

SINGER MANUFACTURING COMPANY v. BULLARD.

Where a sewing-machine is delivered upon an agreement that a specified sum is to be paid monthly for the use of it until a certain amount is paid, and then the machine is to be returned, or one cent paid for it the title to the machine does not pass to the bailee until the full amount is paid.

REPLEVIN of a sewing-machine. Facts found by a referee. In March, 1879, the defendant received from the plaintiffs a sewing-machine, and signed an agreement acknowledging the receipt of the machine of the value of twenty dollars, and agreeing to pay the plaintiffs for the use of it five dollars per month until the amount of twenty dollars was paid, and then to return the machine to the plaintiffs or pay one cent for it. After making payments to the amount of ten dollars, the defendant neglected and refused to make any further payment; and in July, 1881, after a demand upon the defendant, and a refusal to pay or deliver up the machine, the plaintiffs replevied it. Judgment was ordered for the plaintiffs, and the defendant excepted.

Sulloway, Topliff & O'Connor, for the plaintiffs.

J. P. Bartlett, for the defendant.

CLARK, J. The machine was the property of the plaintiffs, whether the agreement is regarded as a lease or as a conditional sale. The title would not pass until the price was paid in full. Upon a demand of payment, and a refusal to comply within a reasonable time, or to deliver up the machine, the plaintiffs had a right to replevy it. *Bailey v. Colby*, 34 N. H. 29; *Singer Mfg Co. v. Graham*, 8 Oreg. 17—S. C., 34 Am. Rep. 572.

Exceptions overruled.

STANLEY, J., did not sit: the others concurred.

ROWELL & a. v. HOLLIS.

The duty imposed upon towns to keep their highways in suitable repair cannot be varied by proof of a custom to make repairs in a particular manner.

The admission of evidence wholly immaterial furnishes no sufficient ground for granting a new trial.