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BAILMENTS AND CONDITIONAL SALES. The cases where possession of goods is in a real or apparent vendee and there is doubt as to the title, may be divided into two classes: one in which the goods have been bailed with the right in the bailee to purchase during or at the conclusion of the term of bailment; the other is where there has been a contract of sale and the vendor has reserved a right of property. Where there is a bailment of goods, delivery takes place on condition that a trust shall be duly executed if there is a special purpose attached to the delivery, or that the goods delivered shall be restored by the bailee according to the directions of the bailor as soon as the purposes of the bailor shall be answered.

In a conditional sale the parties to the contract agree that the vesting in the purchaser of the complete title to the goods sold shall depend upon a condition, precedent or subsequent.

The conditional sale has a position between bailment and absolute sale. As to the parties themselves the question of property is in all these cases settled according to intention; but when interests of third persons appear, difficulties frequently arise. In the case of bailment the right of title is in the bailor, and third parties are to

look to him for information; parties scrutinizing goods that have been the subject of an absolute sale, look to the vendee. The relation of third parties toward the subject of a conditional sale is much the same throughout all jurisdictions. No title passes to the buyer, if there is a condition precedent, until the performance of the condition; and if the condition is one subsequent, then the title passes to the vendee, which title would be divested in case the condition is performed.

As suggested before, these sales are valid in many jurisdictions: *Barrett* v. *Pritchard*, 2 Pick. 512, (1824); *Herring* v. *Hoppock*, 15 N. Y. 409 (1857); *Cole* v. *Berry*, 42 N. J. L. 308 (1880); *Harkness* v. *Russell*, 118 U. S. 663 (1886). Yet there has been so much uncertainty as to the real owner in cases of such transfers of goods, that conditional sales have not been favored in equity; and in some States statutes have been passed providing that where possession has been delivered and property reserved in the vendor, the sale shall be void, unless recorded, as against execution creditors of the vendee and purchasers from him without notice. In some States where chattel mortgages are void unless recorded, such sales have been construed to be chattel mortgages. The Pennsylvania courts have from early times, without the direction of statute, held these sales to be invalid. This has been on account of public policy, and applies to third persons, who have bought for value without notice, and execution creditors. A few recent decisions by the Supreme Court of Pennsylvania may be noted:

Where there was an agreement to erect machinery to be paid for in stipulated installments, with the express condition that "the title, ownership and possession of said machinery and plant" was not to pass until all of the said payments of money had been made, it was held a conditional sale and not a bailment: *Ott* v. *Sweatman*, 166 Pa. 217 (1895). Where goods were received under an agreement by which they were to be kept a certain period, and if within that time they were paid for the title should pass, but otherwise hire to be paid for the use of them; they were bailed, and the property in the goods did not change until the price was paid: *Brown Bros. & Co.* v. *Billington*, 163 Pa. 76 (1894). When a printing press was erected for trial on the premises of an intending purchaser to be paid for on acceptance as satisfactory, there was no delivery until acceptance and payment; and the parties could, while the press was still on trial, change the contract in good faith to one of bailment, with an alternative conversion into a sale, and after such change in the contract the press was not liable to seizure under execution by the judgment creditors of the person for whom it was erected. In the opinion delivered in this case Mr. Justice Mitchell said: "Delivery does not consist in the mere transfer of location or custody of property. There must be the minds of both parties concurring in the transfer in accordance with the contract, the intent of one to deliver and the other to receive:" *Printing Press Co.* v. *Jordan*, 171 Pa. 474 (1895). Some cases in Penn-

sylvania of bailment are: *Ditman* v. *Cattrell*, 125 Pa. 606 (1889); *Edwards' Appeal*, 105 Pa. 103 (1884); *Christie's Appeal*, 85 Pa. 463 (1877); *Enlow* v. *Klein*, 79 Pa. 488 (1875). Cases of conditional sale: *Peek* v. *Heim*, 127 Pa. 500 (1889); *Forrest* v. *Nelson*, 108 Pa. 480 (1885); *Brunswick* v. *Hoover*, 95 Pa. 508 (1880); *Stadtfelt* v. *Huntsman*, 92 Pa 53 (1879); *Martin* v. *Mathiot*, 14 S. & R. 214 (1826).

Two recent decisions in England of cases corresponding closely with the cases of *Stadtfelt* v. *Huntsman* and *Brunswick* v. *Hoover* may be noticed. There they have what are termed *hire-purchase agreements*. "By the hire-purchase system, an intending purchaser of goods is put into immediate possession thereof and agrees to pay a fixed sum by fixed periodical installments, the amount payable for each installment is expressly declared to be nothing more than hire-money for the use of the goods during the period intervening between two consecutive installments, and the lender agrees that on a certain member of installments making up the total sum being paid, the hirer shall become the owner of the goods. On default in the payment of any installment power is reserved to the lender to resume possession of the goods:" *Law Magazine and Review*, February, 1896. In *Lee* v. *Butler* [1893], 2 Q. B. 318, A. obtained possession of some furniture from B. under the following agreement: She was to pay £1 on May 6th, and £96 4 s. on August 1, 1892, these sums to be considered as rent, and no change in ownership to take place till the whole of the £97 4 s. had been paid. B. was given the power of resuming possession of the goods in case there was default in payment, and any sums paid by A. up to that date were irrecoverable by A. A. paid £1 and afterwards sold the goods to C. A. claimed them from C., but he was held not entitled, for A. was a purchaser under section 9 of the Factors' Act, and could convey a good title to a *bona fide* purchaser for value without notice.

In *Hollyv.* *Matthews*, 11 Law Times Reports, 446 (1895), A. obtained possession of a piano on condition that she was to pay 10 s. 6 d. every month in advance by way of rent. When she had paid the full value, £18 18 s., she was to become the owner. On failure to pay any installment, the lender could resume possession of the instrument; there was also an express clause conferring on A. the right of terminating the contract at any time. After having paid some of the installments, she pledged the piano with C. In an action by the lender against C., the Queen's Bench Division affirmed the lower court in favor of the lender. On appeal Lord Esher, M. R., held A. to have been a purchaser. The case was taken to the House of Lords, and again reversed.

BURDEN OF PROOF OF INSANITY IN CRIMINAL CASES. In a most ably considered opinion by Mr. Justice HARLAN in *Davis* v. *U. S.*, 16 Sup. Ct. Rep. 353, the Supreme Court of the United States recently took sides upon a question where eminent courts and jurists disagree. He states the question thus: "The fact of killing

being clearly proved, the legal presumption, based upon the common experience of mankind that every man is sane, was sufficient, the court below in effect said to authorize a verdict of guilty, although the jury might entertain a reasonable doubt upon the evidence whether the accused, by reason of his mental condition, was criminally responsible for the killing in question." After a careful consideration of the English cases, including the answers to the questions of the House of Lords in *McNaughton's Case*, 10 Cl. & F. 199, and of the leading cases in the American State courts supporting the view taken by the court below, the learned Justice concludes, following the rule in a minority of the States, that the instruction was erroneous.

Upon this question courts have taken three positions: (*a*) That the defendant must prove his insanity beyond a reasonable doubt: *State* v. *Spencer*, 21 N. J. L. 196 (1846), tried by Chief Justice Hornblower; *State* v. *Pratt*, 1 Houst. Cr. Ca. (Del.) 269 (1867); (*b*) That the defendant must prove to the reasonable satisfaction of the jury by evidence which *fairly* preponderates: Chief Justice Sharswood in *Coyle* v. *Comm.*, 100 Pa. 577 (1882); *Comm.* v. *Eddy*, 7 Gray, 584 (1856); *Comm.* v. *Pomroy*, 117 Mass. 143 (1875); *State* v. *Lawrence*, 57 Me. 584 (1870); *State* v. *Smith*, 53 Mo. 267 (1873); *Loeffner* v. *State*, 10 O. St. 599 (1860); *State* v. *Starling*, 6 Jones (N. C.), 366 (1859); *Boswell* v. *Comm.*, 20 Gratt., 860 (1871); (*c*) The position taken by Mr. Justice Harlan agreeing with *People* v. *McCann*, 16 N. Y. 57 (1857); *Chase* v. *People*, 40 Ill. 352 (1866); *State* v. *Bartlett*, 43 N. H. 224 (1861); *People* v. *Garbutt*, 17 Mich. 8 (1868); *Cunningham* v. *State*, 56 Miss. 269 (1879); *Dove* v. *State*, 3 Heisk., (Tenn.), 348 (1871); *Blake* v. *State*, 121 Ind. 433 (1880); *State* v. *Coleman*, 20 S. C. 442 (1883); Guiteau's Case, 10 Fed 161, (D. C.) (1882).

After examining this able opinion one cannot avoid its conclusions. In our jurisprudence the burden of proving that the accused is guilty of committing the crime charged is upon the commonwealth. The crime of murder by its definition involves the possession by the accused of such mental capacity as will render him liable criminally for his acts. How then, proceeds the argument, can the jury find the defendant "guilty as charged," if they entertain a reasonable doubt from all the evidence whether he was legally capable of committing crime? The presumption in favor of sanity is rebuttable; "but," the opinion concludes, "to hold that such presumption must absolutely control the jury until it is overthrown or impaired by evidence sufficient to establish the fact of sanity beyond all reasonable doubt, or to the reasonable satisfaction of the jury, is in effect to require him to establish his innocence by proving that he is not guilty of the crime charged." The case which set the precedent for New York, and which Mr. Justice Harlan quotes with approval, was determined when Judges Denio, Johnson, Seldon and Comstock were members of the Court of

Appeals, and with the present Mr. Justice Peckham of counsel for the accused, *People* v. *McCann*, 16 N. Y. 57. In that case, in reversing the trial court for the same erroneous instruction given in this case, Mr. Justice Brown said: "If there be a doubt about the act of killing, all will concede that the prisoner is entitled to the benefit of it; and if there be any doubt about the will, the faculty of the prisoner to distinguish between right and wrong, why should he be deprived of the benefit of it, when both the act and the will are necessary to make out the crime?"

This adherence to the fundamental presumption of innocence characterizes the reasoning of all the courts which adopt this view. It seems to us unanswerable. With those who look with horror upon the increased number of acquittals in atrocious crimes where the defence is insanity, this decision will meet with disapproval; but surely such a possibility, attending all systems of justice, "ought not to induce courts to depart from principles fundamental in criminal law, the recognition and enforcement of which are demanded by every consideration of humanity and justice."

INSURANCE VITIATED BY SUICIDE. In a late case of *Ritter, Ex.* v. *Ins. Co.*, the United States Circuit Court of Appeals decided an important and novel point in insurance law. The question arose upon a suit by the executor of a suicide to recover on a policy of insurance upon the latter's life. The jury found that the man was sane at the time of the commission of the deed, and the insurance company defended the action on the ground that, although the policy contained no provision against the insured taking his own life, as a matter of law there could be no recovery by the estate; that deliberate suicide by one who is sane vitiates the policy. The decision of the court sustained the contention of the defendant. It proceeds upon the general principles underlying contractual obligations, and in substance makes it a tacit condition of every contract of insurance that the insured, while sane, will not take his own life. Such an event is esteemed not to be in the minds of the parties at the time of the formation of the contract, and the resort to it by the insured to put a premature termination to his liability to pay premiums, and to precipitate the payment of the amount of the policy, constitutes a fraud upon the other party to the contract and relieves him from his obligation. The event upon which the contract is based is death, and this is certain to occur at some time: so the only contingency upon which the liability of the insurer depends is the time of its occurrence. To allow the insured to deprive him of the benefit of this contingency would rob the contract of mutuality.

This interpretation of the contract seems to exclude all evidence to show that it was actually intended by the parties that the insurer should assume the protection of the insured against any present or future disposition to suicide; and yet it is possible that in some cases such an intention might have been in the minds of the parties