



1958

## Vendor and Purchaser - Rights and Liabilities - Vendee's Right to Proceeds of Fire Insurance in Reduction of Purchase Price

Dennis H. Hill

Follow this and additional works at: <https://commons.und.edu/ndlr>



Part of the [Law Commons](#)

[How does access to this work benefit you? Let us know!](#)

---

### Recommended Citation

Hill, Dennis H. (1958) "Vendor and Purchaser - Rights and Liabilities - Vendee's Right to Proceeds of Fire Insurance in Reduction of Purchase Price," *North Dakota Law Review*. Vol. 34: No. 2, Article 18.

Available at: <https://commons.und.edu/ndlr/vol34/iss2/18>

This Case Comment is brought to you for free and open access by the School of Law at UND Scholarly Commons. It has been accepted for inclusion in North Dakota Law Review by an authorized editor of UND Scholarly Commons. For more information, please contact [und.common@library.und.edu](mailto:und.common@library.und.edu).

the title back to the original grantor to satisfy himself that the exceptions are not included in the various conveyances.

The statute should bar: all claims under a tax title more than 20 years old, homestead rights, informalities in the execution or acknowledgements of conveyances, defects in the chain due to erroneous recording, adverse possession claims, and many other common defects.<sup>13</sup>

The general operation of the statute is similar to that of statutes of limitation; it also serves as a method of forcing recordation of claims.<sup>14</sup> Although the statutes may work hardship on persons holding interest and claims,<sup>15</sup> nevertheless the statutes serve a public purpose in simplifying land transactions by barring ancient defects in a title which are very troublesome to a title examiner and costly to a client.

JOSEPH R. MAICHEL.

VENDOR AND PURCHASER — RIGHTS AND LIABILITIES — VENDEE'S RIGHT TO PROCEEDS OF FIRE INSURANCE IN REDUCTION OF PURCHASE PRICE. — A purchaser contracted to buy a farm from a vendor. A barn upon the premises was destroyed accidentally by fire between the time of execution of the contract and the passing of title and while the purchaser was in possession. The contract provided for insurance in the vendor's name with premiums to be paid by the purchaser without a specific agreement as to the disposition of the proceeds. The purchaser sued for specific performance and a reduction of the purchase price. The court *held*, three justices dissenting, that the proceeds of the insurance received by the vendor be applied in reduction of the plaintiff's purchase price. *Raplee v. Pipher*, 143 N.E.2d 919 (N.Y. 1957).

At common-law a purchaser under a valid contract of sale had the risk of loss.<sup>1</sup> Property insurance, by its nature, was considered a personal contract of indemnity which ran solely to the named insured and did not run with the land.<sup>2</sup> Thus, when a vendor of realty contracted to sell, retaining legal title as security for the unpaid purchase price, the vendee became the equitable owner of the property<sup>3</sup> and by operation of law assumed any risk of loss.<sup>4</sup> In situations where the vendor required the purchaser to pay the premiums on an insurance policy in the vendor's name in event of the subsequent destruction of the property, the insurer was liable for the insured's remaining interest, and the purchaser was liable for the balance of the purchase price.<sup>5</sup> These theories led to the anomalous result that the vendor had the option of pursuing either the insurer, the purchaser, or both. The insurer

13. *Ibid.* See *B. W. and Leo Harris Co. v. City of Hasting*, 240 Minn. 49, 59 N.W.2d 816, 817 (1953) (dictum).

14. *Wichman v. Messner*, 83 N.W.2d 800 (Minn. 1957); *Iowa Title Standards I*, 2 Drake L. Rev. 76 (1953).

15. See *Basye*, *Clearing Land Titles*, § 177 (1953); *Basye*, *Streamlining Conveyancing Procedure*, 47 Mich. L. Rev. 1097 (1949); *Leahy*, *The North Dakota Marketable Record Title Act*, 29 N. Dak. L. Rev. 265 (1953).

1. *Raynor v. Preston*, 18 Ch. D. 1 (1881).

2. *City of Norwick*, 118 U.S. 468 (1886); *Crownwell v. Brooklyn Fire Ins. Co.*, 41 N.Y. 42 (1870).

3. *Oberholtz v. Oberholtz*, 79 Ohio App. 540, 74 N.E.2d 574 (1947).

4. *Raynor v. Preston*, 18 Ch. D. 1 (1881); 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); *Holland*, *Risk of Loss and Insurance in Contracts for the Sale of Real Estate*, 5 Tex. L. Rev. 249 (1926).

5. *Brownell v. Board of Education*, 239 N.Y. 369, 146 N.E. 630 (1925); *Raynor v. Preston*, 18 Ch. D. 1 (1881).

would be exempt from liability when the purchaser paid the balance of the purchase price, for the defense available to the insurer of "no loss" would defeat the vendor's claim.<sup>6</sup> Thus the insurer incurred no liability but gained the premiums paid.<sup>7</sup> If the vendor sued on the insurance contract and then subsequently pursued the purchaser, he could gain a double recovery.

However, the majority of American jurisdictions, including North Dakota, hold that in absence of contractual provisions equity imposes a trust upon the insurance proceeds received by the vendor, to be applied in abatement of the purchase price owed by the purchaser.<sup>8</sup> Any excess will be directed by the court in favor of the vendee as a beneficiary of the trust. In cases where there has been partial destruction, the insurance proceeds have been directed to be applied in rebuilding or refinishing that portion of the property which was damaged.<sup>9</sup>

The minority view in the United States in such cases leaves the burden on the purchaser of insuring his interest in the land,<sup>10</sup> holding to the common-law rule that insurance is a personal contract running to the insured.<sup>11</sup> This rule had been set by precedent in New York but has been overruled in the principle case.<sup>12</sup> A third rule holds that there is a failure of consideration which allows rescission of the contract and leaves the vendor with his ruins.<sup>13</sup>

DENNIS H. HILL.

---

6. See *Tabbut v. American Ins. Co.*, 185 Mass. 419, 70 N.E. 430 (1904).

7. 3 Corbin, *Contracts*, § 670 (1951); 4 Williston, *Contracts*, § 942 (Rev. Ed. 1936); Vance, *Insurance*, § 131 (3d ed. 1951).

8. *Sheridan v. Peninsular Sav. Bank*, 116 Mich. 545, 74 N.W. 874 (1898); *Standard Oil Co. v. Dye*, 223 Mo.App. 926, 20 S.W.2d 946 (1929); *Millville Aerie v. Weatherly*, 82 N.J.Eq. 455, 88 Atl. 847 (Ch. 1913); *Raplee v. Piper*, 2 App. Div. 732, 152 N.Y.S.2d 799 (3rd Dep't. 1956), *aff'd*, 143 N.E.2d 919; *Persico v. Guernsey*, 29 Misc. 190, 220 N.Y.Supp. 689 (Sup. Ct. 1927); *Gunsch v. Gunsch*, 71 N.W.2d 623 (N.D. 1955); *Russell v. Elliot*, 45 S.D. 184, 186 N.W. 824 (1922); *Brakhage v. Tracy*, 13 S.D. 343, 83 N.W. 363 (1900); *Gillingham v. Phelps*, 5 Wash.2d 410, 105 P.2d 825 (1940).

9. *Hatch v. Commerce Ins. Co.*, 216 Iowa 860, 249 N.W. 164 (1933); *Hancock v. Roitz*, 129 Kan. 111, 281 Pac. 891 (1929); *Naquin v. Texas Sav. Ass'n.*, 95 Tex. 313 (1902).

10. *Phinizy v. Guernsey*, 111 Ga. 346, 36 S.E. 796 (1900); *Gilbert v. Port*, 28 Ohio St. 276 (1875).

11. *Allison v. Nat. Union Fire Ins. Co.*, 163 Tenn. 246, 43 S.W.2d 202, 203 (1931) (dictum); *American Steam Laundry Co. v. Hamburg Bremer Fire Ins. Co.*, 121 Tenn. 13, 113 S.W. 394, 395 (1908) (dictum).

12. *Brownell v. Board of Education*, 239 N.Y. 369, 146 N.E. 630 (1925); *Davison v. MacDonald*, 124 Misc. 726, 209 N.Y.Supp. 145 (Sup. Ct. 1925).

13. *Libman v. Levenson*, 236 Mass. 221, 128 N.E. 13 (1920).