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Article 35

Filing of Contracts of Conditional Sales in New York

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and unconditional only in the case of our neighbors. It does not seem to me that any one who has satisfied himself that an act of his was wrong, and that he will never do it again, would feel the least need or propriety, as between himself and an earthly punishing power alone, of his being made to suffer for what he had done, although, when third persons were introduced, he might, as a philosopher, admit the necessity of hurting him to frighten others. But when our neighbors do wrong, we sometimes feel the fitness of making them smart for it, whether they have repented or not. The feeling of fitness seems to me to be only vengeance in disguise, and I have already admitted that vengeance was an element, though not the chief element of punishment." Nevertheless, it may be assumed as a postulate of sound legal philosophy that the excellence of the criminal law is directly proportional to the extent to which it abandons vengeance as a criterion and adopts prevention and reform as the essential basis for dealing with crimes and criminals.

It is difficult to say how this can be accomplished without the complete individualization of the treatment of criminals. For if the truth were known, it should probably be found that every member of every gang, no matter how closely affiliated with his colleagues, was nevertheless an individual distinct and apart from the other members of the gang, and for whose emancipation from the life of crime, an individual study and treatment was necessary. The theory of modern education which is based on factual studies leaves that impression with regard to the non-criminal portions of our society. In the absence of data it is, of course, not safe to assume anything. But the chief lesson, here as elsewhere, is that uninformed legislation cannot be expected to be significantly corrective.[5]

VERNON F. MURPHY.

FILING OF CONTRACTS OF CONDITIONAL SALES IN NEW YORK.—Legislation which has for its goal the clarification of enactments which have to do with the filing of conditional sales contracts cannot fail to be of value. A study of existing laws reveals solely confusion and contradiction. The new bill promises relief to a branch of the law in which succor is sadly needed.

The bill in substance provides that the filing of conditional sales contracts, provided for in Sections 65, 66, and 67 "of this Article" shall be valid for a period of three (3) years only, "except that, in the counties embraced in the city of New York, such filing shall be valid for one (1) year only." We must look to the history of conditional sales contracts to appreciate and comprehend the necessity for such an amendment.

Under the common law in New York, as in many other states, it was settled that a conditional vendor of goods retained title as

[5] *Cf.* Lawes, Crime and Rehabilitation, New York State Bar Assn. Bull., Jan., 1930.

against all the world, albeit to the prejudice of *bona fide* purchasers for value, who bought, relying solely upon the apparent title of the seller.[1] Obviously, such a rule of law, archaic as it seems today, was the source of much hardship. Purchasers for value were at a loss to determine when their title would be good. To counteract such uncertainty, recording acts have been passed in many states.[2] The recording acts throw the onus on the vendor by requiring him to file a copy of the conditional sales contract in an office of public records so that the world may have notice of the reservation of his title. Consequently, today, under the recording acts, such conditional sale contracts, unless filed, are void as against *bona fide* purchasers from the vendee, who take without actual notice of the reservation of title of the original vendor.[3]

In New York, while the necessity for filing to retain title is undoubtedly settled, the question of when and how often, under the existing law, such contracts should be refiled still is an open one.[4] The Legislature, in its zeal to clarify, has effected contradiction. A brief survey exposes the confusion which prevails in this field of the law where certainty is so desirable.

Prior to September 1, 1922, conditional sale contracts were treated in Article 4 of the Personal Property Law, which comprise Sections 60–67, inclusive. Filing was governed by Section 64, which provided, in substance, that the contract, to be valid against all *bona fide* purchasers or creditors, must have been refiled upon the expiration of the *first or any succeeding year* "reckoning from the time of the first filing." This article was repealed by Chapter 642 of the Laws of 1922, which enacted a new Article 4, comprising Sections 60–80-j, inclusive. Section 71 of the laws as enacted provides:

> "The filing of conditional sale contracts * * * shall be valid for a period of three (3) years only. Refiling, to be effective, must precede the three-year period thirty (30) days."

Inasmuch as Article 4 of Chapter 642 of the Laws of 1922 ostensibly had repealed all the sections of old Article 4, it appeared that filing would be good for three (3) years throughout the entire state. Apparently, the Legislature, however, intended to continue the then existing "official method of filing" in the counties within the city of New York, for the last section of this act contains Section 80-j, which reads:

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[1] Ballard v. Burgett, 40 N. Y. 314 (1869); Austin v. Dye, 46 N. Y. 500 (1871); Comer v. Cunningham, 77 N. Y. 391 (1879).

[2] New York Statutes, Laws 1897, Ch. 418; Laws 1884, Ch. 315.

[3] Kirk v. Crystal, 118 App. Div. 32, 103 N. Y. Supp. 17 (1st Dept. 1907); *aff'd* in 193 N. Y. 622, 86 N. E. 1126 (1908).

[4] Whitney on Sales (1929), Sec. 52.

> "Nothing in this article contained shall be deemed to affect the provisions of Section 64 of the personal property law, or any other provision of law regulating or relating to the official method of filing, refiling, indicing, canceling or satisfying contracts of conditional sale filed in any of the counties within the city of New York or the fees payable therefor."

It appears that the sole effect intended by Section 80-j was to retain the "method of filing, refiling, indicing, canceling or satisfying contracts" in New York City and was not intended to modify the provisions of Section 71, above referred to.

But, on April 9, 1925, the Legislature, oblivious to the confusion that would follow, enacted Chapter 561 of the Laws of 1925, which, so far as pertinent to the present discussion, reads as follows:

> "Section 1. Section 64 of Chapter 45 of the Laws of 1909, entitled 'An Act Relating to Personal Property,' being Chapter 41 of the consolidated laws as last amended by Chapter 455 of the Laws of 1915, and continued in force and effect by Chapter 642 of the Laws of 1922, is hereby amended to read as follows: 'Section 64. Indorsement, entry, refiling and discharge of conditional sale contracts (then follows a restatement of the old Section 64 verbatim except for a minor change).'"

The result is that the old Section 64, in effect prior to 1922, was revivified in its entirety, including the provision for refiling *every year,* while Section 71, providing for refiling *every three years,* continues to remain in force.

The enigma fostered by such careless legislation is aptly illustrated by two recent decisions, wherein two judges, in construing the same sections of this law reached contradictory conclusions. Judge Valente, in his opinion,[5] felt that Section 71 as to filing was the law of the entire state. To quote him:

> "If the Legislature had intended to restrict Section 71 to the territory outside of New York City, it would have said so. What is more likely is that, after Section 64 was repealed by Chapter 642 of the Laws of 1922, it was discovered that the provisions for the routine *method* of filing, including, etc., in New York City had been omitted. Section 64 was therefore continued in force by Section 80-j to the extent of preserving

[5] Perfect Lighting Fixtures Co., Inc. v. Grubar Realty Corp., New York Law Journal, Nov. 2, 1929, at 605. *Affirmed* on appeal: "We are of the opinion that, had the Legislature intended that Section 71 (added by Laws of 1922, Ch. 642, as amended by Laws of 1926, Ch. 160) be applicable only to counties outside those within the city of New York, the statute would have clearly so stated." 228 App. Div. 141 at 144 (1st Dept. 1930).

> such former *methods* of filing, indicing, etc. Such a method of preservation seemed unsatisfactory, and old Section 64 was therefore expressly restored in 1925 in its present form. This restoration, however, did not serve as an amendment to Section 71 or as introducing a one-year period in New York City."

On the other hand, Judge Noonan in his opinion [6] felt that Section 71 was restricted in its application to counties outside of New York City by virtue of the Laws of 1925 which revived the old Section 64, and that it was necessary in the counties of New York City for the vendor to refile at the expiration of the first year.

From this labyrinth of confusion the new bill introduced promises much-needed relief. Aside from the fact that it would definitely settle the time necessary for refiling in the counties of New York City, it expedites the work of the frequently overburdened lawyer. Lawyers who have been called upon to search back three years for copies of conditional sales contracts on file in the register's office, can appreciate the benefits that would accrue if the new bill introduced—necessitating refiling in New York City at the expiration of one year—were to become law. The Legislature, in distinguishing between the counties of New York City and the rest of the state as to the time of refiling, perforce must have realized that the simplification of searches was to be desired in the densely populated counties of New York City. We cannot help but agree that a law which requires searches of the records for one year instead of three will save much time and effort to the busy lawyer, to whom time is usually of the essence.

JOSEPH A. SCHIAVONE.

QUALIFICATION OF AN ATTORNEY AS A COMPETENT WITNESS IN PROBATE PROCEEDINGS.—In order to foster and protect the relationship of attorney and client, the rule was established early in the common law, that confidential communications between attorney and client are privileged.

> "In ancient times, parties litigant were in the habit of coming into court, and prosecuting or defending their suits, in person. Subsequently, however, as law-suits multiplied, and modes of judicial proceeding became more complex and formal, it became necessary to have these suits conducted by persons skilled in the law and in the practice of the courts. This necessity gave rise, at an early day, to the class of attorneys; to facilitate the business of the courts, it was important that these men should be employed. But as parties were not then obliged to testify in their own cases, and could not be compelled

[6] Gimbel Bros. v. Brown, New York Law Journal, June 12, 1929 at 1301.