SALES-PASSAGE OF TITLE BEFORE PAYMENT OF PURCHASE
PRICE

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SALES—PASSAGE OF TITLE BEFORE PAYMENT OF PURCHASE PRICE.—In January, S agreed to sell his business to the plaintiff, who went into possession, took over the lease, and operated the business. He did not have sufficient money to pay the purchase price at the time, and no bill of sale was given. A creditor of S took judgment on a promissory note made by S, of the existence of which note the plaintiff first became aware in February, and levied execution on the goods in the store. The plaintiff filed a claim of property. Held, that there was no sale at the time of the transfer of the business, and so the plaintiff’s title, acquired under a bill of sale given subsequently to the levy, was junior to the right of the creditor. Viera v. Marques (N. J. 1930) 151 Atl. 597.

"When the transaction concerns a definite and specified thing, whose ownership the seller is legally capable of transferring, the primary and fundamental principle” is that title will pass when the parties so intend. Waite, Sales, 17. Since the beginning of the nineteenth century, it has been a canon of the common law that in such a situation the intent of the parties, objectively determined, governs. Williston, Sales, secs. 261, 264, and cases there cited. The leading case on this point is that of Tarling v. Baxter, 6 B. & C. 360; there, A contracted to sell, and B to buy, a stack of hay, the price to be paid in a month, and the vendee to have the right to let the hay remain on the
vendor's land for three months. It was held, per Bayley, J., that "where there is an immediate sale, and nothing remains to be done by the vendor as between him and the vendee, the property in the thing sold vests in the vendee," and so title passed into B as soon as the contract was made. This indicates quite clearly that neither payment of the purchase price nor delivery of possession are necessarily conditions precedent to the passage of title. The Uniform Sales Act, sec. 19, rule 1, in laying down rules for determining intention, codifies the common law view as follows: "Unless a different intention appear ***, where there is an unconditional contract to sell specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment, or the time of delivery, or both, be postponed." 1 Uniform Laws, Ann., 90, 93. In view of these statements of the law, it seems impossible to explain the decision of the New Jersey court in the principal case; for all the elements necessary to cause an immediate passage of title were present, and there was not a vestige of evidence of a contrary intention to rebut the presumption that it passed. The goods were specific, in a deliverable state, and nothing remained to be done by the vendor as between himself and the vendee, and the conclusion seems irresistible that title passed. While no cases appear to have been decided in New Jersey involving this point, that state has adopted the Sales Act, and section 19, rule 1, of the New Jersey act contains precisely the same provision as the model statute. N. J. Comp. Stat. (1910) p. 4651. It can not be said that the transaction violated the Sales in Bulk Law (Laws, N. J., 1915, c. 208, p. 377), for the vendor gave the vendee an affidavit that he had no creditors, and the statute does not require the vendee to make inquiry of anyone but the vendor. It is very possible that the record of the case presented facts which would show an intention that title remain in the vendor, and that the court failed to reveal such facts in its opinion. If this be the case, the opinion seems open to criticism; for, while the decision was not that of the court of last resort, still, the rulings of the supreme court of New Jersey carry weight, and it seems to us that such opinion misleads both the bar and future litigants. As it was so well put by Lord Bacon, in his essay "Of Judicature," "One foul sentence doth more hurt than many foul examples. For those do but corrupt the stream, the other corrupteth the fountain."