plaintiff that the transactions between himself, Auto Finance and the defendants were a "sham," it is, I think, necessary to consider what, if any, legal concept is involved in the use of this popular and pejorative word. I apprehend that, if it has any meaning in law, it means acts done or documents executed by the parties to the "sham" which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create. But one thing, I think, is clear in legal principle, morality and the authorities (see *Yorkshire Railway Wagon Co.* v *Maclure*([15]) and *Stoneleigh Finance Ltd.* v *Phillips*([16])), that for acts or documents to be a "sham," with whatever legal consequences follow from this, all the parties thereto must have a common intention that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating. No unexpressed intentions of a "shammer" affect the rights of a party whom he deceived. There is an express finding in this case that the defendants were not parties to the alleged "sham." So this contention fails.
As regards the contention that the hire-purchase agreement was void under the Hire Purchase and Credit Sale Agreements (Control) Order, 1960, because there was no "actual payment" of the sum of £500 credited to the plaintiff as the "initial payment" in the hire-purchase agreement, this depends upon the meaning of the words "actual payment" in the order. I agree with Russell L.J. that the words of the order, which is penal legislation, must be construed in the

light of the mischief against which the order is directed and also in the light of the well-known practice with respect to initial payments under hire-purchase agreements by which the hire-purchase finance company itself never receives this payment in cash from the hirer but debits it to the dealer in the purchase price and credits it to the hirer in the hire-purchase agreement. Russell L.J. in his judgment deals with this point in detail. I agree with his analysis and his conclusion. I will not try to gild his refined gold.
For these reasons, and for those he will give upon all three contentions of the plaintiff, I would allow this appeal.

RUSSELL L.J. The plaintiff's case for denying the right of the defendants to retake the car under the hire-purchase agreement is threefold. First: he says that the defendants are not shown to have acquired the title to the car. Second: he says that the whole transaction was but a dressed-up arrangement for a loan on the security of the car, and avoided by the Bills of Sale Act. Third: he says that the hire-purchase agreement was illegal and therefore void or unenforceable because no "actual payment" was made of the £500 stated in the agreement to have been paid by way of deposit, or of any other sum, as required by the Hire Purchase and Credit Sale Agreements (Control) Order, 1960 (S.I. 1960 No. 762). I will consider these contentions in that order.
First, as to the defendants' title to or ownership of the car. The county court judge analysed the sequence of events, concluded that the title never reached Auto Finance, and for that reason concluded that it never reached the defendants. But the plaintiff, who was told by Auto Finance that the matter would involve paying off the existing owners (the plaintiff's existing hire-purchase company, Totley), and obtaining hire-purchase finance elsewhere, executed documents for presentation to the defendants which in terms recognised the defendants to be the owners of the car. Indeed, the plaintiff intended the title to the car to pass to the defendants, just as the defendants intended to acquire it; for only thus could the defendants hire it to the plaintiff. The plaintiff further confirmed to the defendants by letter of February 17 that the details of the agreement were correct. How can it be now open to the plaintiff to assert that he became the owner of the car when Totley was paid off, that he has remained such ever since, and that the defendants never became such? One has only to look at the matter from the defendant's point of view - the defendants being, as the judge held, innocent and ignorant of any irregularities - to see that it would be quite wrong to allow the plaintiff to take this title point. He is estopped by his own conduct from denying the defendants' title to the car, and this title by estoppel is a true title: see *Eastern Distributors* v *Goldring*([17]) and *Stoneleigh Finance Ltd.* v *Phillips*([18]).
The plaintiff's second contention is that the substance of the transaction was the borrowing of money by the plaintiff on the security of the car, and that the defendants cannot rely upon the hire-purchase agreement because of the provisions of the Bills of Sale Act. But this is not a case in which the defendants were party to anything but the apparent acquisition of a car for £800 less £500, net £300, and the simultaneous hiring out of the car under a hire-purchase agreement which credited the hirer with a deposit of £500 towards ultimate purchase. The defendants never intended to take part in any transaction by way of a loan of money on the security of the car. To enable the court to hold that a transaction was intended to mask a loan, it must find that both parties to the transaction so intended: see *Yorkshire Railway Wagon Co.* v *Maclure*([19]) and *Stoneleigh Finance Ltd.* v *Phillips*([20]). The latter case is also authority for the proposition that even if it be correct that the substance of the whole arrangement as between the plaintiff and Auto Finance was to dress up a loan on security, that intention on the part of Auto Finance cannot be imputed to the defendants. I must, therefore, reject the plaintiff's contention under this head also.
Thirdly and lastly, the plaintiff says that the hire-purchase agreement upon which the defendants rely is illegal under S.I. 1960 No. 762, and therefore unenforceable, because (he says) no "actual payment" was made of the required percentage of the cash price, though by the agreement he was credited with a deposit of £500 towards ultimate purchase.
The purpose of S.I. 1960 No. 762 is undoubted. It is to restrict credit in the field (inter alia) of hire-purchase: in particular, the requirement of a minimum deposit of a percentage of the cash price of the goods is designed to prevent the acquisition of goods on hire-purchase without immediate and substantial reduction of the acquirer's assets. It is to be noticed that Part II of Schedule 2 to the statutory instrument is aimed at avoiding the effect of payment when it does not have the effect of such reduction. On the other hand, a fair allowance for goods taken in part-exchange - an operation which does reduce the acquirer's assets - is allowed in the calculation of the amount actually paid. It is quite clear that that in the present case - for the cash price figure of £800 is not challenged as appropriate to the car - the plaintiff surrendered and the defendants acquired £500 worth of car in exchange for the same amount credited as paid towards ultimate purchase. The transaction, therefore, was one right outside the mischief of unregulated credit facilities at which the statutory instrument was aimed. But the question remains whether the language of the statutory instrument is such that its net is cast wider than the mischief and embraces also the present case.
In considering the application of the statutory instrument in this regard, I notice first that, as was remarked in *Kingsley* v *Sterling Industrial Securities*([21]) in the ordinary hire-purchase case, the finance company never in the strictest sense receives payment of the initial payment. This the dealer receives from the customer and retains, and the sale by dealer to finance company is carried through by a simple payment of the difference between the cash price and the deposit. It has never been thought necessary for the finance company to pay the cash price to the dealer in exchange for a payment by the dealer (on behalf of the customer-hirer) of the deposit as an initial payment by the hirer to be credited to him. Nor has it been thought necessary to record the equivalent as cross-entries in books. The whole process is short-circuited and the same result achieved.
Suppose a car-owner wishes to raise finance (say, £300) on his car which is worth £800. (Here I am not concerned with

any question of invalidity on other grounds.) The transaction might take this form: the owner approaches a finance company and agrees to sell to the company for £800 on terms that it will hire back the car under a hire-purchase agreement, crediting the owner with an initial payment of £500 and providing for payment of (say) £350 by "x" equal monthly instalments. If this is carried through by a cheque from finance company to owner for £800 in exchange for a cheque the other way for £500, it could not be doubted that the owner had made an actual payment of £500. (Nor could it be said that the £500 had been "acquired" from the finance company under the statutory instrument, Sch. 2, Part II - see the judgment of Winn L.J. in the *Kingsley* case([22]). I would see no reason for denying the fact of "actual payment" in the context of the statutory instrument if, in the example given, instead of cheques being solemnly handed across the table (or indeed currency notes handed one way and part handed back), the transaction was carried through by a cheque for £300 combined with appropriate entries in the finance company's books such as would have attended an exchange of cheques. I would take exactly the same view if, as a matter of practical convenience, all that was done in order to carry out the transaction was a cheque for £300 from the finance company accompanied by a hire-purchase agreement in usual form stating the £800 cash price and £500 initial payment received. The finance company would be paying £800 for the car in part by a cheque for £300 and in part by crediting the owner at his request with a balance of £500 against the ultimate purchase price under the hire-purchase agreement. I cannot think that this would not be actual payment within the statutory instrument when a mutual exchange of cheques, or a handing and return of £500 in notes, would be such. Indeed, the whole transaction could in my judgment have been stated even more briefly with the same outcome. Q. "On what terms will you take over my car and hire it back to me under a hire-purchase agreement?" A. "Cash price £800: deposit £500: balance £300 plus finance charge £50 by 'x' equal monthly instalments. Option payment £1. Total hire-purchase price £851." This conversation, followed by a hire-purchase agreement signed by both declaring the finance company to be the owner of the car and containing those terms and accompanied by a cheque to the owner for £300, would, I consider, be unexceptionable. Both parties would intend the title to pass and it would pass without any physical delivery; and in my view the owner would actually pay the £500 within that phrase as used in the statutory instrument. I do not think that the statutory instrument should be construed in such a way as to require parties to such a transaction to take a long way round when there is a perfectly sensible short cut to the same commercial terminus.

If in such a case "actual payment" can be achieved in this manner, what of the case now under consideration? The plaintiff must, I think, be taken to have known that if the defendants were to hire the car to him on hire-purchase terms, the title to the car must go to the defendants as purchasers: as previously stated, he must have intended this to happen. The £800 was a proper cash price value. The plaintiff, through Auto Finance, puts forward a proposition by which the defendants will buy the car for £800, but by which, instead of paying the cash price to the defendants or to Auto Finance on his behalf and taking £500 back as deposit or initial payment under the hire-purchase agreement, which is an integral part of the transaction, the procedure is short-circuited by a direct credit given in the hire-purchase agreement. If the defendants had paid the full £800 to Auto Finance, the latter would have held £500 of it for the plaintiff with an obligation to repay it on the plaintiff's behalf as initial deposit. If Auto Finance had exchanged their cheque for £500 with the defendants' cheque for £800, and accounted to the plaintiff, the receipt side of such account would have stood at £800, and the disbursement side, in addition to £160 paid to Totley, would have included an item "£500 initial deposit paid to defendants on your behalf." Clearly there would have been actual payment of the initial deposit. I would not construe the statutory instrument so as to destroy a transaction because a purely formal step is not taken. The case of *Kingsley*([23]) was, of course, different. But I would borrow from the judgment of Sellers L.J.([24]) the phrase "The fact that those motions were not actually gone through can make no difference to the transaction": and I echo another phrase([25]) by saying that here £500 was a real loss to the plaintiff because the car was worth £800: he had the money in the value of the car and the transaction was in no sense one where a man acquired a car when he had nothing with which to acquire it and was unable to find the deposit: and finally I agree with the statement[26] that it is not the manner of payment which the statutory instrument affects but its reality.

For those reasons I would allow the appeal.

It is right to record that it was said in evidence for Auto Finance that before the car was sold after repossession for £575, Auto Finance offered it to the plaintiff for £280, the sum which Auto Finance were called upon to pay to the defendants under a recourse agreement: though the judge made no finding on this. If this offer were made and had the plaintiff been able or willing to accept it, his total outlay in acquiring the car from first to last would have been about £974 - the retail price when he "bought" it new in September, 1963, having been £940.

I do not agree with the suggestion that Auto Finance was agent of the defendants so as to validate the first two of the plaintiff's contentions. The county court judge made no such finding, and I do not think it any more justified than it would have been in the *Stoneleigh Finance* case([26]). Particular reliance is placed on the profit made on the sale of the car and permitted by the defendants to be kept by Auto Finance. As to profit, this was at the relevant time a feature of any hire-purchase agreement (above certain limits of value) where there was a high percentage of initial payment and the hirer defaulted, so that the finance company was entitled to repossess and sell for the true value of the car and keep the proceeds: if the plaintiff had defaulted on the Totley agreement, Totley could have repossessed and sold and made a large profit. As to the repossession being by Auto Finance on behalf of the defendants, and the profit being taken by Auto Finance and not by the defendants, this was presumably provided for in the recourse agreement. If anything, the profit retention by Auto Finance without accounting to the defendants points away from agency.

I add that the only point for argument in *Viking Hire-Purchase Co.* v *Jordan*([27]) referred to by the Master of the Rolls, was whether the agreement was a hire-purchase agreement within the statutory instrument of 1960. If, as was held, it

was in character such an agreement, it was conceded that it offended under the statutory instrument because no cash price was stated therein.

Riproduciamo il testo della sentenza da [1967] 2 Q.B. 786.

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[1] [1967] 1 W.L.R. 295; [1967] 1 All E.R. 117, C.A.
[2] Ante, p. 46; [1967] 2 W.L.R. 561; [1967] 1 All E.R. 515, C.A.
[3] [1957] 2 Q.B. 600; [1957] 3 W.L.R. 237; [1957] 2 All E.R. 525, C.A.
[4] [1965] 2 Q.B. 537; [1965] 2 W.L.R. 508; [1965] 1 All E.R. 513, C.A.
[5] Ante, p. 747; [1966] 2 W.L.R. 1265; [1966] 1 All E.R. 37; [1966] 2 All E.R. 414, C.A.
[6] [1964] 2 Q.B. 203; [1963] 3 W.L.R. 559; [1963] 3 All E.R. 50, C.A.
[7] (1966) Bar Library Transcript No. 272 of 1966.
[8] (1775) 1 Cowp. 341, 343.
[9] [1962] A.C. 294; [1962] 2 W.L.R. 548; [1962] 1 All E.R. 494, P.C.
[10] [1951] W.N. 136 and 256; [1951] 1 All E.R. 185 and 1062, C.A.
[11] [1951] 1 All E.R. 185, 189, 1062.
[12] [1912] A.C. 716; 28 T.L.R. 547, H.L.
[13] [1965] 2 Q.B. 537.
[14] [1967] 1 W.L.R. 295.
[15] (1882) 21 Ch.D. 309, C.A.
[16] [1965] 2 Q.B. 537.
[17] [1957] 2 Q.B. 600, 611.
[18] [1965] 2 Q.B. 537, 571, 578.
[19] 21 Ch.D. 309.
[20] [1965] 2 Q.B. 537.
[21] Ante, p. 747.
[22] Ante. p. 777.
[23] Ante, p. 747.
[24] Ibid. 768, 769.
[25] Ibid. 769.
[26] [1965] 2 Q.B. 537.
[27] (1966) Bar Library Transcript No. 272 of 1966.