

the instalments, to treat all of them as at once payable, and sue for them: No doubt, if they take that course, they elect to have the purchase then completed. They could not sue for the purchase money and insist that the property in the goods, the price of which they were suing for, had not passed. But that is merely one of certain alternative courses which are open to Messrs. Crossley."

These observations are not to be construed as laying down the unqualified proposition that in all cases of conditional sales of chattels, where it is a term "that the property shall not pass until payment, nevertheless it shall pass if the vendors elect to sue for the purchase money—but are merely a judicial interpretation of the terms of the special agreement entered into by the parties to that action, one of which was, not that the vendors might sue for the purchase money and at the same time recover possession of the chattel, but that they might do one of two things, at their election, namely, call in and sue for the whole of the unpaid purchase money, or "instead of seeking to recover such balance, may, if they think fit, seize and resume absolute possession," etc.

Here the terms of the agreement between the parties are different, and in case of Bird's default the defendant is not, by the terms of the contract, put to his election, but is left in the full enjoyment of the right to demand payment of the purchase money, and until payment to resume possession. If the general proposition contended for by Mr. Raney were the law, then, were a vendor to resume possession and thereafter sue for the whole purchase money, the right to possession would at once be lost, and the property in the chattel would at once pass to the purchaser. But this result would be contrary to the express agreement of the parties, which provides that "the title . . . shall not pass . . . until all moneys payable . . . have been fully paid . . . and in case of default of any of the payments . . . and without affecting my liability for purchase money . . . you are at liberty . . . to remove the said machinery," etc.

Thus it is expressly agreed between the parties that the defendants might resume possession without affecting Bird's liability for the purchase money, that is, the vendor was to be entitled to possession until payment of the purchase money. For these reasons, *McIntyre v. Crossley* has, in my opinion, no application, and the second objection fails.