

Insurance--Purchaser's Rights to Proceeds of Vendor's Policy (Cowan v. Sutherland, 117 N.Y.S.2d 365 (Sup. Ct. 1952))

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tial relationship.¹⁹ Judicial protection has been denied on the ground that a voluntary disclosure of the idea causes it to become common property.²⁰ This does not mean that there may not be a limited disclosure²¹ so as to apprise the purchaser of what is being offered to him. "If it were held otherwise the mere offer to sell would destroy the thing offered."²²

The present case is decided in a manner which the court thinks more in accord with modern legal developments and substantial justice. A novel idea, tangible in form and disclosed under express or implied contract, is a legally protected property right.

It is submitted on the one hand, that a truly ingenious idea, so difficult to create, warrants a higher claim to be treated as property than mere physical possessions. Failure to protect these ideas would result in a removal of the profit motive, which is their impetus, and consequently the free flow of progressive ideas to the general public would be retarded. On the other hand, the apparent willingness of the courts to protect these ideas and their tremendous commercial value, especially in the field of radio, television and motion pictures, has brought an avalanche of claimants asserting that they are originators of ideas which have been unscrupulously appropriated. Thus the likelihood of nuisance suits is evident. Any attempt to resolve this apparent conflict must undertake to reconcile the need for adequate legal protection to men of ability with the necessity for discouraging arbitrary and vexatious suits based on unfounded claims to originality.



INSURANCE—PURCHASER'S RIGHTS TO PROCEEDS OF VENDOR'S POLICY.—Plaintiff-purchaser brought an action for specific performance of a contract for sale of real property and to recover a portion

¹⁹ See *Shubert v. Columbia Pictures Corp.*, 189 Misc. 734, 741, 72 N. Y. S. 2d 851, 857 (Sup. Ct. 1947), *aff'd mem.*, 274 App. Div. 751, 80 N. Y. S. 2d 724 (1st Dep't 1948); see Note, 23 A. L. R. 2d 244, 254 (1952).

²⁰ See *Moore v. Ford Motor Co.*, 43 F. 2d 685, 686 (2d Cir. 1930); *Bowen v. Yankee Network, Inc.*, *supra* note 18, at 63; *Bristol v. Equitable Life Assur. Soc'y*, *supra* note 18, at 267, 30 N. E. at 507 (1892).

²¹ See *Stanley v. Columbia Broadcasting System, Inc.*, 35 Cal. 2d 653, 221 P. 2d 73, 80 (1950) (recording audition for a radio program does not make the idea public property); *How J. Ryan & Associates, Inc. v. Century Brewing Ass'n*, 185 Wash. 600, 55 P. 2d 1053, 1054 (1936). For further examples of limited disclosures, see Warner, *Protection of the Content of Radio and Television Programs by Common Law Copyright*, 3 VAND. L. REV. 209, 229 (1950).

²² *How J. Ryan & Associates, Inc. v. Century Brewing Ass'n*, *supra* note 21, 55 P. 2d at 1054.

of the proceeds of a fire insurance policy, taken in the name of the vendor and upon which the purchaser paid the premiums. Recognizing the validity of an oral modification of the contract of sale,¹ the court decreed specific performance. In denying plaintiff's claim to a portion of the proceeds, the court *held* that the policy was for the benefit of the insured, the vendor, the purchaser having no claim to the proceeds, even though he paid the premiums. *Cowan v. Sutherland*, 117 N. Y. S. 2d 365 (Sup. Ct. 1952).

The English common-law rule, that the risk of loss in an executory contract for the sale of land falls on the purchaser,² has been adopted by the majority of jurisdictions in the United States.³ In an apparent effort to mitigate the harshness of the rule, it has been modified so as to allow the uninsured purchaser the right to have the proceeds of the vendor's fire insurance policy applied toward the reduction of the unpaid portion of the purchase price.⁴ In England, however, the rule has been strictly applied to the uninsured purchaser. In the celebrated case of *Rayner v. Preston*,⁵ it was held that the benefits of the vendor's fire insurance policy belonged to the vendor, the purchaser having no claim to the proceeds in the absence of any contractual stipulation to the contrary. Subsequently, the rule in England was changed by act of Parliament,⁶ allowing the purchaser to recover the proceeds of the vendor's policy, upon completing payment of the purchase price, where the purchaser has paid a proportionate part of the premiums.⁷

The New York Court of Appeals has strictly adhered to the doctrine promulgated in *Paine v. Meller*,⁸ imposing the risk of loss on the purchaser as soon as the contract of sale has been made.⁹ The seeming harshness of such a rule was somewhat alleviated by statute in New York.¹⁰ Under this statute, the Uniform Vendor and Purchaser Risk Act, the risk of loss is deemed to fall upon the purchaser

¹ The court also *held* that the conversation of the purchaser and vendor subsequent to the fire, constituted a valid offer and acceptance which, combined with part payment of the reduced purchase price, created a valid modification of the written contract. It further denied vendor's counterclaim for damage to his personal property left in the possession of the purchaser, since the vendor failed to show lack of due care by the purchaser.

² See *Lysaght v. Edwards*, 2 Ch. D. 499, 507 (1876); *Paine v. Meller*, 6 Ves. 349, 352, 31 Eng. Rep. 1088, 1089 (1801).

³ See Vanneman, *Risk of Loss, In Equity, Between the Date of Contract to Sell Real Estate and Transfer of Title*, 8 MINN. L. REV. 127 (1924); LEG. DOC. NO. 65(M), 1936 REPORT, N. Y. LAW REVISION COMMISSION 757, 771.

⁴ See Note, 37 A. L. R. 1324 (1925), and cases collected therein.

⁵ 18 Ch. D. 1, 50 L. J. Ch. (N.S.) 472 (1881).

⁶ Law of Property Act, 1925, 15 & 16 GEO. 5, c. 20, § 47.

⁷ *Id.* at (2). See 29 HALSBURY'S LAWS OF ENGLAND 342 (2d ed. 1938).

⁸ 6 Ves. 349, 31 Eng. Rep. 1088 (1801).

⁹ *Sewell v. Underhill*, 197 N. Y. 168, 90 N. E. 430 (1910); see *Brownell v. Board of Education*, 239 N. Y. 369, 374, 146 N. E. 630, 632 (1925).

¹⁰ N. Y. REAL PROP. LAW § 240-a.

only when he has gone into possession or taken title.¹¹ The provisions of this statute were construed so as to deny the purchaser any rights to the vendor's policy, unless expressly so provided.¹²

In applying the rule, the New York courts recognize the basic principles of insurance law which limit recovery on the policy to those in privity or named as beneficiaries therein.¹³ In addition, the courts apparently reason that where the risk of loss falls upon the purchaser, he has an insurable interest,¹⁴ and should not depend on the vendor's policy for indemnification. Thus the equitable concept of the vendor holding the proceeds of his policy as trustee for the benefit of the purchaser, as recognized by the majority of American jurisdictions,¹⁵ is rejected in New York.¹⁶

The instant case presented the courts of New York with an opportunity to restrict the harsh application of the rule, to cases where the purchaser is in possession but has not paid the premiums. A rule which would, in such a case, allow the purchaser a proportionate share of the insurance proceeds would achieve substantial justice. It is submitted that the court's failure to seize upon this opportunity to limit an inequitable rule was unfortunate. It would seem that if a change is to be effected it is more likely to be brought about by legislation than by judicial decision.



PROPERTY—MONEY LEFT ON SHELF IN BANK VAULT—MISLAID NOT LOST.—Plaintiff sought to recover a \$100 bill delivered by her to an employee of defendant bank after she had discovered it lying on the shelf of a writing booth adjacent to the safe-deposit vault, in

¹¹ See *Rosenbloom v. Maryland Ins. Co.*, 258 App. Div. 14, 16, 15 N. Y. S. 2d 304, 306 (4th Dep't 1939); *New York Medical College v. 15-21 East 111th Street Corp.*, 90 N. Y. S. 2d 591, 592 (Sup. Ct. 1949); see *World Exhibit Corp. v. City Bank Farmers Trust Co.*, 270 App. Div. 654, 658, 61 N. Y. S. 2d 889, 893 (2d Dep't), *aff'd mem.*, 296 N. Y. 586, 68 N. E. 2d 876 (1946).

¹² *Matter of Bond & Mortgage Guarantee Co.*, 63 N. Y. S. 2d 120 (Sup. Ct. 1946).

¹³ See *Brownell v. Board of Education*, *supra* note 9, at 374, 146 N. E. at 632. *But see Persico v. Guernsey*, 129 Misc. 190, 194, 220 N. Y. Supp. 689, 693 (Sup. Ct.), *aff'd mem.*, 222 App. Div. 719, 225 N. Y. Supp. 890 (4th Dep't 1927).

¹⁴ See *Carpenter v. German American Ins. Co.*, 135 N. Y. 298, 31 N. E. 1015 (1892); *Brooks v. Erie Fire Ins. Co.*, 76 App. Div. 275, 78 N. Y. Supp. 748 (3d Dep't 1902), *aff'd mem.*, 177 N. Y. 572, 69 N. E. 1120 (1904); N. Y. INSURANCE LAW § 148.

¹⁵ See Note, 37 A. L. R. 1324 (1925), and cases collected therein.

¹⁶ See *Brownell v. Board of Education*, 239 N. Y. 369, 372-74, 146 N. E. 630, 632 (1925). *But see Persico v. Guernsey*, *supra* note 13.