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# Conditional Sales

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pellee was injured by breathing impure air and noxious gases in a mine, during a period of several months and the court denied compensation. It would be seemingly impossible under the Kentucky act to grant compensation for an injury from breathing noxious gases in a mine even though the injury could be traced to an unexpected event happening at a particular time or on a particular day.

It may be concluded that Kentucky is not in accord with the majority of states on the question of compensation for sudden and unexpected injuries from noxious gases and poisonous air. In accord with practically all of the states, Kentucky holds that occupational diseases are not compensable, but the added provision that the disease must be of traumatic origin puts the state in a class by itself.

It is submitted that the act should be amended to exclude the word "traumatic." There was no remedy at common law for occupational diseases and the general legislative intent seems to be that they should not be included under the provisions of compensation acts. These are the natural and reasonably to be expected results of workmen following certain occupations for a considerable period of time and since they may be expected, the workman is on guard as to what he may expect.

On the other hand, a disease, which is not the ordinary result of an employee's work, reasonably to be anticipated as a result of pursuing the same, but contracted as a direct result of unusual circumstances connected therewith, meets all the other requirements of the act, is an accident, and should be compensable.

ROY MORELAND.

Lexington, Kentucky.

### CONDITIONAL SALES.

The business man's most serious problem has always been to provide sufficient security for his sales. The answer to the problem is the conditional sale. It has crept into our law and caused much litigation in the courts. This conditional sale, however, has become well established, and is recognized as valid and enforceable in the majority of jurisdictions. The courts holding that the condition is not valid<sup>1</sup> and the transaction is an absolute

<sup>1</sup> 24 R. C. L., p. 462, n. 11; 20 Colo. 353; 46 Ill. 487; 10 Bush (Ky.) 337; 21 Md. 406; 92 Pa. St. 53.

sale base their reasoning on grounds of public policy, maintaining that the public must be protected from the frauds which would necessarily follow any other decision; while the courts allowing such conditional sales to be enforced<sup>2</sup> follow the fundamental common law rule that where the parties by their agreement indicate an intention to create a condition precedent to the passing of title, such condition will prevent the passing of title in the subject matter until its performance, even though possession is taken by the vendee. Blackb., Sales 167.

In one sense, any sale with a condition attached whether concurrent or precedent, is a conditional sale, but we are particularly interested in sales where the condition is precedent, and is to be performed by the payment of the purchase price. The term "conditional sale" is, indeed, usually applied to this kind of transactions. It is a sale in which the property or title in the chattel is retained in the seller, even after delivery to the buyer, until the purchase price is paid in full by the buyer. The payment of the purchase price is a prerequisite to the passing of title. Some courts hold that it is in effect a chattel mortgage, or absolute sale with an equitable lien or mortgage back to the original buyer, while some call it a bailment for a particular purpose. However, the distinction between a conditional sale and a chattel mortgage must be clearly defined. One test is made by examining the title. Only he who has the title can mortgage the goods, hence if the title is retained by the seller there can be no mortgage but only a conditional sale.<sup>3</sup> The weight of authority distinguished them by the intent of the parties,<sup>4</sup> while some courts distinguish them by the obligation to pay in each transaction, holding that it is absolute in the chattel mortgage, and optional in the conditional sale.

It has been urged that the recognition of the conditional sale as valid leaves loopholes for fraud and works ruin to innocent purchasers who have no notice of such a secret reservation of title in another, that one who puts the possession of a chattel and the ostensible ownership into the hands of another, thereby permitting the possessor to sell to an innocent purchaser to his loss and damage, should be estopped to assert his title in

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<sup>2</sup> See 24 R. C. L., p. 455, n. 17 and 18.

<sup>3</sup> 176 Ill. 288; 99 N. Y. Supp. 856; 118 Mich. 636.

<sup>4</sup> 82 Mo. Ann. 30; 284 Fed. 516; 40 Cal. 141.

the chattel against such innocent buyer. But one who has no title can transfer none according to the common law and since the conditional vendee had no title, the innocent purchaser who bought from him has none. Massachusetts<sup>5</sup> and New York,<sup>6</sup> as well as a great many other jurisdictions, reason this way. But now the policy of our law is generally to protect the bona fide purchaser. Consequently, while most of the states still give validity to the conditional sale, even against purchasers and creditors, a great many enforce it only between the parties, and will not allow the seller to assert his title against bona fide purchasers and creditors.<sup>7</sup>

In a great many states the attitude of the courts towards conditional sales has been influenced by statutes requiring the recordation of all liens and mortgages. A typical example is the statute in Kentucky (Sec. 496) declaring that "No deed or deed of trust or mortgage conveying a legal or equitable title to real or personal estate shall be valid against a purchaser for a valuable consideration, without notice thereof, or against creditors, until such deed or mortgage shall be acknowledged or proved according to law and lodged for record."

In *Harkness v. Russell*,<sup>8</sup> Mr. Justice Bradley says that modern condemnation of conditional sales is due largely to a misconception of the origin of the question in English law. Quoting from him, "It has been a provision of English bankrupt laws that if any person becoming bankrupt has in his possession or disposition by consent of the owner, any goods or chattels of which he (the possessor) is the reputed owner, such goods are to be sold for the benefit of his creditors. . . . This presumption of property in the bankrupt has become so imbedded in the English law that in process of time many persons in the profession not adverting to its origin in the statute of bankruptcy, were led to regard it as a doctrine of the common law; and hence in some states in this country, where no such statute exists, the principles of the statute have been followed, and conditional sales of the kind now under consideration have been condemned either as being fraudulent and void as against creditors, or as

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<sup>5</sup> 4 Mass. 405; 3 Gray (Mass.) 545.

<sup>6</sup> 15 N. Y. 409; 40 N. Y. 314; 62 N. Y. 1.

<sup>7</sup> See *Supra*, note 1.

<sup>8</sup> 113 U. S. 663.

amounting, in effect, to absolute sales with a reserved lien or mortgage to secure the payment of the purchase money.”

This is, substantially, the position taken by the courts of Kentucky, that the sale will be construed as absolute with a mortgage or equitable lien back to the seller to secure the purchase money, which lien will be enforced between the parties but not as to creditors and purchasers.<sup>9</sup> Louisiana takes the extreme position of not allowing or recognizing a conditional sale at all.<sup>10</sup>

The Uniform Conditional Sales Act, which has been adopted in six jurisdictions<sup>11</sup> recognized the conditional sale as valid but does not permit its enforcement against bona fide purchasers and creditors without notice. The provisions of this act are substantially the same as the Kentucky law of conditional sales.

Having compared the authorities, let us now compare the two sides of the question on principle. On the one hand we have a transaction wherein the seller of a chattel is allowed to transfer the possession, use, and presumptive ownership of the chattel to another party, nevertheless, keeping and reserving unto himself the title and property therein, until the happening of a certain contingency, the payment of the purchase price. Although, the vendor has in his pocket the only evidence of his ownership, yet he is allowed by law when that title is in dispute to assert and establish that title and ownership even against a bona fide purchaser without notice. At common law the parties to a contract could create a condition precedent to the passing of title and courts would give it effect. The conditional vendee would get no title and would be allowed to transfer none. The fact that the purchaser had no notice of the condition would not create a title in him. But it must be admitted that this sometimes will permit fraud. Shall one be allowed to parade, as his own, chattels which do not belong to him, thus securing credit and trust to which he may not be entitled? The vendee's possession and beneficial use of the chattel raise a presumption of his ownership of it. Is it wise to allow an innocent third party to lend money on the strength of that presumption only to find later that he had no security

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<sup>9</sup> 10 Bush 337; 44 S. W. 124; 13 Bush 430; 111 Ky. 827.

<sup>10</sup> 121 La. 152.

<sup>11</sup> Alaska, Arizona, Delaware, New Jersey, South Dakota, West Virginia, Wisconsin.

for his loan, that the chattel really belonged to someone else of whom he had no knowledge?

On the other hand, if we take the position that is represented by the Kentucky courts, we have a transaction that gives to the seller all the advantages concerning security for the purchase price consistent with the rights of others, while at the same time it excludes the objectionable features as to fraud and hardship being perpetrated on innocent purchasers from the conditional buyer. It is admittedly to the advantage of the seller to be able to retain his hold on the property until the purchase price has been paid, but by preventing him from asserting his claim against creditors and purchasers unless he has provided the means, by recording his claim as a chattel mortgage, loss will result to neither the seller of a chattel on such a condition nor to purchasers of the chattel from such buyer. On principle, and as a matter of public policy, it seems a better rule to give validity to the sale and condition between the parties, but deny the assertion of title by the seller against purchasers and creditors without notice. If the conditional vendor fails to take advantage of the statute permitting recordation, he has no ground to complain if the court upholds the rights asserted by a bona fide purchaser or a creditor without notice.

EUGENE B. COCHRAN.

Note.—Thirty-one states have passed acts specifically requiring conditional sales to be in writing and recorded (Williston on Sales, 2nd Ed., Sec. 327). See also *American Law Book Co. v. Brewer*, 202 Mo. App. 15, 213 S. W. 381.—Editor.