ILLUSTRATIVE CASES IN PERSONALTY. PART II - SALES; PP. 197-412

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Illustrative Cases in Personalty. Part II - Sales; pp. 197-412 by W. S. Pattee

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Trieste

ILLUSTRATIVE CASES

IN

PERSONALTY.

BY

W. S. PATTEE, LL.D.,

DEAN OF COLLEGE OF LAW, UNIVERSITY OF MINNESOTA.

PART II.—SALES.

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CASES ON SALES

OF

PERSONAL PROPERTY.

A sale is a contract for "The transfer of the absolute or general property in a thing for a price in money." Darlington on Per. Property, 78; Benjamin on Sales (Ed. 1884), 1.

I.

THING TO BE SOLD.

A.

Actual Existence.

RUTHRAUFF v. HAGENBUCH.

Supreme Court of Pennsylvania, 1868.

58 Pa. St. 103.

READ, J. The plaintiff raised a crop of tobacco on the land of the defendant in 1863, on the shares. It was gathered, stripped, and stored in sheds on the farm of the defendant, and remained in the joint ownership of the plaintiff and defendant until the 18th of March, 1864, when they entered into the following agreement under seal:—

"Agreement entered into March 18, 1864, between Daniel S. Ruthrauff and Peter Hagenbuch, both of Union County, Pennsylvania, as follows, to wit: The said Ruthrauff hereby agrees to sell, and doth sell, unto the said Hagenbuch, in Turbut Township, being the undivided half of all the tobacco said

Ruthrauff raised on the said farm, at fourteen cents per pound. The said tobacco being herein and hereby now delivered by said Ruthrauff to said Hagenbuch—and the said Hagenbuch hereby agrees to sell the said tobacco for the best price that he can obtain for it—and whatever said Hagenbuch may obtain for said tobacco after paying all expenses for preparing the same for market, and selling over and above the said sum of fourteen cents per pound, he shall account for and pay to said Ruthrauff."

Upon this agreement are endorsed receipts for payments on the 4th December, 1863, January, 1864, and March 18, 1864, amounting to $110.08.

The tobacco remained on the land and in the possession of the defendant until the 17th March, 1865, when it was swept away by a flood, and the real question in this cause was what is the true construction of this agreement, which, of course, was for the decision of the Court.

The natural reading of this instrument would make the transaction a sale and delivery of the plaintiff's share of the tobacco to the defendant for a fixed price, to be increased, but not to be diminished, by the net proceeds of sale above that price, which could be fixed or made certain without difficulty. If this were a sale, then the defendant is liable to the plaintiff for the lost tobacco, and at the price of 14 cents per pound, the flood having rendered impossible the performance of the latter part of the agreement, which, therefore, becomes simply a sale for a fixed price.

This is strongly corroborated by the receipts for money endorsed on the agreement, the last on the very day of its execution. The counsel for the defendant, it is true, states that the defendant was the creditor of the plaintiff; if so, it makes the sale more evident, because, if it were not so, the plaintiff would lose the tobacco and still remain liable to the defendant, supposing the defendant to have been his creditor to the full value of the tobacco; and if it is a bailment or trust, then the plaintiff is still liable for that amount, having lost the very tobacco which would be said, according to the defendant's theory, to be simply a trust or agency on the part of the defendant.

The Court, therefore, erred in holding it not to be a sale,

but a transfer in the nature of a trust, and that the defendant was a mere trustee, holding the tobacco for the benefit of the plaintiff.

We think it was a sale, and the Court should have so instructed the jury.

Judgment reversed, and a *venire de novo* awarded.

B.

Potential Existence.

HULL *v.* HULL. 40 A.R. 165

Supreme Court of Errors, Connecticut, 1880.

48 Conn. 250.

LOOMIS, J. The controversy in this case has reference to the ownership of six colts, the progeny of two brood mares, which the plaintiff, some ten years prior to this suit, purchased in Boston of the Rev. William H. H. Murray. The contract of sale provided that the plaintiff might take the mares to Murray's farm in this State, of which she was and had been for several years the superintendent, and there keep them as breeding mares; and all the colts thereafter foaled from them, though sired by Murray's stallions, were to be the exclusive property of the plaintiff.

No attempt has been made by Murray's creditors or his trustee to deprive the plaintiff of the mares so purchased, and they are now in her undisturbed possession; but the colts, while on Murray's farm on the 1st of August, 1879, were attached by one of his creditors, who subsequently released the property to the defendant as trustee in insolvency, who had the property in his possession at the time the plaintiff brought her writ of replevin.

The sole ground upon which the defendant claims to hold these colts is, that there was such a retention of possession by Murray after the sale as to render the transaction constructively fraudulent as against creditors.

The Court below overruled this claim, and in so doing we think committed no error.

The doctrine as to retention of possession after a sale has no application to the facts of this case. A vendor cannot retain after a sale what does not then exist nor that which is already in the possession of the vendee. This proposition would seem to be self-sustaining. If, however, it needs confirmation, the authorities in this State and elsewhere abundantly supply it: Lucas *v.* Birdsey, 41 Conn. 357; Capron *v.* Porter, 43 Id. 389; Spring *v.* Chipman, 6 Verm. 662. In Bellows *v.* Wells, 36 Verm. 599, it was held that a lessee might convey to his lessor all the crops which might be grown on the leased land during the term, and no delivery of the crops after they were harvested was necessary even as against attaching creditors, and that the doctrine as to retention of possession after the sale did not apply to property which at the time of the sale was not subject to attachment and had no real existence as property at all.

The case at bar is within the principle of the above authorities, for it is very clear that the title to the property in question when it first came into existence was in the plaintiff.

In reaching this conclusion it is not necessary to hold that the mares became the absolute property of the plaintiff under Massachusetts law without a more substantial and visible change of possession, or that under our law, the title to the mares being in the plaintiff clearly as between the parties, the rule imported from the civil law, *partus sequitur ventrem*, applies.

We waive the consideration of these questions. It will suffice that, by the express terms of the contract, the plaintiff was to have as her own all the colts that might be born from these mares. That the law will sanction such a contract is very clear.

It is true, as remarked in Perkins on Conveyances (tit. Grant, § 65), that "it is a common learning in the law that a man cannot grant or charge that which he has not;" yet it is equally well settled that a future possibility arising out of, or dependent upon, some present right, property, or interest, may be the subject of a valid present sale.

The distinction is illustrated in Hobart, 132, as follows: "The grant of all the tithe wool of a certain year is good in its creation, though it may happen that there be no tithe wool