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UNIFORM LAWS, ANNOTATED

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Assisted by the Editorial Staff of the Publishers

Book 2

UNIFORM CONDITIONAL SALES ACT



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PREFACE

This volume is the second of the series known as Uniform Laws, Annotated, a series designed to render of easy access to the profession the most recent accomplishment in the development of legal jurisprudence. Uniformity of the law is the present day aim and hope of the legal student. A decided step in that direction is the gradual centralization of the law making power in the Federal government, but a still more remarkable advance has been made by the adoption in our state jurisdictions of uniform laws dealing with matters of state cognizance. Every state legislature has adopted one or more of the acts recommended by the National Conference of Commissioners on Uniform State Laws, and the number of laws adopted and the number of states adopting them are both increasing annually.

It goes without saying that the lawyer who would be up to the times must have these laws, and of still greater necessity is it that he should have the decisions construing these laws. Any question of the relative value of decisions as precedents entirely disappears when the statute law on which they are based is identical everywhere.

To present these uniform laws and these all important decisions in a compact compass is the purpose of this series, a purpose best subserved by the publication of each law with its annotations, as far as warranted, in a single volume. In other words — "One law, one book."

This second volume, presenting the Uniform Conditional Sales Act, is characterized by the same care in compilation and annotation as the other volumes of the series. While this particular law is both comparatively short and of comparatively recent adoption, yet in the constantly expanding commercial life of the nation there are few subjects of greater importance than conditional sales. Because of this fact the publishers have departed from the general plan of publication and have added an Appendix which gathers together the conditional sales statutes of those jurisdictions which have not as yet adopted the Uniform Act. For purposes of contrast and of practical application to the exigencies of practice, the matter contained in this Appendix should prove invaluable to the subscriber.

This and each of the other volumes of the series will be kept up to date by the publishers' patented device of a Cumulative Supplement containing all new decisions and statutory changes, and mechanically constructed so as to slip into a pocket at the end of the book.

THE PUBLISHERS.

Uniform Conditional Sales Act

Table of States Wherein Act Has Been Adopted †

	Adopting act	Date of taking effect	Present form of act
Alaska	Laws 1919, ch. 13 .	April 22, 1919*	Original act.
Arizona.... .	Laws 1919, ch. 40	June 6, 1920	Original act.
Delaware	Laws 1919, ch. 192 .	June 1, 1919	Original act.
New Jersey	Laws 1919, ch. 210	April 15, 1919*	Original act.
South Dakota	Laws 1919, ch. 137	Mar. 14, 1919*	Original act.
Wisconsin.. .	Laws 1919, ch. 672 .	July 25, 1919*	Stats. 1919, §§ 1684u-1—1684u-31.

* Date of approval

† Since the compilation of this table West Virginia has adopted the Uniform Act.

Cite this volume

2 U. L. A.

UNIFORM CONDITIONAL SALES ACT.

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§.1. Definition of terms.— In this Act "Conditional sale" means (1) any contract for the sale of goods under which possession is delivered to the buyer and the property

in the goods is to vest in the buyer at a subsequent time upon the payment of part or all of the price, or upon the performance of any other condition or the happening of any contingency; or (2) any contract for the bailments or leasing of goods by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to the value of the goods, and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming the owner of such goods upon full compliance with the terms of the contract.

"Buyer" means the person who buys or hires the goods covered by the conditional sale, or any legal successor in interest of such person.

"Filing district" means the sub-division of the state in which conditional sale contracts, or copies thereof, are required by this act to be filed.

"Goods" means all chattels personal other than things in action and money, and includes emblements, industrial growing crops, and things attached to or forming a part of land which are agreed to be severed before sale or under the conditional sale.

"Performance of the condition" means the occurrence of the event upon which the property in the goods is to vest in the buyer, whether such event is the performance of an act by the buyer or the happening of a contingency.

"Person" includes an individual, partnership, corporation, and any other association.

"Purchase" includes mortgage and pledge.

"Purchaser" includes mortgagee and pledgee.

"Seller" means the person who sells or leases the goods covered by the conditional sale, or any legal successor in interest of such person.

COMMISSIONERS' NOTE.

It seems desirable to include sales where title is to pass on part payment, since the opportunity for deception of the public exists in such cases, though for a shorter period than when title is retained till full payment. The statutes of Montana, New Brunswick, and Ontario expressly include such contracts. Occasional

cases of such reservation of title are to be found. Powell v. Clawson, (1909) 38 Pa. Super. Ct. 245.

The statutes of Iowa, Nebraska, New Jersey, New York, Virginia, West Virginia, Wisconsin, and Wyoming define as conditional sales contracts which provide for the passing of the property to the buyer upon the performance of any condition, not merely upon the payment of the price. In such cases possession and apparent ownership are rendered deceptive by a reservation of title, and the danger to the public is as great as if the condition had been payment of the price. Instances of reservations of this kind are not uncommon. Forbes v. Taylor, (1903) 139 Ala. 286, 35 So. 855 (third party to pay the price); Van Allen v. Francis, (1899) 123 Cal. 474, 56 Pac. 339 (execution of mortgage); Tarr v. Stearman, (1914) 264 Ill. 110, 105 N. E. 957 (rendition of services); Gailey v. Dennis, (1909) 135 Mo. App. 93, 115 S. W. 506 (execution of note); Clark v. Clement, (1903) 75 Vt. 417, 56 Atl. 94 (doing of work).

It is well known that some sellers attempt to evade the conditional sale recording acts by calling the contract a "lease" or "hiring agreement" and providing for the payment of "rent." Wherever these "leases" are substantially equivalent to conditional sales, they should be subject to the same restrictions. This equivalency seems to exist when the buyer is bound to pay rent substantially equal to the value of the goods and has the option of becoming or is to become the owner of the goods after all the rent is paid. In such a contract "rent" means the purchase price, and possession as "lessee" means the possession of a buyer under an executory contract of sale. That the buyer, in some cases, has the option of becoming the owner and thus a sale is not sure to take place, is of but small importance, for, as a practical matter, the buyer will always be willing to accept ownership when he has paid the value. The instances of a buyer declining to become the owner of goods where he has paid "rent" equivalent to the value of the goods, and electing to return the goods and allow these payments to be considered as actual rent, must be exceedingly infrequent.

The statutes of Alabama, Iowa, Maine, Missouri, Ohio, Washington, Wyoming, and Ontario class as conditional sales, leases substantially like those described in section one. In many cases where the "lessee" has absolutely agreed to buy the goods at the rent named the contract has been held one of conditional

sale. Warren v. Liddell, (1895) 110 Ala. 232, 20 So. 89; Lundy Furniture Co. v. White, (1900) 128 Cal. 170, 60 Pac. 759, 79 A. S. R. 41; Coors v. Reagan, (1908) 44 Colo. 126, 96 Pac. 966; Hine v. Roberts, (1880) 48 Conn. 267, 40 Am. Rep. 170; Staunton v. Smith, (1906) 6 Penn. (Del.) 193, 65 Atl. 593; Hays v. Jordan, (1890) 85 Ga. 741, 11 S. E. 833, 9 L. R. A. 373; Lucas v. Campbell, (1878) 88 Ill. 447; Singer Sewing Mach. Co. v. Holcomb, (1874) 40 Ia. 33; Campbell v. Atherton, (1898) 92 Me. 66, 42 Atl. 232; Smith v. Aldrich, (1902) 180 Mass. 367, 62 N. E. 381; Wickes v. Hill, (1897) 115 Mich. 333, 73 N. W. 375; Gerrish v. Clark, (1887) 64 N. H. 492, 13 Atl. 870; Equitable Gen. Providing Co. v. Eisentrager, (1901) 34 Misc. 179, 68 N. Y. S. 866; Kelly Springfield Road Roller Co. v. Spyker, (1906) 215 Pa. St. 332, 64 Atl. 546; Carpenter v. Scott, (1881) 13 R. I. 477; Pringle v. Canfield, (1905) 19 S. D. 506, 104 N. W. 223; Cowan v. Singer Mfg. Co, (1893) 92 Tenn. 376, 21 S. W. 663; Whitcomb v. Woodworth, (1882) 54 Vt. 544; Kidder v. Wittler-Corbin Machinery Co., (1905) 38 Wash. 179, 80 Pac. 301.

"Leases" have likewise been construed to be conditional sale contracts in numerous cases where the buyer had merely an option to become the owner in return for the rentals paid. In re Morris, (1907) 156 Fed. 597; Unmack v. Douglass, (1903) 75 Conn. 633, 55 Atl. 12; Vette v. J. S. Merrell Drug Co., (1909) 137 Mo. App. 229, 117 S. W. 666; Lauter Co. v. Isenreath, (1909) 77 N. J. L. 323, 72 Atl. 56; Central Union Gas Co. v. Browning, (1913) 210 N. Y. 10, 103 N. E. 822; Weiss v. Leichter, (1909) 113 N. Y. S. 999; Hamilton v. Highlands, (1907) 144 N. C. 279, 56 S. E. 929, 12 Ann. Cas. 876; Sage v. Sleutz, (1872) 23 Ohio St. 1; Herring-Hall-Marvin Co. v. Smith, (1903) 43 Ore. 315, 72 Pac. 704, 73 Pac. 340; Singer Mfg. Co. v. Nash, (1898) 70 Vt. 434, 41 Atl. 429.

STATUTORY NOTES.

The **Alaska** act adds to this section the following definitions: "'State' means any State, or Territory of the United States and 'this state,' the Territory of Alaska." — See Laws 1919, ch. 13.

CASE NOTES.

Purported Lease Held to Be Conditional Sale.

A contract whereby one party agrees to lease a motor truck to the other for a specified period, the lessee agreeing to pay monthly installments of rental and having the option of pur-

chasing the truck for $1 at the end of the rental period provided all installments have been paid, falls within the second definition of a conditional sale contained in this section and constitutes a conditional sale and not a lease. Rapoport v. Rapoport Express Co., (1919) 90 N. J. Eq. 519, 107 Atl. 822.

§ 2. Primary rights of buyer.— The buyer shall have the right when not in default to retain possession of the goods, and he shall also have the right to acquire the property in the goods on the performance of the conditions of the contract. The seller shall be liable to the buyer for the breach of all promises and warranties, express or implied, made in the conditional sale contract, whether or not the property in the goods has passed to the buyer.

COMMISSIONERS' NOTE.

The special right of a buyer under a conditional sale where he is not in default is to retain possession even though the price is not yet paid, and to acquire title, and not merely a right of action for breach of contract, by satisfying the condition.

The remedies which are common to all buyers of goods, whether the contract be conditional or unconditional, are left to the Uniform Sales Act or to the prevailing common law. The courts have found some difficulty in fixing the rights of the parties where a warranty has been made in a conditional sale contract. Rogers v. Otto Gas Engine Works, (1910) 7 Ga. App. 587, 67 S. E. 700; W. W. Kimball Co. v. Massey, (1914) 126 Minn. 461, 148 N. W. 307; Peuser v. Marsh, (1915) 167 App. Div. 604, 153 N. Y. S. 381; Cooper v. Payne, (1906) 186 N. Y. 334, 78 N. E. 1076; Blair v. Johnson, (1903) 111 Tenn. 111, 76 S. W. 912. If the seller's promise with respect to the goods has been broken, it is submitted that the buyer ought to be allowed to recover damages suffered by that breach, whether the buyer has become the owner of the goods or not.

§ 3. Primary rights of seller.— The buyer shall be liable to the seller for the purchase price, or for installments thereof, as the same shall become due, and for breach of all promises made by him in the conditional sale contract, whether or not the property in the goods has passed to the buyer.

COMMISSIONERS' NOTE.

This section is elementary, but is inserted for the sake of a complete enumeration of the rights of the seller against the buyer. The seller's only remedies are an action for the price or the retaking of the goods or both. Of course, no attempt is made to state the rights of the seller against third persons, as, for example, the right to maintain trover or replevin. Such rights are the same as those of any other owner of personal property.

§ 4. Conditional sales valid except as otherwise provided.— Every provision in a conditional sale reserving property in the seller after possession of the goods is delivered to the buyer, shall be valid as to all persons, except as hereinafter otherwise provided.

COMMISSIONERS' NOTE.

This states the general rule of the common law. It is accepted by the statute, except so far as the requirements of filing, etc., qualify it.

§ 5. Conditional sales void as to certain persons.— Every provision in a conditional sale reserving property in the seller, shall be void as to any purchaser from or creditor of the buyer, who, without notice of such provision, purchases the goods or acquires by attachment or levy a lien upon them, before the contract or a copy thereof shall be filed as hereinafter provided, unless such contract or copy is so filed within ten days after the making of the conditional sale.

COMMISSIONERS' NOTE.

Statutes requiring the recording or filing of conditional sale contracts now exist in 29 states, namely: Alabama, Arizona, Colorado, Connecticut, Georgia, Florida, Iowa, Kansas, Maine, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. In four other states recording statutes partially covering the filing of conditional sales have been passed, namely, in Massachusetts, Michigan, Oregon, and Pennsylvania. In Kentucky these con-

tracts are treated as chattel mortgages and required to be recorded as such. To prevent injury to innocent persons who may rely on the buyer's apparent ownership, it seems desirable to insert this filing requirement in the Uniform Act. The burden on the seller is slight, and the benefit to the public is great.

The question of difficulty is, in whose favor shall this filing statute operate? Against what persons shall the reservation of title be void in the absence of recording?

As far as subsequent purchasers from the buyer are concerned, the statutes are practically unanimous in protecting them. Under the definition of purchaser in section 1 mortgagees and pledgees are included.

The statutes of Alabama, Virginia, Washington, West Virginia, New Brunswick, Ontario, and Saskatchewan expressly require that the purchasers to be protected shall have paid "value." This element of value is necessarily implied in the word "purchaser." There is no equity in protecting donees of the buyer by the recording section. In view of the great variety of definitions of "value" it is deemed wise to leave that question to be determined by the pre-existing local law and not to attempt to make uniform the law by a definition in this act.

It is well established that only purchasers without notice of the conditional nature of the buyer's interest should be protected. Express provisions to that effect are found in the statutes of Kansas, Minnesota, Missouri, Oklahoma, South Carolina, Virginia, West Virginia, New Brunswick, Ontario, and Saskatchewan. See also Anderson v. Adams, (1903) 117 Ga. 919, 43 S. E. 982; Larned First Nat. Bank v. Tufts, (1894) 53 Kan. 710, 37 Pac. 127; Van Buren v. Stubbings, (1907) 149 Mich. 206, 112 N. W. 706; Barnes v. Rawlings, (1898) 74 Mo. App. 531; Kelsey v. Kendall, (1875) 48 Vt. 24; Perkins v. Best, (1896) 94 Wis. 168, 68 N. W. 762.

As to creditors, in a few states, namely, Alabama, Georgia, North Dakota, South Carolina, and Washington, only creditors whose rights accrue subsequent to the conditional sale are protected, but in a great majority of the states the date of the extension of the credit is not important. See the statutes of the various states and Hamilton v. David C. Beggs Co., (1910) 179 Fed. 949; Corbett v. Riddle, (1913) 209 Fed. 811, 126 C. C. A. 535; Patton v. Phoenix Brick Co., (1912) 167 Mo. App. 8, 150 S. W. 1116; Huffard v. Akers, (1902) 52 W. Va. 21, 43 S. E. 124. In New York creditors are not protected at all by the recording act.

Creditors have been classed in a second way by the courts, namely, as lien creditors and general creditors. In many states there are decisions to the effect that only those creditors who have by judgment, or levy of an execution, or by attachment, secured a lien on the particular goods which were the subject-matter of the conditional sale, are protected. The general creditors of the buyer are not within the protection of the recording act. In re Atlanta News Pub. Co., (1907) 160 Fed. 519; In re Hager, (1909) 166 Fed. 972; John Deere Plow Co. v. Anderson, (1909) 174 Fed. 815, 98 C. C. A. 523; Crucible Steel Co. v. Holt, (1909) 174 Fed. 127, 98 C. C. A. 101; Big Four Implement Co. v. Wright, (1913) 207 Fed. 535, 125 C. C. A. 577, 47 L. R. A. (N. S.) 1223; Wilson v. Lewis, (1902) 63 Neb. 617, 88 N. W. 690; Reischmann v. Masker, (1903) 69 N. J. L. 353, 55 Atl. 301; Mechanics' Bank v. Gullett Gin Co., (1898 Tex.) 48 S. W. 627; Malmo v. Washington Rendering, etc., Co., (1914) 79 Wash. 534, 140 Pac. 569, L. R. A. 1917C 440; E. L. Essley Machinery Co. v. First Trust Co., (1915) 160 Wis. 300, 151 N. W. 814. In several states the statutes expressly protect lien creditors only. This is true in Alabama, Montana, Nebraska, New Jersey, Vermont and Wyoming.

The statute as drafted protects both prior and subsequent creditors who have acquired a lien on the goods by levy or attachment. By such act they have in a certain sense become purchasers of the goods. They have acquired legal property rights in the goods, and, if they have done so innocently, they ought to be protected as against the conditional seller. Their equities are superior to his.

It is very generally held that creditors, in order to claim the protection of the statute, must have been without notice of the conditional nature of the buyers' rights at the time when their rights were fixed. See the statutes of Alabama, Arizona, Iowa, Nebraska, New Jersey, North Dakota, South Dakota, and Washington. See also In re Vandewater, (1915) 219 Fed. 627; Diamond Rubber Co. v. Montgomery Fourth Nat. Bank, (1911) 171 Ala. 420, 55 So. 100; Jones v. Clark, (1894) 20 Colo. 353, 38 Pac. 371; Reisman v. Wester, (1911) 10 Ga. App. 96, 72 S. E. 942; F. P. Gluck Co. v. Therme, (1912) 154 Ia. 201, 134 N. W. 438; Dyer v. Thorstad, (1886) 35 Minn. 534, 29 N. W. 345; Norton v. Pilger, (1890) 30 Neb. 860, 47 N. W. 471; Batchelder v. Sanborn, (1890) 66 N. H. 192, 22 Atl. 535; McPhail v. Gerry, (1882)

55 Vt. 174; Secor v. Close, (1914) 83 Wash. 77, 145 Pac. 56; Wolf Co. v. Kutch, (1911) 147 Wis. 209, 132 N. W. 981.

In a majority of the states the contract or a copy may be filed. See the statutes of Arizona, Kansas, Michigan, Minnesota, Missouri, Montana, New York, North Dakota, Ohio, Oklahoma, Texas, Wisconsin, Wyoming, and Saskatchewan. In Alabama, Iowa, and New Jersey the contract itself must be recorded. In Nebraska, New Brunswick, Ontario, and Prince Edward Island the copy alone may be filed. In New Hampshire, Virginia, Washington, and West Virginia only memorandum of the contract need be filed. To require that the original contract or a copy be filed seems best. Doubtless generally a copy will be filed. It seems useless to restrict the seller to either the original or a copy. The object is to make public the terms of the sale. The exact words of the contract will do that better than any abbreviation or memorandum.

Under the statute the contract is valid for ten days without filing. It was thought unwise to require the seller to file immediately. The seller's office may be far distant from the filing district. He should have a reasonable time to mail his papers and get them filed. A filing after ten days from the date of the making of the contract of course protects the seller against all subsequent purchasers or creditors who buy or levy on the goods.

CASE NOTES.

"Attachment or Levy."

Drawing attention to the fact that this section makes conditional sales invalid as against creditors who, without notice, acquire by attachment or levy a lien, etc., it has been said by Vice Chancellor Lane of New Jersey: "Whether these words, 'attachment or levy,' can be considered to refer to and include any lien acquired by operation of law or judicial process, including the equitable lien acquired by creditors through the appointment of a receiver, or whether the word must be confined to technical attachment or levy, is, I imagine, going to be the subject of considerable judicial inquiry." Rapoport v. Rapoport Express Co., (1919) 90 N. J. Eq. 519, 107 Atl. 822.

§ 6. Place of filing.— The conditional sale contract or copy shall be filed in the office in [the city,] [county,] [registration district] in which the

goods are first kept for use by the buyer after the sale. It shall not be necessary to the validity of such conditional sale contract, or in order to entitle it to be filed, that it be acknowledged or attested. This section shall not apply to the contracts described in Section 8.

COMMISSIONERS' NOTE.

The filing statutes now in force are of two classes with respect to the place of record required. One requires record in a local office, such as the town clerk's office; the other class makes the county the unit of record. Connecticut, Maine, Massachusetts, Michigan, New Hampshire, New York (with some exceptions), Vermont, and Wisconsin have the town recording system. The twenty-three other states having recording statutes require record in the county office where deeds are recorded and all important records with respect to real property are kept. The county system has seemed the better, since the records in the county office will be kept in much more orderly fashion than in the town offices and since the convenience of persons desiring to deal with the goods will be served quite as well by a record in the principal town or city of the county as if the record were located in some remote office in the county, but in view of the fact that communities become accustomed to a method long in use, and that a change would be difficult, especially as chattel mortgages are not covered by this act, the office of filing is left blank.

The next question to be decided is, which city or county shall be made the place of record? There are but two practical possibilities, namely, the place of the buyer's residence and the place where the goods are situated.

Connecticut, Iowa, Maine, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, South Carolina, South Dakota, Washington, Wisconsin, New Brunswick, Ontario, Prince Edward Island, and Saskatchewan (15 states and 4 Canadian provinces) require record in the district of the buyer's residence.

Arizona, Montana, North Dakota, Virvinia, West Virginia, and Wyoming (6 states) record in the county where the goods were at the time of sale.

Oklahoma and Kansas (2 states) record where the goods shall be kept after the sale.

In Alabama, Georgia, and Michigan a double record is required, one in the district of the buyer's residence and one in the district where the goods were delivered. In Texas the record may be either in the county of the buyer's residence or in the county of delivery.

The desideratum is to have a record in the place where the goods are permanently kept. It is there that innocent purchasers and creditors will be misled by the apparent ownership of the buyer. Record in the place of the buyer's residence is of little importance, unless the goods are kept there. The district "in which the goods are first kept for use by the buyer" will be the district where the goods are first located with any degree of permanence. The seller may keep the goods for a time after the sale; the buyer may receive the goods at one place and immediately transmit them to another; the goods may be technically delivered to the buyer by handing them over to a carrier; but in none of these cases is the district of temporary location the district where a record should be made.

It is of particular importance that the rules governing the place of filing be uniform in the several states. Many sellers do business of making conditional sales throughout the nation. For their sake a single simple rule everywhere is important; and the interest of other members of the public is the same.

STATUTORY NOTES.

The omission in this section of the name of the filing officer is supplied in the Uniform Acts of the various jurisdictions as follows:

Alaska.— "Recorder in the Recording District," etc.— See Laws 1919, ch. 13.

Arizona.— "County Recorder of the county," etc.— See Laws 1919, ch. 40.

Delaware.— "Recorder of Deeds in the county," etc.— See Laws 1919, ch. 192.

New Jersey.— "County clerk, or where there is a register of deeds in the office of such register of deeds in the county," etc.— See Laws 1919, ch. 210.

South Dakota.— "Register of Deeds of the county," etc.— See Laws 1919, ch. 137.

Wisconsin.— "Clerk of the town, village or city," etc.— See Laws 1919, ch. 672.

§ 7. Fixtures.— If the goods are so affixed to realty, at the time of a conditional sale or subsequently as to become a part thereof and not to be severable wholly or in any portion without material injury to the freehold, the reservation of property as to any portion not so severable shall be void after the goods are so affixed, as against any person who has not expressly assented to the reservation. If the goods are so affixed to realty at the time of a conditional sale or subsequently as to become part thereof but to be severable without material injury to the freehold, the reservation of property shall be void after the goods are so affixed as against subsequent purchasers of the realty for value and without notice of the conditional seller's title, unless the conditional sale contract, or a copy thereof, together with a statement signed by the seller briefly describing the realty and stating that the goods are or are to be affixed thereto, shall be filed before such purchase in the office where a deed of the realty would be recorded or registered to affect such realty. As against the owner of realty the reservation of the property in goods by a conditional seller shall be void when such goods are to be so affixed to the realty as to become part thereof but to be severable without material injury to the freehold, unless the conditional sale contract, or a copy thereof, together with a statement signed by the seller briefly describing the realty and stating that the goods are to be affixed thereto, shall be filed before they are affixed, in the office where a deed would be recorded or registered to affect such realty.

COMMISSIONERS' NOTE.

In practically all American states a conditional seller who has reserved title to a chattel which is affixed by the vendee to his real property has no rights against a subsequent purchaser or mortgagee of the real property who has no notice of the conditional sale of the chattel. Prince v. Case, (1835) 10 Conn. 375, 27 Am. Dec. 675; J. S. Schofield's Sons Co. v. Woodward, (1911) 137 Ga. 65, 72 S. E. 509; Allis-Chalmers Co. v. Atlantic, (1914) 164 Ia. 8, 144 N. W. 346, Ann. Cas. 1916D 910, 52 L. R. A. (N.S.) 561; Rowand v. Anderson, (1885) 33 Kan. 264, 6 Pac. 255, 52

Am. Rep. 529; Hopewell Mills v. Taunton Sav. Bank, (1890) 150 Mass. 519, 521, 23 N. E. 327, 15 A. S. R. 235, 6 L. R. A. 249; Jenks v. Colwell, (1887) 66 Mich. 420, 33 N. W. 528, 11 A. S. R. 502; Tibbetts v. Horne, (1889) 65 N. H. 242, 23 Atl. 145, 23 A. S. R. 31, 15 L. R. A. 56; Brennan v. Whitaker, (1864) 15 Ohio St. 446; Washburn v. Inter-Mountain Min. Co., (1910) 56 Ore. 578, 109 Pac. 382, Ann. Cas. 1912C 357; Union Bank, etc., v. Fred W. Wolf Co. (1904) 114 Tenn. 255, 86 S. W. 310, 108 A. S. R. 903, 4 Ann. Cas. 1073; Davenport v. Shants, (1870) 43 Vt. 546.

In four states comparatively recently statutes have been enacted declaring that the condition reserving title to fixtures shall be void as against subsequent purchasers or mortgagees of the real property who have no notice of the conditional sale, unless the conditional sale contract is recorded in the office where a deed of the land would be recorded. See the statutes of Massachusetts, New York, Oregon, and Pennsylvania.

Section 7 above is modeled in the main after these statutes. If the property can be severed from the realty without material injury, it seems desirable to give the conditional seller a chance to protect himself against dealers with the real estate by the making of a record. If this record is in the same office where deeds of real property are recorded, the labor of searching for conditional sale contracts on the part of the prospective buyer or mortgagee of the land will be slight.

A distinction, however, is made between goods affixed to realty which have lost their identity and goods affixed to realty which can be readily severed. A separate sentence has also been inserted to cover the peculiar case of the sale of goods to a contractor to be affixed by him to the real property of another, in other words, the case of the validity of the conditional sale of a fixture as against the " owner " of the realty.

§ 8. Railroad equipment or rolling stock.— No conditional sale of railroad, or street or interurban railway equipment or rolling stock shall be valid as against the purchasers and creditors described in Section 5, unless the contract shall be acknowledged by the buyer or attested in like manner as a deed of real property, and the contract, or a copy thereof, shall be filed or recorded in the office of ; and unless when any engine or car so sold

is delivered there shall then be plainly and conspicuously marked upon each side thereof the name of the seller, followed by the word "owner."

COMMISSIONERS' NOTE.

Statutes making special provision for the conditional sale of railroad and street railway rolling stock and equipment are now found in 46 states. They are strikingly similar.

Goods Covered by the Statutes.

The phrase most commonly used to describe the goods covered by these statutes is "railroad and street railway equipment and rolling stock." In a few states interurban equipment and rolling stock are specifically mentioned, and there seems to be no reason why they should not be included. In some states only railroad equipment and rolling stock are mentioned. The slight variations of wording are so numerous that they cannot be detailed here. The words used in section 8 are supported by a majority of the statutes.

Acknowledgment Required.

Acknowledgment is required in 40 of the 46 states having these railroad statutes. It seems desirable to give some formality to the contract, in view of the large amounts of money generally involved and the fact that record is required in a state office.

Persons Protected.

The existing statutes in most instances make the reservation of title void as against judgment creditors and purchasers in good faith. It seems desirable to give the protection of the statute, in case of failure to record, to the same persons named in the general filing statute herein, section 5.

Place of Record.

In 28 of the states the place of record is made the office of the Secretary of State and in four others record is required in the office and also in a county office. In view of the statewide nature of the business often involved and the importance of the contracts, state registration is justifiable.

Marking of Engines and Cars.

In all but four of the 46 states the engines and cars are required to be marked with the name of the seller and a statement indi-

cating his ownership. This provision is continued in section 8 above.

Duration of Conditional Sale Contracts of Railroad Equipment.

In 12 states the time during which these contracts can run is limited. In Arizona, Delaware, Minnesota, Montana, North Dakota, South Dakota, and Wisconsin the limit is 10 years; in Mississippi and Tennessee 15 years; in Maryland 20 years, and in Colorado and Kentucky 25 years. A provision requiring the refiling of these contracts at the end of 15 years has been inserted in section 11.

STATUTORY NOTES.

The omission in this section of the name of the filing officer is supplied in the Uniform Acts of the various jurisdictions as follows:

Alaska.—"Secretary of the Territory of Alaska."—See Laws 1919, ch. 13.

Arizona.—"County Recorder."—See Laws 1919, ch. 40.

Delaware.—"Secretary of State of Delaware."—See Laws 1919, ch. 192.

New Jersey.—"Secretary of State."—See Laws 1919, ch. 210.

South Dakota.—"Secretary of State."—See Laws 1919, ch. 137.

Wisconsin.—"Secretary of State."—See Laws 1919, ch. 672.

§ 9. **Conditional sale of goods for resale.**—When goods are delivered under a conditional sale contract and the seller expressly or impliedly consents that the buyer may resell them prior to performance of the condition, the reservation of property shall be void against purchasers from the buyer for value in the ordinary course of business, and as to them the buyer shall be deemed the owner of the goods, even though the contract or a copy thereof shall be filed according to the provisions of this act.

COMMISSIONERS' NOTE.

This section attempts to state a rule of law quite widely recognized. Bass v. International Harvester Co., (1910) 169 Ala. 154, 53 So. 1014, 33 L. R. A. (N. S.) 374; Flint Wagon Works v. Maloney, (1911) 3 Boyce (Del.) 137, 81 Atl. 502; Clarke v.

McNatt, (1909) 132 Ga. 610, 64 S. E. 795, 26 L. R. A. (N. S.) 585; Trousdale v. Winona Wagon Co., (1913) 25 Idaho 131, 137 Pac. 372; Barbour v. Perry, (1892) 41 Ill. App. 613; Winchester Wagon Works, etc., Co. v. Carman, (1886) 109 Ind. 31, 9 N. E. 707, 58 Am. Rep. 382; Rogers v. Whitehouse, (1880) 71 Me. 222; Spooner v. Cummings, (1890) 151 Mass. 313, 23 N. E. 839, 840; Pratt v. Burhans, (1891) 84 Mich. 487, 47 N. W. 1064, 22 A. S. R. 703; Columbus Buggy Co. v. Turley, (1895) 73 Miss. 529, 19 So. 232, 55 A. S. R. 550, 32 L. R. A. 260; Baker v. Tolles, (1894) 68 N. H. 73, 36 Atl. 551; Fitzgerald v. Fuller, (1879) 19 Hun (N. Y.) 180; Star Clothing Mfg. Co. v. Nordeman, (1906) 118 Tenn. 384, 100 S. W. 93; Oconto Land Co. v. Wallschlaeger, (1914) 155 Wis. 418, 144 N. W. 979. Where the same seller attempts to reserve the property in himself and at the same time to allow a resale by a retailer in the ordinary course of business, he is doing two inconsistent things. A purchaser from a retailer in the ordinary course of business ought not to be obliged to examine the records to learn whether retailer has title or whether title has been reserved under a conditional sale contract. That the goods have been put into the retailer's stock with the consent of the wholesaler is conclusive evidence that they are there for sale and that the retailer has title or the right to convey.

The mere constructive notice of the record of the contract ought not to prevail as against a buyer from a retailer in the ordinary course of business. Mortgagees and pledgees, since they are not purchasers "in the ordinary course of business," and creditors of the retailer will be bound by the provisions of the recording act and will have constructive notice of the conditional sale, but in the case of purchasers in the ordinary course of business, as distinguished from purchasers of the stock in bulk, no notice of the conditional sale should be effectual to bind them.

Public Acts of Michigan, 1915, p. 112, sec. 1, requires that a contract for the conditional sale of goods to a retailer to be resold by him shall be recorded in order to be valid as against anyone except the seller and buyer. But in Michigan there is no general recording statute.

§ 10. Filing.— The filing officer shall mark upon the contract or copy filed with him the day and hour of filing and shall file the contract or copy in his office for public inspection. He shall keep a separate book in which he

shall enter the names of the seller and buyer, the date of the contract, the day and hour of filing, a brief description of goods, the price named in the contract and the date of cancellation thereof; except that in entering the contracts mentioned in Section 8 the shall record either the sum remaining to be paid upon the contract or the price of the goods. Such book shall be indexed under the names of both seller and buyer. For filing and entering such contract or copy the filing officer shall be entitled to a fee of [ten cents], except that for filing and entering a contract described in Section 8 the shall be entitled to a fee of [one dollar].

COMMISSIONERS' NOTE.

In Minnesota, Montana, Nebraska, New York, Texas, Virginia, Washington, Wisconsin, Wyoming, New Brunswick, Ontario, Prince Edward Island, and Saskatchewan the statutes expressly provide as to the duties of the clerk receiving a conditional sale contract for filing. The provisions are, in the main, like those above indicated. The clerk would, in order to make the record effective, necessarily be obliged to have some such system of recording, but it seems better to require it expressly rather than to leave it to the discretion of the various officers concerned. Uniformity of style of record is of some importance. The filing fee for ordinary contracts is 50 cents in Montana and Prince Edward Island; 25 cents in Nebraska, Virginia, Washington, Wyoming, and Saskatchewan; 12 cents in New York and Wisconsin, and 10 cents in Minnesota, New Brunswick, and Ontario. It is desirable to encourage sellers to file their contracts and therefore the fee of 10 cents has been suggested. The labor of the clerk will be very slight.

The fee for filing contracts with respect to railroad equipment is found to be $15 in two states, $10 in one state, $5 in seven states, $2 in four states, and $1 in four states. The fee of $1 seems adequate to compensate the Secretary of State.

The amount of the fee has been bracketed to indicate the possibility of local variation upon this point.

STATUTORY NOTES.

The omission in this section of the name of the filing officer is supplied in the Uniform Acts of the various jurisdictions as follows:

Alaska.— " Secretary of the Territory." — See Laws 1919, ch. 13.

Arizona.— " County Recorder." — See Laws 1919, ch. 40.

Delaware.— " Secretary of State." — See Laws 1919, ch. 192.

New Jersey.— " Secretary of State." — See Laws 1919, ch. 210.

South Dakota.— " Secretary of State." — See Laws 1919, ch. 137.

Wisconsin.— " Secretary of State." — See Laws 1919, ch. 672.

For the filing fees inserted in brackets in this section, the amounts substituted in the Uniform Acts of the various jurisdictions are as follows:

Alaska.— " Fees prescribed for like services by the Attorney General of the United States " instead of " ten cents." — See Laws 1919, ch. 13.

Arizona.— " Seventy-five cents " instead of " ten cents;" " seventy-five cents " instead of " one dollar." — See Laws 1919, ch. 40.

Delaware.— " One dollar " instead of " ten cents "; " two dollars " instead of " one dollar." — See Laws 1919, ch. 192.

New Jersey.— " One dollar " instead of " ten cents." — See Laws 1919, ch. 210, as amended by Laws 1920, ch. 68.

The **Arizona** act inserts, before the last sentence of this section, the following provision: " In case of a contract affecting the title to real estate, the filing officer shall also be required to index the same in ' Index of Real Estate Mortgages.' "— See Laws 1919, ch. 40.

§ 11. **Refiling.**— The filing of conditional sale contracts provided for in Sections 5, 6 and 7 shall be valid for a period of three years only. The filing of the contract provided for by Section 8 shall be valid for a period of fifteen years only. The validity of the filing may in each case be extended for successive additional periods of one year from the date of refiling by filing in the proper filing district a copy of the original contract within thirty days next preceding the expiration of each period, with a statement attached signed by the seller, showing that the contract is in force and the amount remaining to be paid thereon. Such copy, with statement attached, shall be filed

and entered in the same manner as a contract or copy filed and entered for the first time, and the filing officer shall be entitled to a like fee as upon the original filing.

COMMISSIONERS' NOTE.

In only a few jurisdictions are there provisions limiting the effectiveness of the record of conditional sale contracts. In Minnesota the record is good for but six years, in Nebraska for five years, in Saskatchewan for two years, and in New York, Wisconsin and Wyoming for one year only. Notwithstanding the slight acceptance of this principle of refiling, it seems desirable to require a refiling after three years. The ordinary conditional sale contract will be performed or broken before that time. If a contract extends over a period longer than three years, a fresh record should be made at the end of three years. Searchers should not be obliged to go back for an indefinite period to discover whether the title to a piano is in the possessor of it.

As shown in the notes to section 8, in 12 states the validity of car trust contracts is limited, the periods ranging from 10 to 25 years. A longer time is ordinarily required for the performance of these contracts than for the performance of an ordinary conditional sale contract. It would seem that 15 years, with a provision for refiling at the end of that time, would be sufficient.

STATUTORY NOTES.

The **Alaska** act changes the periods of time prescribed in the first and second sentences of this section from " three years " to " one year " and from " fifteen years " to " ten years " respectively.— See Laws 1919, ch. 13.

§ 12. Cancellation of contract.—After the performance of the condition, upon written demand delivered personally or by registered mail by the buyer or any other person having an interest in the goods, the seller shall execute, acknowledge and deliver to the demandant a statement that the condition in the contract has been performed. If for ten days after such demand the seller fails to mail or deliver such a statement of satisfaction, he shall forfeit to the demandant five dollars [$5.00] and be liable for all damages suffered. Upon presentation of such statement

of satisfaction the filing officer shall file the same and note the cancellation of the contract and the date thereof on the margin of the page where the contract has been entered. For filing and entering the statement of satisfaction the filing officer shall be entitled to a fee of [ten cents], except that the shall be entitled to a fee of [fifty cents] for filing and entering a statement of the satisfaction of a contract described in Section 8.

COMMISSIONERS' NOTE.

The procedure upon the cancellation of a conditional sale agreement, due to performance, is expressly provided for in but few states. In Minnesota, New York, Vermont, and Virginia, and in New Brunswick and Saskatchewan, provisions similar to those made in section 12 are set forth in the statutes. Here, as in the case of filing and refiling, it seems desirable to make the record uniform and to prescribe an orderly procedure to be followed in dealing with these contracts. The clerk would in most cases probably, without statutory direction, treat the question of cancellation as above provided, but it is advantageous to make certain such treatment.

The fees for the cancellation of the railroad equipment contracts as set forth in the present statutes, range from three dollars to fifty cents. In the majority of states in which provisions have been found, namely, in 12, the fee is one dollar. The fee of fifty cents seems adequate to compensate the official for his labor, and seems in correct proportion to the fee of one dollar for filing the contract.

STATUTORY NOTES.

The omission in this section of the name of the filing officer is supplied in the Uniform Acts of the various jurisdictions as follows:

Alaska.—"Secretary of the Territory."—See Laws 1919, ch. 13.

Arizona.—" County Recorder."—See Laws 1919, ch. 40.

Delaware.—" Secretary of State."—See Laws 1919, ch. 192.

New Jersey.—" Secretary of State."—See Laws 1919, ch. 210.

South Dakota.—" Secretary of State."—See Laws 1919, ch. 137.

Wisconsin.—"Secretary of State."—See Laws 1919, ch. 672.

For the filing fee inserted in brackets in this section, the amounts substituted in the Uniform Acts of the various jurisdictions are as follows:

Alaska.—"Fee prescribed by the Attorney General of the United States for similar services" instead of "ten cents."—See Laws 1919, ch. 13.

Arizona.—"Seventy-five cents" instead of "ten cents."—"seventy-five cents" instead of "fifty cents."—See Laws 1919, ch. 40.

Delaware.—"Twenty-five cents" instead of "ten cents."—See Laws 1919, ch. 192.

New Jersey.—"Twenty cents" instead of "ten cents."—See Laws 1919, ch. 210, as amended by Laws 1920, ch. 68.

§ 13. Prohibition of removal or sale without notice.—Unless the contract otherwise provides, the buyer may, without the consent of the seller, remove the goods from any filing district and sell, mortgage or otherwise dispose of his interest in them; but prior to the performance of the condition, no such buyer shall remove the goods from a filing district in which the contract or a copy thereof is filed, except for temporary uses for a period of not more than thirty days, unless the buyer not less than ten days before such removal shall give the seller personally or by registered mail written notice of the place to which the goods are to be removed and the approximate time of such intended removal; not prior to the performance of the condition shall the buyer sell, mortgage or otherwise dispose of his interest in the goods, unless he, or the person to whom he is about to sell, mortgage or otherwise dispose of the same, shall notify the seller in writing personally or by registered mail of the name and address of the person to whom his interest in the goods is about to be sold, mortgaged or otherwise transferred, not less than ten days before such sale, mortgage or other disposal. If any buyer does so remove the goods, or does so sell, mortgage or otherwise dispose of his interest in them without such notice or in violation of the contract, the seller may retake

possession of the goods and deal with them as in case of default in payment of part or all of the purchase price. The provisions of this section regarding the removal of goods shall not apply, however, to the goods described in Section 8.

COMMISSIONERS' NOTE.

Unless there is a record of the conditional sale contract in the place in which the goods are located, the public is apt to be defrauded. Innocent buyers and chattel mortgagees will naturally examine only the records of the city or county in which the goods are located. They are not apt to know where the goods were originally delivered, or where the possessor of them lived, when he bought them. It seems desirable to compel the seller to make a new record of the contract when the goods are moved into a new county, or for the first time brought into the state. In order that it may be reasonable to compel the seller to make this record, every effort must be made to give the seller notice of the removal. He will naturally learn in many cases of such removal, because he will be collecting the part payments and will be looking for the buyer. But if a civil penalty is placed upon removal by the buyer without notice to the seller, the chances of the seller knowing of such removal and being able to file the contract in the new county will be greatly increased. In view of the danger to the seller if the goods are taken into a new county where there is no record, the penalty of allowing the seller to retake the goods as on default, does not seem too harsh.

In Texas the seller is allowed to retake the goods if the buyer removes them from the county without his consent. In Vermont for the removal of the goods from the state without the seller's consent the buyer may be subjected to a penalty of twice the value of the goods. In Saskatchewan removal from the registration district without 20 days' written notice to the seller is prohibited under penalty of $100 fine.

It seems unreasonable to compel the buyer to get the consent of the seller to a removal to a new county or a new state unless he has agreed to such a provision in his original contract. Such consent might be withheld unjustly by the seller. If the seller knows of the removal, he can refile the contract. Such refiling is what is desired, not an absolute prohibition against moving the goods about from place to place.

Conditional sale contracts frequently contain provisions prohibiting removal and allowing retaking by the seller on that account and such provisions have been forced by the courts. Hall v. Draper, (1878) 20 Kan. 137.

The interest of the buyer ought to be assignable before complete payment, but the assignment is of so much importance to the seller that he should receive notice of it as soon as possible. The section requires notice to be given under penalty of allowing the seller to treat the buyer as if in default. If the seller is to look to another than the original buyer for his payments, he should know that fact as soon as possible. If the seller is not obliged to look to that other for the payments, he should know that possession of the goods has passed to another or that another claims some interest in the goods. The statutes of at least 27 states make a sale by the buyer criminal, in some cases merely where such sale is without the written consent of the seller, and in others where the subsale or other transfer is with fraudulent intent.

STATUTORY NOTES.

The **Alaska** act changes the notice of " ten days," twice prescribed in this section, to " twenty days."—See Laws 1919, ch. 13.

§ 14. Refiling on removal.—When, prior to the performance of the condition, the goods are removed by the buyer from a filing district in this state to another filing district in this state in which such contract or a copy thereof is not filed, or are removed from another state into a filing district in this state where such contract or copy is not filed, the reservation of the property in the seller shall be void as to the purchasers and creditors described in Section 5, unless the conditional sale contract or a copy thereof shall be filed in the filing district to which the goods are removed, within ten days after the seller has received notice of the filing district to which the goods have been removed. The provisions of this section shall not apply, however, to the goods described in Section 8. The provisions of Section 11 regarding the duration of the validity of the filing and the necessity for refiling shall apply to

contracts or copies which are filed in a filing district other than that where the goods are originally kept for use by the buyer after the sale.

COMMISSIONERS' NOTE.

As stated previously, the place where the goods are situated is the county where it is important to have the record for the purpose of protecting the public. In a few jurisdictions the statutes provide that the seller must refile the contract on a removal of the goods to a new county and on the bringing of the goods into the state for the first time. This refiling is not required to be immediate. In Alabama the refiling must be within 30 days after the removal, in Georgia within six months, in Mississippi within 12 months, in Texas within four months, in West Virginia within three months, and in Saskatchewan within 60 days. It might be unreasonable to require the seller to make a new record at once. He should be given time to learn of the removal and to prepare and send his papers for record. Most sellers collect part payments frequently and will thus learn of the removal. The provisions of sections 11 and 13 will assist in bringing the removal to the seller's attention. The ten-day period within which the contract must be filed seems not too strict a requirement, since the time runs not from the removal but from the seller's notice of the place to which the goods have been removed.

A large number of cases have arisen in which the principal question was as to the law which controlled where goods were removed from one state to another. It seems to be settled that if the goods are sold in state A for the purpose of being removed to state B, the law of state B will control regarding the recording of the conditional sale contract. In re Gray, (1908) 170 Fed. 638; Potter Mfg. Co. v. Arthur, (1915) 220 Fed. 843, 136 C. C. A. 589, Ann. Cas. 1916A 1268; Lanston Monotype Mach. Co. v. Curtis, (1915) 224 Fed. 403, 140 C. C. A. 89; Summers v. Carbondale Mach. Co., (1915) 116 Ark. 246, 173 S. W. 194; Beggs v. Bartels, (1900) 73 Conn. 132, 46 Atl. 874, 84 A. S. R. 152; Bradley v. Kingman Implement Co., (1907) 79 Neb. 144, 112 N. W. 346. But if the goods are sold under a conditional sale contract in state A and delivered in state A, and after some use they are removed to state B, there is a great conflict of opinion. In the following cases the law of state A, the state where the contract was made, controlled as to

the conflicting rights of the seller and claimants under the buyer: Harper v. People, (1892) 2 Colo. App. 177, 29 Pac. 1040; Fuller v. Webster, (1915) 5 Boyce (Del.) 538, 95 Atl. 335; Waters v. Cox, (1878) 2 Ill. App. 129; Baldwin v. Hill, (1896) 4 Kan. App. 168, 46 Pac. 329; Gross v. Jordan, (1891) 83 Me. 380, 22 Atl. 250; Davis v. Osgood, (1898) 69 N. H. 427, 44 Atl. 432; Warnken v. Langdon Mercantile Co., (1898) 8 N. D. 243, 77 N. W. 1000; Studebaker Bros. Co. v. Mau, (1905) 13 Wyo. 358, 80 Pac. 151, 110 A. S. R. 1001. In the following cases the laws of state B, the state to which the goods were removed, controlled as to the formalities necessary to protect the seller's rights under the conditional sale contract: Corbett v. Riddle, (1913) 209 Fed. 811, 126 C. C. A. 535; Weinstein v. Freyer, (1890) 93 Ala. 257, 9 So. 285, 12 L. R. A. 700; Public Parks Amusement Co. v. Embree-McLean Carriage Co., (1897) 64 Ark. 29, 40 S. W. 582; North v. Goebel, (1912) 138 Ga. 739, 76 S. E. 46; Emerson Co. v. Proctor, (1903) 97 Me. 360, 54 Atl. 849; Marvin Safe Co. v. Norton, (1886) 48 N. J. L. 410, 7 Atl. 418, 57 Am. Rep. 566; National Cash Register Co. v. Paulson, (1905) 16 Okla. 204, 83 Pac. 793; Sanger v. Jesse French Piano, etc., Co., (1899) 21 Tex. Civ. App. 523, 52 S. W. 621.

If a uniform law with respect to conditional sales were adopted, and this law provided for the refiling of the contract upon removal of the goods, the difficulties illustrated by these cases would be avoided. A slight extra burden would be placed upon the seller in refiling the contract, but much litigation and loss on the part of the innocent public would be prevented.

STATUTORY NOTES.

The **Alaska** act changes the expression "this state," wherever used in this section, to "this Territory."— See Laws 1919, ch. 13.

§ 15. Fraudulent injury, concealment, removal or sale.— When, prior to the performance of the condition, the buyer maliciously or with intent to defraud, shall injure, destroy or conceal the goods, or remove them to a filing district where the contract or a copy thereof is not filed, without having given the notice required by Section 13, or shall sell, mortgage, or otherwise dispose of such goods under claim of full ownership, he shall be guilty of a crime

and upon conviction thereof shall be imprisoned [in the county jail] for not more than [one year] or be fined not more than [$500] or both.

COMMISSIONERS' NOTE.

Provisions of this sort imposing a criminal penalty for acts done with a fraudulent intent and calculated to destroy the seller's security are very common. It seems desirable to insert such a section for the prevention of fraud upon the seller, and also fraud upon the innocent public in some cases.

In Kansas, Missouri, Nevada, New Jersey, Ohio, Oregon, and Washington, the statute makes fraudulent destruction of the goods a crime.

In Kansas, Missouri, Oregon, South Dakota, and Washington fraudulent injury of the goods is a crime.

In Connecticut, District of Columbia, Idaho, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Missouri, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, South Dakota, Tennessee, and Washington, fraudulent concealment of the goods is covered by the criminal statute.

In Arkansas, California, Connecticut, District of Columbia, Florida, Idaho, Maryland, Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, North Dakota, Ohio, Oregon, South Dakota, Virginia, Washington, and Wyoming the statutes make fraudulent removal a crime.

In Alabama, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Idaho, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, South Dakota, Tennessee, Vermont, Virginia, Washington, and Wyoming, the fraudulent sale or other disposal of the goods is a crime.

The fines imposed vary from $1,000 as a maximum in Nebraska, Nevada, New Hampshire and North Dakota to $5.00 as a minimum in Virginia. The periods of imprisonment to which the criminal may be sentenced vary from 10 years as a maximum in Nebraska to 15 days as a minimum in Kentucky and Virginia. The one year period of imprisonment seems reasonable as a maximum and it seems desirable to make the possible fine depend upon the value of the goods.

Some of these criminal statutes apply specifically only to condi-

tional sales, others to conditional sales and chattel mortgages, and still others by their express wording might seem to be confined to cases of chattel mortgages. The latter class are inserted here, since the offense in the case of fraud on the part of a chattel mortgagee is essentially similar, and doubtless in many cases the statutes have been held to apply to conditional sales by implication.

STATUTORY NOTES.

The **Alaska** act changes the bracketed words " in the county jail " in this section to " in the Federal jail."— See Laws 1919, ch. 13.

The **Arizona** act changes the amount of the fine inserted in brackets, in this section, to " one thousand dollars."—See Laws 1919, ch. 40.

The **Delaware** and **New Jersey** acts substitute the word " misdemeanor " for the word " crime " in the latter part of this section and omit the bracketed words " in the county jail." —See Del. Laws 1919, ch. 192; N. J. Laws 1919, ch. 210.

The **Wisconsin** act substitutes the word " misdemeanor " for the word " crime " in the latter part of this section.— See Laws 1919, ch. 672.

§ 16. Retaking possession.—When the buyer shall be in default in the payment of any sum due under the contract, or in the performance of any other condition which the contract requires him to perform in order to obtain the property in the goods, or in the performance of any promise the breach of which is by the contract expressly made a ground for the retaking of the goods, the seller may retake possession thereof. Unless the goods can be retaken without breach of the peace, they shall be retaken by legal process; but nothing herein shall be construed to authorize a violation of the criminal law.

COMMISSIONERS' NOTE.

This right on the part of the seller is an elementary one. It is generally reserved in the contract, but it is deemed wise to make it a statutory right, rather than a right to be contracted for. This right is restricted and limited by the following sections, which prescribe what the seller must do after resuming possession.

It is deemed wise to insert a statement that the seller may resume possession without process, only if he can do so without breach of the peace; but that he must resort to legal process if he cannot obtain the goods without breach of the peace.

§ 17. Notice of intention to retake.—Not more than forty nor less than twenty days prior to the retaking, the seller, if he so desires, may serve upon the buyer personally or by registered mail a notice of intention to retake the goods on account of the buyer's default. The notice shall state the default and the period at the end of which the goods will be retaken, and shall briefly and clearly state what the buyer's rights under this act will be in case they are retaken. If the notice is so served and the buyer does not perform the obligations in which he has made default before the day set for retaking, the seller may retake the goods and hold them subject to the provisions of Sections 19, 20, 21, 22 and 23 regarding resale, but without any right of redemption.

COMMISSIONERS' NOTE.

The object of this section is to enable the seller to avoid unnecessary expense and trouble. Often the seller without this section would have to make one trip to the buyer's town to retake the goods, then store the goods at considerable expense during the redemption period, and lastly make a second trip to the buyer's town to resell the goods. If the buyer has from twenty to forty days' notice that he must pay up or lose the goods his rights are as well protected as if he had a ten days' period of redemption after the goods have been retaken. The object is to give the buyer a reasonable time to raise the back payments. Either a notice of intention to retake or a period of redemption after retaking will give the buyer protection. If the former enables the seller to avoid useless trouble and expense, the seller should have the option of taking either method.

§ 18. Redemption.—If the seller does not give the notice of intention to retake described in Section 17, he shall retain the goods for ten days after the retaking within the state in which they were located when retaken, during

which period the buyer, upon payment or tender of the amount due under the contract at the time of retaking and interest, or upon performance or tender of performance of such other condition as may be named in the contract as precedent to the passage of the property in the goods, or upon performance or tender of performance of any other promise for the breach of which the goods were retaken, and upon payment of the expenses of retaking, keeping and storage, may redeem the goods and become entitled to take possession of them and to continue in the performance of the contract as if no default had occurred. Upon written demand delivered personally or by registered mail by the buyer, the seller shall furnish to the buyer a written statement of the sum due under the contract and the expense of retaking, keeping and storage. For failure to furnish such statement within a reasonable time after demand, the seller shall forfeit to the buyer [$10] and also be liable to him for all damages suffered because of such failure. If the goods are perishable so that retention for ten days as herein prescribed would result in their destruction or substantial injury, the provisions of this section shall not apply, and the seller may resell the goods immediately upon their retaking. The provision of this section requiring the retention of the goods within the state during the period allowed for redemption shall not apply to the goods described in Section 8.

COMMISSIONERS' NOTE.

The theory of the following sections is that a conditional sale is practically equivalent to a chattel mortgage, and that the rights of buyer and seller in the conditional sale ought to coincide with those of chattel mortgagor and mortgagee as nearly as possible. Hence the buyer is given the right of redemption after default. It seems but little hardship on the seller to compel him to retain the goods within reach of the buyer for ten days and allow the buyer to redeem the goods, if he can raise the money. In ten days there should be opportunity to borrow the money, or to obtain it through the receipt of salary or wages. To extend the period unduly imposes a hardship upon the seller in every case, and will

benefit a buyer only in rare instances. Experience shows that if he does not do so promptly he seldom attempts to redeem. It is essential that the buyer should be able to discover just how much is claimed to be due on the contract and as a result of the retaking. The seller should furnish a written statement of this. The fixing of a small penalty for failure to deliver such a statement may stimulate promptness on the part of the seller.

In Maine, Massachusetts, Nebraska, New York, Pennsylvania, Vermont, Wisconsin, New Brunswick, Ontario, Prince Edward Island, and Saskatchewan the statutes expressly provide for redemption by the buyer, the period of redemption varying from 15 days to 40 days. In some states in the absence of statutes the courts have allowed the buyer the right of redemption. Miller v. Steen, (1866) 30 Cal. 407, 89 Am. Dec. 124; Liver v. Mills, (1909) 155 Cal. 459, 101 Pac. 299; Puffer, etc., Mfg. Co. v. Lucas, (1893) 112 N. C. 377, 17 S. E. 174, 19 L. R. A. 682.

STATUTORY NOTES.

The **Wisconsin** act excepts instruments covered by the act from the provisions of subsection 1 of section 2316a, and subsection 1 of section 2136m, of the Wisconsin statutes, relating to the sale and redemption of "personal property taken by virtue of any chattel mortgage, lease or other instrument intended as security." — See Laws 1919, ch. 672.

§ 19. Compulsory resale by seller.—If the buyer does not redeem the goods within ten days after the seller has retaken possession, and the buyer has paid at least fifty per cent of the purchase price at the time of the retaking, the seller shall sell them at public auction in the state where they were at the time of the retaking, such sale to be held not more than thirty days after the retaking. The seller shall give to the buyer not less than ten days' written notice of the sale, either personally or by registered mail, directed to the buyer at his last known place of business or residence. The seller shall also give notice of the sale by at least three notices posted in different public places within the filing district where the goods are to be sold, at least five days before the sale. If at the time of the retaking $500 or more has been paid on the purchase price, the seller

shall also give notice of the sale at least five days before the sale by publication in a newspaper published or having a general circulation within the filing district where the goods are to be sold. The seller may bid for the goods at the resale. If the goods are of the kind described in Section 8, the parties may fix in the conditional sale contract the place where the goods shall be resold.

COMMISSIONERS' NOTE.

In many states the buyer, upon default, forfeits the part payments already made, if the seller retakes the goods. Bray v. Lowery, (1912) 163 Cal. 256, 124 Pac. 1004; Herbert v. Rhodes-Burford Furniture Co., (1902) 106 Ill. App. 583; Richards v. Hellen, (1911) 153 Ia. 66, 133 N. W. 393; Fleck v. Warner, (1881) 25 Kan. 492; Lorain Steel Co. v. Norfolk, etc., St. R. Co., (1905) 187 Mass. 500, 73 N. E. 646; Thirlby v. Rainbow, (1892) 93 Mich. 164, 53 N. W. 159; C. W. Raymond Co. v. Kahn, (1914) 124 Minn. 426, 145 N. W. 164, 51 L. R. A. (N. S.) 251; Duke v. Shackleford, (1879) 56 Miss. 552; Stearns v. Drake, (1902) 24 R. I. 272, 52 Atl. 1082. But in several of these cases the holding was merely that the seller need not return the part payments before bringing replevin for the goods, and the court hinted that the buyer might later recover his part payments, less a reasonable reduction for the use of and damage to the goods. In other cases it has been held that the buyer is entitled to have his part payments, less rent and damage charges, returned to him when the seller retakes the goods. Hill v. Townsend, (1881) 69 Ala. 286; Commercial Pub. Co. v. Campbell Printing-Press, etc., Co., (1900) 111 Ga. 388, 36 S. E. 756; Quality Clothes Shop v. Keeney, (1915) 57 Ind. App. 500, 106 N. E. 541; Shafer v. Russell, (1904) 28 Utah 444, 79 Pac. 559. The tendency of the courts is to avoid the old hard and fast rule that the buyer forfeited his part payments on default. The courts recognize the equity of the buyer in the goods on account of his part payments. In some states they have had to resort to indirect methods of giving the buyer the benefit of this equity. In other states they have felt bound by the old strict rule of forfeiture. It seems desirable to do away with this doubt and indirection and to admit clearly the right of the buyer to have the benefit of his part payments after default.

In a few states statutory schemes for relieving the buyer of the hardship of forfeiture have been provided. These may be divided into three classes. There are first the states which provide that the seller may not retake the goods for default, unless he returns to the buyer the part payments, less a reasonable amount for the use of the property and damage to it. Such systems prevail in Missouri and Ohio. In Missouri the right to the return of part payments on retaking exists in all cases. In Ohio only when the buyer has paid an amount in excess of twenty-five per cent of the purchase price must the seller return part payments on retaking. This scheme is open to the objection that it is difficult to determine what the value of the use of the goods has been and whether they have been damaged or not. The seller is apt to impose on the buyer and retain too much of the part payments under a claim of rent and alleged damage to the goods.

In Massachusetts and Pennsylvania the right to have a resale is optional with the buyer. In Massachusetts, where seventy-five per cent or more of the price has been paid, the buyer may demand a resale, and will be entitled to the surplus in the hands of the seller after the payment of the full price and expenses. This statute applies only to furniture and other household effects. In Pennsylvania the statute respecting the conditional sale of chattels to be attached to real property provides that the buyer may, within 10 days after the retaking, demand a resale of the property and shall be entitled to any surplus in the hands of the seller after the satisfaction of the price and the expenses. In Vermont the seller may resell the goods, and if he does so, the buyer shall be entitled to the surplus thus created. The option in Vermont is with the seller.

In a third class of states resale is compulsory. These states are New York and Tennessee. In these states the seller is obliged, after retaking the goods, to resell them and return to the buyer the excess in his hands after the payment of the price and the expenses of resale. This compulsory resale insures the return of all part payments equitably due him. If he has contracted for goods at a price of $100 and has paid $75 at the time of default and retaking, and the goods on the compulsory resale bring but $25, the buyer is entitled to no return of part payments. The use he has had of the property has evidently been worth $75, for the goods have become so worn and damaged that they will bring only $25. But if, in the case supposed, the goods bring $50 on

the resale, it is evident that the buyer ought to have returned to him $25, less the expense of resale. If such return is not made, the seller will have received $25 unjustly, and the buyer will have been mulcted in that amount because of his default.

The latter system, namely, that of compulsory resale, is the one adopted in the proposed statute. It is believed to be better than the optional resale plan adopted in Massachusetts and Pennsylvania, because it works automatically. Many buyers of goods on conditional sale contracts are men of small means, little versed in the law and unfamiliar with correct business methods. They will not, it is believed, be apt to take advantage of an optional resale provision. They will not ordinarily know of it. It may be said that, if they are careless with respect to their own rights, they do not deserve protection. But the answer is that they frequently will not know what their own rights are, that they are a class of buyers who are frequently very needy and ignorant.

In New York the resale must take place within 60 days after the retaking of the goods and not before 30 days after such retaking. This seems a needlessly long period. It is believed that, if the buyer does not redeem the goods, the seller should be allowed to dispose of the matter by resale as soon as he can do so with due regard to a protection of the buyer's rights. Ten days after the period of redemption has expired seems long enough in which to advertise the resale. In Tennessee the seller must advertise the property for resale within 10 days after the retaking.

The length of notice of the resale which the seller must give varies in the different states. In Massachusetts the requirement is three days' newspaper notice; in New York 15 days' notice to the buyer is required; in North Carolina 10 days' notice to the buyer and 20 days' public notice by posting; in Tennessee 10 days' notice to the public by three posted notices; in Vermont 10 days' notice to the buyer and 10 days' notice to the public by two posted notices.

The notices required by the proposed section 15 are believed to be reasonable and to give the buyer and the public sufficient time to prepare to attend the sale ready to bid, if they desire to do so.

In New Brunswick, Ontario, and Prince Edward Island 5 days' personal notice to the buyer or 7 days' written notice is required. In Saskatchewan the buyer is entitled to 8 days' personal notice of the resale or 10 days' written notice. The resale in the Cana-

dian provinces is optional with the seller and not for the purpose of awarding the buyer the surplus after the payment of the price and expenses.

Under this statute a compulsory resale is provided for only where the buyer has paid a considerable portion of the purchase price, namely, fifty per cent. If he has paid less, statistics show that nothing is realized for the buyer on a resale. The depreciation of the goods more than eats up the buyer's equity. Where there is no chance of benefiting the buyer, a compulsory resale is a useless and expensive formality. If the buyer wants a resale for the purpose of determining his equity, he may, under the provisions of the following section, demand it, even though he has paid only ten per cent of the price. But it seems undesirable to require such resale as a matter of law in cases where business experience shows that it can do no good.

The last sentence of this section gives greater liberty as to the place of sale to the parties in the case of the resale of railroad equipment.

STATUTORY NOTES.

The **Alaska** act changes the notice of " five days " prescribed in the third sentence of this section to " ten days," and omits the fourth sentence.—See Laws 1919, ch. 13.

See the reference to the **Wisconsin** act in the " Statutory Notes " under section 18, supra.

§ 20. Resale at option of parties.—If the buyer has not paid at least fifty per cent of the purchase price at the time of the retaking, the seller shall not be under a duty to resell the goods as prescribed in Section 19, unless the buyer serves upon the seller, within ten days after the retaking, a written notice demanding a resale, delivered personally or by registered mail. If such notice is served, the resale shall take place within thirty days after the service, in the manner, at the place and upon the notice prescribed in Section 19. The seller may voluntarily resell the goods for account of the buyer on compliance with the same requirements.

COMMISSIONERS' NOTE.

As explained in the notes to section 19, a resale where less than fifty per cent of the price has been paid has been shown to be

a useless, expensive formality, not productive of any good to buyer or seller. Nevertheless, if the buyer desires to have a resale when he has paid less than fifty per cent of the price, he ought to have the right to demand a resale. This section gives him such right but does not make the resale compulsory where less than fifty per cent has been paid.

STATUTORY NOTES.

See the reference to the **Wisconsin** act in the "Statutory Notes" under section 18, supra.

§ 21. Proceeds of resale.—The proceeds of the resale shall be applied (1) to the payment of the expenses thereof, (2) to the payment of the expenses of retaking, keeping and storing the goods, (3) to the satisfaction of the balance due under the contract. Any sum remaining after the satisfaction of such claims shall be paid to the buyer.

COMMISSIONERS' NOTE.

The provisions of this section are supported by the statutes of Massachusetts, New York, Pennsylvania, Tennessee, and Vermont, the only statutes in which resale as a means of estimating the amount to be returned to the buyer is recognized. That the buyer should have the surplus, which represents his equity in the goods, is in accord with the chattel mortgage theory of the conditional sale.

§ 22. Deficiency on resale.—If the proceeds of the resale are not sufficient to defray the expenses thereof, and also the expenses of retaking, keeping and storing the goods and the balance due upon the purchase price, the seller may recover the deficiency from the buyer, or from anyone who has succeeded to the obligations of the buyer.

COMMISSIONERS' NOTE.

This section follows out the mortgage theory. The chattel mortgagee can, of course, recover any deficiency after foreclosing his mortgage. The result produced by this section has been reached in a number of cases. Matteson v. Equitable Min., etc., Co., (1904) 143 Cal. 436, 77 Pac. 144; Kinney v. Avery, (1914) 14 Ga. App. 180, 80 S. E. 663; Christie v. Scott, (1908) 77 Kan. 257.

94 Pac. 214; Dederick v. Wolfe, (1891) 68 Miss. 500, 9 So. 350, 24 A. S. R. 283; McCormick Harvesting Mach. Co. v. Koch, (1899) 8 Okla. 374, 58 Pac. 626; Ascue v. Aultman, (1884) 2 Willson Civ. Cas. Ct. App. (Tex.) 497.

§ 23. Rights of parties where there is no resale.— Where there is no resale, the seller may retain the goods as his own property without obligation to account to the buyer except as provided in Section 25, and the buyer shall be discharged of all obligation.

COMMISSIONERS' NOTE.

This section frees the seller from all obligations where the law is complied with and there is no resale. In such cases the equity of the buyer is probably practically worthless and it has seemed best to wipe out the transaction and clear the slate of all obligations on both sides.

§ 24. Election of remedies.—After the retaking of possession as provided in Section 16 the buyer shall be liable for the price only after a resale and only to the extent provided in Section 22. Neither the bringing of an action by the seller for the recovery of the whole or any part of the price, nor the recovery of judgment in such action, nor the collection of a portion of the price, shall be deemed inconsistent with a later retaking of the goods as provided in Section 16. But such right of retaking shall not be exercised by the seller after he has collected the entire price, or after he has claimed a lien upon the goods, or attracted [attached ?] them, or levied upon them as the goods of the buyer.

COMMISSIONERS' NOTE.

It is often held that the retaking of the goods by the seller constitutes an election which prevents him from later suing for the purchase price. Hanson v. Dayton, (1907) 153 Fed. 258, 82 C. C. A. 588; Nashville Lumber Co. v. Robinson, (1909) 91 Ark. 319, 121 S. W. 350; Muncy v. Brain, (1910) 158 Cal. 300, 110 Pac. 945; Turk v. Carnahan, (1900) 25 Ind. App. 125, 57 N. E. 729, 81 A. S. R. 85; Perkins v. Grobben, (1898) 116 Mich. 172, 74 N. W. 469, 72 A. S. R. 512, 39, L. R. A. 815; Chase v. Kelly, (1914) 125

Minn. 317, 146 N. W. 1113, L. R. A. 1916A 912; Madison River Livestock Co. v. Osler, (1909) 39 Mont. 244, 102 Pac. 325, 133 A. S. R. 558; Nelson v. Gibson, (1911) 143 App. Div. 894, 129 N. Y. S. 702; Kelley Springfield Road Roller Co. v. Schlimme, (1908) 220 Pa. St. 413, 69 Atl. 867, 123 A. S. R. 707; Stewart, etc., Drug Co. v. Reed, (1913) 74 Wash. 401, 133 Pac. 577. This seems correct, only if the act of retaking necessarily amounts to a rescission of the contract. This is not necessarily true because it is perfectly possible that the seller has resumed possession merely for the purpose of realizing on his security. On the other hand, the buyer ought not thereafter to be liable for the price, unless the security which he has given for the payment of the price, the goods themselves, proves insufficient to compensate the seller. In section 22 the seller is allowed to recover the deficiency after a resale. If he retakes the property, he is deemed to have elected to look to the goods as his primary security. If that should fail, he may have the secondary remedy of recovering the deficiency from the buyer.

It seems obvious that action for a single installment of the price not the final installment, does not amount to an election to treat the buyer as the owner of the goods. The buyer is not, according to the most essential term of the contract, to become the owner until he has paid the price. The recovery of a single installment is perfectly consistent with the payment of the further installments by the buyer and the complete performance of the contract. The recovery of such installments ought not, therefore, to preclude the seller from retaking the goods later, in case of default. Haynes v. Temple, (1908) 198 Mass. 372, 84 N. E. 467.

Upon the question of the effect of bringing an action for the entire balance of the price due, the authorities are not harmonious. The prevailing view is that the commencement of an action for the entire price prevents a retaking of the goods at a later time. Butler v. Dodson, (1906) 78 Ark. 569, 94 S. W. 703; Waltz v. Silveria, (1914) 25 Cal. App. 717, 145 Pac. 169; North Robinson Dean Co. v. Strong, (1914) 25 Idaho 721, 139 Pac. 847; Smith v. Barber, (1899) 153 Ind. 322, 53 N. E. 1014; Richards v. Schreiber, etc., Co., (1896) 98 Ia. 422, 67 N. W. 569; Bailey v. Hervey, (1883) 135 Mass. 172; Alden v. Dyer, (1904) 92 Minn. 134, 99 N. W. 784; Frederickson v. Schmittroth, (1907) 77 Neb. 724, 112 N. W. 564; Orcutt v. Rickenbrodt, (1899) 42 App. Div. 238, 59 N. Y. S. 1008; Dowagiac Mfg. Co. v. Mahon, (1904) 13 N. D. 516, 101 N. W. 903; Sioux Falls Adjustment Co. v. Aikens,

(1913) 32 S. D. 154, 142 N. W. 651; Winton Motor Carriage Co. v. Broadway Automobile Co., (1911) 65 Wash. 650, 18 Pac. 817, 37 L. R. A. (N. S.) 71. The contrary view has been maintained in E. E. Forbes Piano Co. v. Wilson, (905) 144 Ala. 586, 39 So. 645; Jones v. Snider, (1896) 99 Ga. 276, 25 S. E. 668; Foster v. Briggs Machinery, etc., Co., (1906) 6 Indian Ter. 342, 98 S. W. 120; Westinghouse Electric, etc., Co. v. Auburn, etc., Co., (1910) 106 Me. 349, 76 Atl. 897; Campbell Printing Press, etc., Co. v. Rockaway Pub. Co., (1894) 56 N. J. L. 676, 29 Atl. 681, 44 A. S. R. 410.

The minority view which is that adopted in section 24 seems more reasonable and in accord with the chattel mortgage theory of a conditional sale. If an action for the price bars a later retaking of the goods, the seller will never dare to sue for the price and run the risk of getting a worthless judgment and losing his claim upon the goods. Just as an action for the chattel mortgage debt does not bar the foreclosure of the chattel mortgage at a later time, so an action for the purchase price under a conditional sale should not bar a later reliance on the reservation of the property in the goods as security.

CASE NOTES.

Declaratory of Existing Law.

It has been said obiter, in Wisconsin, that this section is declaratory of the rule obtaining in that state that a vendor of goods in a contract of conditional sale does not waive the right to retake the goods by attempting to enforce collection of the purchase price. Defiance Mach. Works v. Gill, (1920) 170 Wis. 477, 175 N. W. 940.

§ 25. Recovery of part payments.—If the seller fails to comply with the provisions of Sections 18, 19, 20, 21 and 23 after retaking the goods, the buyer may recover from the seller his actual damages, if any, and in no event less than one-fourth of the sum of all payments which have been made under the contract, with interest.

COMMISSIONERS' NOTE.

In the two states which have a compulsory resale provision, namely, New York and Tennessee, the penalty for failure to carry out the resale provisions according to law is that the buyer may recover his part payments. Some penalty is necessary in order

to insure that the resale will take place. It seems fair to allow the buyer his actual damages (the difference between the amount of his part payments and the value of the use of the property which he has had, and also the value of his bargain) and to fix a minimum penalty to be recovered in all cases. This will protect the buyer in all cases where his equity is of any appreciable value.

In Massachusetts, where the buyer may in some cases demand a resale, the penalty for failure to resell is that the right of redemption on the part of the buyer is not foreclosed. In Pennsylvania, where a similar right on the buyer's part to demand a resale exists, there seems to be no penalty for failure to resell after the demand.

§ 26. Waiver of statutory protection.—No act or agreement of the buyer before or at the time of the making of the contract, nor any agreement or statement by the buyer in such contract, shall constitute a valid waiver of the provisions of Sections 18, 19, 20, 21 and 25; except that the contract may stipulate that on such default of the buyer as is provided for in Section 16, the seller may rescind the conditional sale, either as to all the goods or as to any part thereof for which a specific price was fixed in the contract. If the contract thus provides for rescission, the seller at his option may retake such goods without complying with or being bound by the provisions of Sections 17 to 25 inclusive, as to the goods retaken, upon crediting the buyer with the full purchase price of those goods. So much of this credit as is necessary to cancel any indebtedness of the buyer to the seller shall be so applied, and the seller shall repay to the buyer on demand any surplus not so required.

COMMISSIONERS' NOTE.

This section was amended at the 1920 Conference by adding the words beginning with " except that the " and continuing to " not so required."

This section is supported by decisions in three of the states having resale and redemption provisions for the benefit of the buyer. Desseau v. Holmes, (1905) 187 Mass. 486, 73 N. E. 656, 105 A. S. R. 417; Drake v. Metropolitan Mfg. Co., (1914) 218 Mass. 112, 105 N. E. 634; Crowe v. Liquid Carbonic Co., (1913)

208 N. Y. 396, 102 N. E. 573; Massillon Engine, etc., Co. v. Wilkes, (Tenn. 1904) 82 S. W. 316. In the absence of such a provision unscrupulous sellers would do away with the effect of the statute by waivers printed in small type in the contract. No act should constitute a waiver unless performed after the contract of conditional sale is complete.

STATUTORY NOTES.

The acts of **Alaska** (Laws 1919, ch. 13), **Arizona** (Laws 1919, ch. 40), **Delaware** (Laws 1919, ch. 192), **New Jersey** (Laws 1919, ch. 210), **South Dakota** (Laws 1919, ch. 137), and **Wisconsin** (Laws 1919, ch. 672), all having been adopted, as will be noted, in the year 1919, do not contain the provisions added to this section at the 1920 Conference (see "Commissioners' Note," supra).

§ 27. Loss and increase.—After the delivery of the goods to the buyer and prior to the retaking of them by the seller, the risk of injury and loss shall rest upon the buyer. The increase of the goods shall be subject to the same conditions as the original goods.

COMMISSIONERS' NOTE.

The rule with respect to risk of loss is that adopted by the Uniform Sales Act and by a great majority of the states. Uniform Sales Act, section 22; Blue v. American Soda Fountain Co., (1907) 150 Ala. 165, 43 So. 709; Hollenberg Music Co. v. Barron, (1911) 100 Ark. 403, 140 S. W. 582, Ann. Cas. 1913C 659, 36 L. R. A. (N. S.) 594; O'Neill-Adams Co. v. Eklund, (1915) 89 Conn. 232, 93 Atl. 524, Ann. Cas. 1918D 379; Phenix Ins. Co. v. Hilliard, (1910) 59 Fla. 590, 52 So. 799, 138 A. S. R. 171; Jessup v. Fairbanks, (1906) 38 Ind. App. 673, 78 N. E. 1050; Burnley v. Tufts, (1888) 66 Miss. 48, 5 So. 627, 14 A. S. R. 540; Tufts v. Wynne, (1891) 45 Mo. App. 42; Charles A. Stickney Co. v. Nichols, (1915) 98 Neb. 287, 152 N. W. 554; Collerd v. Tully, (1911) 78 N. J. Eq. 557, 80 Atl. 491, Ann. Cas. 1912C 78; National Cash Register Co. v. South Bay Club House Ass'n, (1909) 64 Misc. 125, 118 N. Y. S. 1044; Whitlock v. Auburn Lumber Co., (1907) 145 N. C. 120, 58 S. E. 909, 12 L. R. A. (N. S.) 1214; Harley v. Stanley, (1909) 25 Okla. 89, 105 Pac. 188, 138 A. S. R. 900; Carolina, etc., R. Co. v. Unaka Springs Lumber Co., (1914) 130 Tenn. 354, 170 S. W. 591; LaValley v. Ravenna, (1905) 78 Vt. 152, 62 Atl. 47, 6 Ann. Cas. 684, 112 A. S. R. 898, 2 L. R. A. (N. S.) 97; Exposition

Arcade Corp. v. Lit, (1912) 113 Va. 574, 75 S. E. 117, Ann Cas. 1913D 335. It seems desirable to insert this section in the Uniform Conditional Sales Act, although there may be a duplication of legislation in states where the Uniform Sales Act is already in force. The Uniform Sales Act does not expressly refer to conditional sales, but only to sales where the title is reserved as security for the payment of the price. Furthermore, states which have not adopted the Uniform Sales Act may adopt the Uniform Conditional Sales Act.

It is well established that the increase of goods sold under a conditional sale remain the property of the seller until the performance of the condition and then pass to the buyer with the original goods. Anderson v. Leverette, (1902) 116 Ga. 732, 42 S. E. 1026; Allen v. Delano, (1867) 55 Me. 113, 92 Am. Dec. 573; Desany v. Thorp, (1897) 70 Vt. 31, 39 Atl. 309.

§ 28. Act prospective only.— This act shall not apply to conditional sales made prior to the time when it takes effect.

CASE NOTES.

Application of Act.

The Arizona act (Laws 1919, ch. 40) has been held to have no application to a contract executed in 1917. McArthur Bros. Mercantile Co. v. Hagihara, (1921) —Ariz.— 194 Pac. 336, 13 A. L. R. 1038.

The New Jersey act does not apply to a contract executed subsequent to the approval of the act but prior to its taking effect. Wood v. Cox, (1921) — N. J. —, 113 Atl. 501.

§ 29. Rules for cases not provided for.— In any case not provided for in this act the rules of law and equity, including the law merchant, and in particular those relating to principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall continue to apply to conditional sales.

COMMISSIONERS' NOTE.

This section is modeled after section 73 of the Uniform Sales Act and is inserted for the sake of completeness and clarity.

§ 30. Uniformity of interpretation.— This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

COMMISSIONERS' NOTE.

This important section is contained in all the Uniform Commercial Acts to lead courts to consider in construing the act not only the previous jurisprudence of the state, but the law of other states.

§ 31. Short title.— This act may be cited as the Uniform Conditional Sales Act.

§ 32. Inconsistent laws repealed.— Except so far as they are applicable to conditional sales made prior to the time when this act takes effect, the following acts shall be and hereby are repealed. [Here repeal all existing acts in the field of conditional sales.]

STATUTORY NOTES.

The **Alaska** act changes this section to read as follows: "All acts and parts of acts inconsistent herewith are hereby repealed." — See Laws 1919, ch. 13.

The **Arizona** act changes the second clause of this section to read as follows: "All acts and parts of acts in conflict with the provisions of this act are hereby repealed." — See Laws 1919, ch. 40.

The **Delaware** act changes the second clause of this section to read as follows: "All acts or parts of acts inconsistent herewith are hereby repealed." — See Laws 1919, ch. 192.

The **New Jersey** act changes this section to read as follows: "All acts and parts of acts inconsistent with this act are hereby repealed except that nothing herein shall govern or affect any contract for the conditional sale of goods and chattels recorded under existing laws prior to the time when this act takes effect." — See Laws 1919, ch. 210.

The **South Dakota** act changes this section to read as follows: " Except so far as it is applicable to conditional sales made prior to the time when this act takes effect. Section 932 Revised Code of 1919, is hereby repealed." — See Laws 1919, ch. 137.

The **Wisconsin** act changes the second clause of this section to read as follows: " Sections 1684t–53a, 1839a, 2317 and 2319b of the statutes are repealed. Said sections need not be published in future editions of the statutes." — See Laws 1919, ch. 672.

§ 33. Time of taking effect.— This act shall take effect .....

APPENDIX

CONDITIONAL SALES STATUTES

Of Jurisdictions Wherein Uniform Conditional Sales Act Has Not Yet Been Adopted.

Where no specific provisions relative to conditional sales are to be found in a particular jurisdiction, the statutory provisions governing chattel mortgages are given as applicable either by analogy or by direct judicial decision.

ALABAMA.

CONDITIONAL SALES GENERALLY.

Civil Code 1907.

§ 3394. *Conditional sales, leases, etc., to be recorded.*—All other contracts for the conditional sale of personal property, by the terms of which the vendor retains the title until payment of the purchase money and the purchaser obtains possession of the property, and all contracts for the lease, rent or hire of personal property, by the terms of which the property is delivered to another on condition that it shall belong to him whenever the amount paid shall be a certain sum, or the value of the property, the title to remain in the other party until such sum or value shall have been paid, are, as to such condition, void against purchasers for a valuable consideration, mortgagees and judgment creditors without notice thereof, unless such contracts are in writing and recorded in the office of the judge of probate of the county in which the party so obtaining possession of the property resides, and also the county in which such property is delivered and remains; and if, before the payment of the purchase money or the sum or value stipulated, the property is removed to another county, the contract must be again recorded within three months from the time of such removal, in the county to which it is removed; and if any such property is brought into this state while subject to such condition, the contract of sale, lease, hire, or rent, must within three months thereafter be recorded in the county into which the property is brought and remains and all local or special laws in conflict herewith are expressly repealed, provided that in counties having according to the last federal census or according to any succeeding federal census a population of more than eighty thousand (80,000) inhabitants such contracts of less than two hundred dollars in

amount need not be filed for record as provided in this section. (As amended by Laws 1911, p. 115.)

§ 3395. *Such contract, or a certified copy thereof, may be received in evidence.*— Such contract, when the execution thereof has been acknowledged or proved before an officer having authority to take and certify the acknowledgment of conveyances, and when such contract has been duly recorded, must be received in evidence without other proof of execution; and if the original of such contract is lost or destroyed, or the party offering in evidence a certified transcript has not the custody or control thereof, a certified transcript from the record thereof must be received in evidence without other proof of the execution of the original.

RAILROAD EQUIPMENT.

Civil Code 1907.

§ 3393. *Contracts for conditional sale of railroad rolling stock.* — Contracts for conditional sale of railroad equipment or rolling stock, by the terms of which the vendor retains the title until payment of the purchase money, and the purchaser obtains possession, are void against the judgment creditors of the purchaser without notice, or purchasers from him for a valuable consideration without notice, unless such contracts are in writing, and, within three months after the making thereof, recorded in the office of the judge of probate of the county in which such corporation may have its principal office or place of business; and if it has not in this state a principal office or place of business, then in the office of the secretary of state; and, in addition, all cars or engines so sold must have thereon, plainly marked, the name of the vendor.

DETINUE.

Civil Code 1907.

§ 3789. *Suit by mortgagee or vendor.*— If the suit is by a mortgagee, or his assignee, against a mortgagor or one holding under him, or by a vendor who has made a conditional sale reserving title until the entire purchase money shall be paid, or his assignee, against his vendee or one holding under him, the defendant may upon suggestion, require that the jury ascertain the amount of the mortgage debt, or the unpaid balance of the purchase price of the article sold; and if the debt due is ascertained to be less than the value of the property sued for as assessed by the jury,

judgment must be rendered for the property sued for, or if that is not to be had, then for the amount of the debt as ascertained by the jury. The court must also make an order that, if the debt so ascertained, interest, and costs, be paid within thirty days, no execution or other process shall issue on the judgment; and on payment thereof to the plaintiff or to the clerk for his use, the clerk must, on the face of the record of the judgment, indorse the fact of such payment, and thereafter the plaintiff shall be deemed the unsuccessful party within the meaning of section 3783.

§ 3790. *When suit is by mortgagee or vendor.*— When the suit is by a mortgagee, or by a vendor in a contract of conditional sale, or their assignee, against the mortgagor or the vendee, or one holding under them, and suggestion is made as provided in the preceding section, if the amount of the debt is ascertained to be less than the value of the property sued for, and the defendant has given bond and taken the property into his possession, and fails for thirty days after the judgment to deliver the property, or pay the amount found to be due, to the sheriff, execution may issue against the obligors in the bond for the amount of the debt assessed and the costs in like manner as provided in section 3783.

§ 3791. *What may be pleaded in such case.*— In any action under the provisions of this chapter brought by a mortgagee or by a vendor in a contract of conditional sale, or by their assignee, claiming title under such mortgagee or vendor in a contract of conditional sale, in addition to any defenses appropriate to the action of detinue, the defendant may plead any matter of defense, including usury, that he might have pleaded if the action had been on the debt, except the statute of limitation.

Criminal Provisions.

Criminal Code 1907.

§ 7342. *Removing, selling, or buying property to which others have claim.*—Any person who removes or sells any personal property for the purpose of hindering, delaying, or defrauding any person who has a claim thereto, under any written instrument, lien created by law for rent or advances, or any other lawful or valid claim, verbal or written, with the knowledge of the existence thereof; or who, with like intent, buys, receives, or conceals any such property, with the knowledge of the existence of any such claim, must, on conviction, be punished as if he had stolen the same.

§ 7423. *Selling mortgaged property.*—Any person who sells or conveys any personal property, upon which he has given a written mortgage, lien, or deed of trust, and which is then unsatisfied, in whole or in part, without first obtaining the consent of the lawful holder thereof to such sale or conveyance, must, on conviction, be fined not more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months, one or both, at the discretion of the jury.

ARKANSAS.

CHATTEL MORTGAGES.

Digest of Statutes 1921.

§ 7380. *Proof; record.*—All mortgages, whether for real or personal estate, shall be proved or acknowledged in the same manner that deeds for the conveyance of real estate are now required by law to be proved or acknowledged; and when so proved or acknowledged shall be recorded, if for lands, in the county or counties in which the lands lie, and, if for personal property, in the county in which the mortgagor resides. Provided, if the mortgagor is a nonresident of this State, the mortgage shall be recorded in the county in which the property is situated at the time the mortgage is executed.

§ 7381. *When lien attaches.*— Every mortgage, whether for real or personal property, shall be a lien on the mortgaged property from the time the same is filed in the recorder's office for record, and not before; which filing shall be notice to all persons of the existence of such mortgage.

§ 7382. *Extension of maturity — indorsement.*— No agreement for the extension of the date of maturity of the whole or any part of any debt or note secured by mortgage, deed of trust, or vendor's lien, or for the renewal thereof, whether made in writing or otherwise, and no written or oral acknowledgment of indebtedness thereon, shall, so far as the same affects the rights of third parties, operate to revive said debts or extend the operation of the statute of limitations with reference thereto unless a memorandum showing such extension or renewal is indorsed on the margin of the record where such instrument is recorded, which indorsement shall be attested and dated by the clerk. Provided, that in all cases of existing recorded mortgages, deeds of trust or deeds barred by the terms of this section, or where the debt retaining

liens, where the debt or liability would be barred by the terms of this section, or where the debt or liability existing would be barred in less than one year from the date of this act, the party in whose favor said debt or liability exists shall be allowed one year from the date of said debt or liability to bring action to enforce the same.

§ 7383. *Duty of recorder.*— It shall be the duty of the recorder to indorse on every mortgage filed in his office for record, and note in the record, the precise time such mortgage was filed for record.

§ 7384. *When filed.*— Whenever any mortgage or conveyance intended to operate as a mortgage of personal property, or any deed of trust upon personal property, shall be filed with any recorder in this state, upon which is indorsed the following words, "This instrument is to be filed, but not recorded," and which indorsement is signed by the mortgagee, his agent or attorney, the said instrument when so received shall be marked "Filed" by the recorder, with the time of filing upon the back of said instrument; and he shall file the same in his office, and it shall be a lien upon the property therein described from the time of filing, and the same shall be kept there for the inspection of all persons interested; and such instrument shall thenceforth be notice to all the world of the contents thereof without further record.

§ 7385. *Copy as evidence.*—A copy of any such original instrument, so indorsed and filed as required by section 7384, certified by the recorder, in whose office the same shall have been filed, shall be received in evidence in all suits or proceedings to which it may be applicable; and, if, in any suit or proceeding, the execution of said instrument, or its genuineness, shall be questioned in such manner as to render the production of the original necessary, the same may be produced by the recorder of the county in obedience to a subpoena duces tecum or other proper process.

§ 7386. *Minutes to be kept.*— The recorder of deeds shall keep a book in which shall be entered a minute of mortgages and trust deeds of personal property, filed under this act. Said book shall be ruled off into separate columns, with heads as follows: "Time of reception," "Name of mortgagor," "Name of mortgagee," "Date of instrument," "Amount secured," "When due," "Property mortgaged," and "Remarks." Under the head of "Property mortgaged" it shall be sufficient to enter a general description of the property and the particular place where located. An index to said book shall be kept in the manner as required for other records.

§ 7387. *Fees of recorder.*— Recorders of deeds shall be entitled to receive the following fees for services under the provisions of this act: For filing each instrument or copy and entering the same upon the record herein provided for, twenty-five cents; for copies of such instruments, such fees as are now allowed by law to clerks of the circuit court for copies of papers on file in their offices.

This act shall not be so construed as to apply to any instrument which shall not be indorsed by the mortgagee as aforesaid.

§ 7388. *Withdrawal by mortgagee.*—All trust deeds or mortgages of personal property filed in any recorder's office in any county in this State, upon which is indorsed, " This instrument is to be filed but not recorded," may be withdrawn by the mortgagee if such mortgage be canceled or satisfied, and the recorder shall make a minute of such withdrawal, cancellation or satisfaction on the book required to be kept to enter such mortgages or trust deeds, under the head of " Remarks."

§ 7389. *Withdrawal by either party.*— In all cases where such mortgages or trust deeds have been canceled or satisfied, the recorder may allow such instrument to be withdrawn from the files of his office by either the mortgagee or mortgagor.

Railroad Equipment.

Digest of Statutes 1921.

§ 8540. *Validity and enforcement.*— In any contract for the sale of railroad or street railway equipment or rolling stock, it shall be lawful to agree that the title to the property sold or contracted to be sold, although possession thereof may be delivered immediately, or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money, and in any contract for the leasing or hiring such property it shall be lawful to stipulate for a conditional sale thereof at the termination of such contract, and that the rentals or amounts to be received under such contract may as paid be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price shall have been paid in full, and until the terms of the contract shall have been fully performed notwithstanding delivery to and possession by such lessee or bailee; provided, no such contract shall be valid as against any subsequent judgment creditor or any subsequent bona fide purchaser for value and without notice unless —

First. The same shall be evidence by an instrument executed by the parties and duly acknowledged by the vendee or lessee or bailee, as the case may be, or duly proved before some person authorized by law to take acknowledgment of deeds and in the same manner as deeds are acknowledged or proved.

Second. Such instrument shall be filed for record in the office of the Secretary of State of this commonwealth.

Third. Each locomotive engine or car so sold, leased or hired, or contracted to be sold, leased or hired as aforesaid shall have the name of the vendor, lessor, or bailor plainly marked on each side thereof followed by the word " owner " or " lessor " or " bailor " as the case may be.

§ 8541. *How recorded and satisfied.*— The contracts herein authorized shall be recorded by the Secretary of State in a book of records to be kept for that purpose, and on payment in full of the purchase money and the performance of the terms and conditions stipulated in any such contract a declaration in writing to that effect may be made by the vendor, lessor or bailor or his or its assignee, which declaration may be made on the margin of the record of the contract duly attested, or it may be made by a separate instrument to be acknowledged by the vendor, lessor, bailor or his or its assignee and recorded as aforesaid, and for such services the Secretary of State shall be entitled to the same fees that are allowed recorders for recording deeds and mortgages.

§ 8542. *Existing contracts not affected.*— This act shall not be held to invalidate or affect in any way any contract heretofore made of the kind referred to in Section 8540 and any such contract heretofore made may upon compliance with the provisions of this act be recorded as herein provided.

Criminal Provisions.

Digest of Statutes 1921.

§ 2552. *Sale with intent to defraud.*— It shall be unlawful for any person to sell, barter, exchange or otherwise dispose of, or to remove beyond the limits of this State, or of the county in which a landlord's or laborer's lien exists, or in which a lien has been created by virtue of a mortgage or deed of trust, any property of any kind, character or description, upon which a lien of any kind enumerated above exists; provided, such sale, barter, exchange, removal or disposal of such property be made with the intent to

defeat the holder of such lien in the collection of the debt secured by such mortgage, laborer's or landlord's lien.

§ 2553. *Aiding or abetting same.*— It shall be unlawful for any person knowingly to aid, abet or in any manner assist any person in the sale, barter, exchange, removal or disposal of any property as prohibited in the foregoing section.

§ 2554. *Penalty.*—All persons who shall be convicted of violating section 2552 or section 2553 shall be deemed guilty of a felony where the debt secured by such lien exceeds in amount the sum of ten dollars and the property so sold, bartered, exchanged, removed or otherwise disposed of exceeds in value the sum of ten dollars, and shall be punished by imprisonment in the penitentiary for a period of not less than six months nor more than two years.

§ 2555. *When a misdemeanor.*—All persons who shall be convicted of violating section 2552 or section 2553 shall be deemed guilty of a misdemeanor where the debt secured by such lien does not exceed in amount the sum of ten dollars, or where the property so sold, bartered, exchanged, removed or otherwise disposed of does not exceed in value the sum of ten dollars, and shall be punished by a fine of not less than ten dollars nor more than fifty dollars.

CALIFORNIA.

CHATTEL MORTGAGES.

Civil Code.

§ 2955. Mortgages may be made upon all growing crops, including grapes and fruit, and upon any and all kinds of personal property, except the following:

1. Personal property not capable of manual delivery;
2. Articles of wearing apparel and personal adornment;
3. The stock in trade of a merchant.

§ 2957. *When void as to third persons.*—A mortgage of personal property is void as against creditors of the mortgagor and subsequent purchasers and encumbrancers of the property in good faith and for value, unless:

1. It is accompanied by the affidavit of all the parties thereto that it is made in good faith and without any design to hinder, delay, or defraud creditors;

2. It is acknowledged, or proved, certified, and recorded in like manner as grants of real property.

§ 2958. *Mortgage of ships, when void as to third persons.*— A mortgage of any vessel or part of any vessel under the flag of the United States is void as against any person (other than the mortgagor, his heirs, and devisee, and persons having actual notice thereof), unless the mortgage is recorded in the office of the collector of customs where such vessel is registered or enrolled.

§ 2959. A mortgage of personal property must be recorded in the office of the county recorder of the county in which the mortgagor resides, if the mortgagor be a resident of this state, and it shall also be recorded in the county in which the property mortgaged is situated, or to which it may be removed.

§ 2960. *Property in transit, where to be recorded.*— For the purposes of this article, property in transit from the possession of the mortgagee to the county of the residence of the mortgagor, or to a location for use, is, during a reasonable time for such transportation, to be taken as situated in the county in which the mortgagor resides, or where it is intended to be used.

§ 2961. *Property of a common carrier, where to be recorded.*— For a like purpose, personal property used in conducting the business of a common carrier is to be taken as situated in the county in which the principal office or place of business of the carrier is located.

§ 2962. *Recorded in different places.*—A single mortgage of personal property, embracing several things of such character or so situated that by the provisions of this article separate mortgages upon them would be required to be recorded in different places, is only valid in respect to the things as to which it is duly recorded.

§ 2963. *Personal mortgage may be recorded.*— Except as it is otherwise in this article provided, mortgages of personal property may be acknowledged or proved and certified, recorded in like manner and with like effect as grants of real property; but they must be recorded in books kept for personal mortgages exclusively.

§ 2964. *Certified copies may be recorded, when.*—A certified copy of a mortgage of personal property once recorded may be recorded in any other county, and when so recorded, the record thereof has the same force and effect as though it was of the original mortgage.

§ 2965. When personal property mortgaged is thereafter removed from the county in which it is situated, the lien of the mortgage shall not be affected thereby for thirty days after such removal; but, after the expiration of such thirty days, the prop-

erty mortgaged is exempted from the operation of the mortgage, except as between the parties thereto, until either:

1. The mortgagee causes the mortgage to be recorded in the county to which the property has been removed; or

2. The mortgagee takes possession of the property as prescribed in the next section.

§ 2966. *May be taken by mortgagee as a pledge, when.*— If a mortgagor voluntarily removes or permits the removal of the mortgaged property from the county in which it was situated at the time it was mortgaged, the mortgagee may take possession and dispose of the property as a pledge for the payment of the debt, though the debt is not due.

§ 2967. *How foreclosed.*—A mortgagee of personal property, when the debt to secure which the mortgage was executed becomes due, may foreclose the mortgagor's right of redemption by a sale of the property, made in the manner and upon the notice prescribed by the title on "Pledge," or by proceedings under the Code of Civil Procedure.

§ 2968. Personal property mortgaged may be taken under attachment or execution issued at the suit of a creditor of the mortgagor.

§ 2969. Before the property is so taken, the officer must pay or tender to the mortgagee the amount of the mortgage debt and interest, or must deposit the amount thereof with the county clerk or treasurer, payable to the order of the mortgagee.

§ 2970. *Distribution of proceeds of sale under process.*— When the property thus taken is sold under process, the officer must apply the proceeds of the sale as follows:

1. To the repayment of the sum paid to the mortgagee, with interest from the date of such payment; and,

2. The balance, if any, in like manner as the proceeds of sale under execution are applied in other cases.

§ 2971. *Sections not applicable to mortgage of certain ships.*— Sections two thousand nine hundred and fifty-seven, two thousand nine hundred and fifty-nine, two thousand nine hundred and sixty, two thousand nine hundred and sixty-one, two thousand nine hundred and sixty-two, two thousand nine hundred and sixty-three, two thousand nine hundred and sixty-four, two thousand nine hundred and sixty-five, and two thousand nine hundred and sixty-six do not apply to any mortgage of a ship or part of a ship under the flag of the United States.

§ 2972. *Lien of mortgage on growing crop.*— The lien of a mort-

gage on a growing crop continues on the crop after severance, whether remaining in its original state or converted into another product, so long as the same remains on the land of mortgagor.

§ 2973. Mortgages of personal property, other than that mentioned in section 2955, and mortgages not made in conformity with the provisions of this article, are nevertheless valid between the parties, their heirs, legatees, and personal representatives, and persons who, before parting with value, have actual notice thereof.

Railroad Equipment.

Laws 1913, p. 1121 (Deering's General Laws 1915, Act. 2931a).

§ 1. In any contract for the sale of railroad or street railway equipment or rolling stock, it shall be lawful to agree that title to the property sold or contracted to be sold, although possession thereof may be delivered immediately or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money. And in any contract for the leasing or hiring of such property, it shall be lawful to stipulate for a conditional sale thereof at the termination of such contract, and that the rentals or amounts to be received under such contract may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price shall have been paid in full, and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee; provided, that no such contract shall be valid as against any subsequent judgment creditor or any subsequent bona fide purchaser for value and without notice, unless (1) the same shall be evidenced by an instrument executed by the parties and duly acknowledged by the vendee, lessee, or bailee, as the case may be, or duly proved before some person authorized by law to take acknowledgments of deeds, and in the same manner as deeds are acknowledged or proved; (2) such instrument shall be filed for record in the office of the secretary of state of this state; (3) each car or locomotive engine so sold, leased, or hired, or contracted to be sold, leased or hired as aforesaid, shall have the name of the vendor, lessor, or bailor plainly marked in letters not less than one inch in size on each side thereof, followed by the word " owner," or " lessor," or " bailor," as the case may be.

§ 2. The contracts herein authorized shall be filed with the secretary of state and recorded by him in a book of records to be

kept for that purpose. And on payment in full of the purchase money and the performance of the terms and conditions stipulated in any such contract a declaration in writing to that effect shall be made by the vendor, lessor, or bailor, or his or its assignee, which declaration shall be made by a separate instrument, to be acknowledged by the vendor, lessor, or bailor, or his or its assignee, and recorded as aforesaid. The secretary of state shall collect and pay into the state treasury five dollars for filing each of such contracts or declarations and twenty cents per folio for recording the same.

§ 3. This act shall not be held to invalidate or affect in any way any contract heretofore made of the kind referred to in section 1 hereof, and any such contract heretofore made may, upon compliance with the provisions of this act, be recorded as herein provided.

CRIMINAL PROVISIONS.

Penal Code.

§ 504-a. *Fraudulent removal of leased property embezzlement.* — Every person who shall fraudulently remove, conceal or dispose of any goods, chattels or effects, leased or let to him by any instrument in writing, or any personal property or effects of another in his possession, under a contract of purchase not yet fulfilled, and any person in possession of such goods, chattels, or effects knowing them to be subject to such lease or contract of purchase who shall so remove, conceal or dispose of the same with intent to injure or defraud the lessor or owner thereof, is guilty of embezzlement. (Added by Laws 1917, p. 273.)

CANADIAN PROVINCES.

ALBERTA.

CONDITIONAL SALES.

Consolidated Ordinances 1915, Chapter 44.

§ 1. Whenever on a sale or bailment of goods of the value of fifteen dollars or over it is agreed, provided or conditioned that the right of property or right of possession in whole or in part shall remain in the seller or bailor notwithstanding that the actual possession of the goods passes to the buyer or bailee the seller or bailor shall not be permitted to set up any such right of property or right of possession as against any purchaser or mortgagee of or from the buyer or bailee of such goods in good faith for valuable consideration or as against judgments, executions or attachments against the purchaser or bailee unless such sale or bailment

with such agreement, proviso or condition is in writing signed by the bailee or his agent and registered as hereinafter provided. Such writing shall contain such a description of the goods the subject of the bailment that the same may be readily and easily known and distinguished:

Provided that nothing in this section shall apply to any bailment where it is not intended that the property in the goods shall eventually pass to the bailee on payment of purchase money in whole or in part or the performance of some condition by the bailee:

And provided further, that nothing in this section shall apply in cases of conditional sales or bailments of incorporated companies to railway companies if the contract evidencing the conditional sale or bailment or a copy thereof certified under the hand of the president or vice-president and secretary of the company and verified by an affidavit of the secretary thereto attached or endorsed thereon, and having the corporate seal attached thereto, is filed with the registrar of joint stock companies within thirty days from the execution thereof. (C. O., c. 44, s. 1; 1908, c. 20, s. 2.)

§ 2. Such writing or a true copy thereof shall be registered in the office of the registration clerk for chattel mortgages in the registration district within which the buyer or bailee resides within thirty days from the time of the actual delivery of such goods to the bailee or buyer; and in the event of such goods being delivered in a registration district other than that in which the buyer or bailee resides at the time of such delivery such writing or a true copy thereof shall also be registered within thirty days from the time of the actual delivery of such goods in the registration district in which such goods are delivered.

(2) If such goods are after the delivery thereof removed by the buyer or bailee into another registration district a further registration shall be made in the registration district into which such goods are removed within sixty days after such removal.

(3) Every such agreement or a true copy thereof shall upon every such registration be accompanied by an affidavit of the seller or bailor or his agent stating that the written agreement annexed thereto truly sets forth the agreement entered into between the parties and that the said agreement was entered into bona fide and not for the purpose of protecting the goods mentioned therein against the creditors of the buyer or bailee. (1908, c. 20, s. 2.)

(4) Any such agreement, proviso, or condition as is mentioned in section 1 of this Act shall cease to be valid against the creditors of the persons making the same and against subsequent purchasers or mortgagees in good faith for valuable consideration after the expiration of two years from the filing of such writing unless within thirty days next preceding the expiration of the said two years a statement of the amount still due for principal and interest on said sale or bailment and of all payments made on account thereof is registered in the office of the registration clerk of the registration district where the property is then situate, with an affidavit of the vendor or bailor or of one of several vendors or bailors or of the assignee or of one of several assignees or of their assigns or of the agent of the vendor or bailor or vendors or bailors or of the assignee or one of several assignees or of their assigns duly authorized for that purpose, as the case may be, stating that such statements are true and that the said sale or bailment writing was not kept on foot for any fraudulent purpose or to defeat, delay or prejudice the creditors of the purchaser or bailee, which statement and affidavit shall be regarded as one instrument:

Provided that as to any such agreement, proviso or condition contained in any writing which has been registered previous to the passing of this subsection and which but for this proviso would by virtue of this subsection cease to have effect before or within six months after the passing hereof the same shall not cease to have effect by reason only of this subsection if the statement herein mentioned is registered within six months after the passing of this subsection. (Added by Laws 1916, ch. 3; amended by Laws 1917, ch. 3, and by Laws 1919, ch. 4.)

(5) Another statement in accordance with the provisions of the last preceding subsection duly verified as required thereby shall be filed in the office of the registration clerk of the district where the property is then situate within thirty days next preceding the expiration of the term of one year from the day of the filing of the statement required by the last preceding subsection and in default thereof any such agreement, proviso or condition as is mentioned in section 1 shall cease to have effect and the property or right of possession therein mentioned shall be deemed to have passed to the purchaser or bailee, and so on from year to year, that is to say, another statement as aforesaid duly verified shall be filed within thirty days next preceding the expiration of one year from the day of filing of the former statement and in default thereof such agreement, proviso or condition shall cease to have

effect and the property or right to possession pass as aforesaid. (Added by Laws 1916, ch. 3.)

§ 2-a. The seller or bailor of goods of the value of fifteen dollars or over, may before sale and delivery of possession, print, stamp, paint, or otherwise permanently mark on the said goods, so as to be plainly visible, words setting out that said goods are the property of the said seller or bailor until paid for, and the name, address and occupation of said seller or bailor, and in such case shall notwithstanding the removal of such goods to another registration district, have the same rights therein and thereto, as if lien had been duly registered in such registration district.

(2) Any person removing or defacing, so as to be illegible, any such mark on any goods, before payment or tender of the amount due in respect of such goods or performance of the conditions of the bailment, shall be liable on summary conviction to a fine of not more than $500 and costs. (Added by Laws 1920, ch. 4.)

§ 3. Subject to the rights of third persons accrued by reason of such omissions as are hereinafter mentioned, a judge of the District Court of the district within which any such writing as is mentioned in section 1 of this Act or such statement as is mentioned in subsection 4 of section 2 of this Act is or should be registered; on being satisfied the omission to register within the time prescribed by this ordinance or any omission or misstatement in such writing or statement was accidental or due to inadvertence or impossibility; in fact, may in his discretion order such omission or misstatement to be rectified in the register or may extend the time for such registration on such terms and conditions, if any, as to security, notice by advertisement or otherwise, or as to any other matter as he thinks fit to direct. (Added by Laws 1917, ch. 3.)

§ 4. Should any goods or chattels subject to the provisions of this Act be affixed to any realty, such goods and chattels shall notwithstanding remain so subject and shall not be realty, but the owner of such realty, or any purchaser, or any mortgagee, or other incumbrancer on such realty, shall have the right as against manufacturer, bailor, or vendor thereof, or any person claiming through or under them, to retain the said goods and chattels upon payment of the amount due and owing therein. (Added by Laws 1917, ch. 3.)

§ 5. Repealed (1903 [2d Session], c. 12, s. 1).

§ 6. The seller or bailor shall upon payment or tender of the amount due in respect of such goods or performance of the conditions of the bailment sign and deliver to any person demanding

it a memorandum in writing stating that his claims against the goods are satisfied and such memorandum shall thereupon operate to divest the seller or bailor of any further interest or right of possession if any in the said goods. Any such memorandum if accompanied by an affidavit of execution of an attesting witness may be registered. (C. O., c. 44, s. 6.)

§ 7. In case the seller or bailor shall retake possession of the goods he shall retain the same in his possession for at least twenty days and the buyer, bailee or any one claiming by or through or under the buyer or bailee may redeem the same upon payment of the amount actually due thereon and the actual necessary expenses of taking possession. (C. O., c. 44, s. 7.)

§ 8. The goods or chattels shall not be sold without five days' notice of the intended sale being first given to the buyer or bailee or his successor in interest. The notice may be personally served or may in the absence of such buyer, bailee or his successor in interest be left at his residence or last place of abode or may be sent by registered letter deposited in the post office, at least seven days before the time when the said five days will elapse addressed to the buyer or bailee or his successor in interest at his last known post office address in Canada. The said five days or seven days may be part of the twenty days mentioned in section 7 hereof. (C. O., c. 44, s. 8.)

§ 9. Copies of any instrument filed under this Ordinance certified by the registration clerk shall be received as *prima facie* evidence for all purposes as if the original instrument were produced and also as *prima facie* evidence of the execution of the original instrument according to the purport of such copy. And the clerk's certificate shall also be *prima facie* evidence of the date and hour of registration or filing. (C. O., c. 44, s. 9.)

§ 10. The registration clerk shall be entitled to charge a fee of 25 cents for each registration; 10 cents for each search; 10 cents per 100 words for copies of documents, and 25 cents for each certificate. (C. O., c. 44, s. 10.)

§ 11. The Lieutenant Governor in Council shall from time to time provide the necessary books, forms, and other office requisites and may alter or repeal any of the provisions of section 10 hereof as to fees and shall make such rules and regulations as are necessary to carry out the provisions of this Ordinance. (Added by Laws 1917, ch. 3.)

BRITISH COLUMBIA.

CONDITIONAL SALES.

Revised Statutes 1911, Chapter 203 (Sale of Goods Act).

§ 28. (1) Every receipt note, hire receipt, or order for chattels given by any bailee of chattels where the condition of the bailment is such that the possession of the chattel should pass without any ownership therein being acquired by the bailee until the payment of the purchase or consideration money, or some stipulated part thereof, shall be void as against any subsequent purchasers or mortgagees of such chattels without notice in good faith for valuable consideration, unless a true copy of any such receipt note, hire receipt, order, or other instrument evidencing the bailment or conditional sale given to secure the purchase money or part thereof shall be filed with the proper officer not later than thirty days after the giving of such receipt note, hire receipt, or order by the bailee or conditional purchaser.

(2) No such bailment or conditional purchase shall be valid as against such subsequent purchaser or mortgagee as aforesaid unless it is evidenced in writing, signed by the bailee, or conditional purchaser, or his agent, nor unless, in the instrument evidencing the bailment or conditional sale, the chattels are so described that they may be clearly identified.

(3) Such instrument shall be filed with the proper officer in the county within which the chattels are delivered or are, by the terms of the instrument, required to be delivered.

(4) The office for filing shall be the office of the Registrar of the County Court holden in or nearest to the place where delivery of the chattels is made or required to be made.

(5) The expression " proper officer " in this section means such Registrar of the County Court.

(6) The provisions of this section shall not apply to leases of chattels where the lessee has no right to purchase and has no interest in the chattels other than the right to the possession and use of the same, and such leased chattels shall not be subject to distress for rent. (Amended by Laws 1916, ch. 56.)

§ 29. Should any goods or chattels subject to the provisions of this Act be affixed to any realty, such goods and chattels shall notwithstanding remain so subject and shall not be realty, but the owner of such realty, or any purchaser, or any mortgagee, or other incumbrancer on such realty, shall have the right as against the

manufacturer, bailor, or vendor thereof, or any person claiming through or under them, to retain the said goods or chattels upon payment of the amount due and owing thereon. (1903-04, c. 46, s. 2.)

§ 30. Every manufacturer, bailor, or vendor shall, on application by any proposed purchaser or other interested person, within five days furnish full information respecting the amount or balance due or unpaid on any such manufactured goods or chattels, and the terms of payment of such amount or balance; and in case of refusal or neglect to furnish the information asked for, such manufacturer, bailor, or vendor, shall be liable to a fine not exceeding fifty dollars on summary conviction before a Stipendiary or Police Magistrate or two Justices of the Peace. (R. S. 1897, c. 169, s. 26.)

§ 31. The person so inquiring (if by letter) shall give a name and post-office address to which a reply may be sent, and it shall be sufficient if the information aforesaid be given by registered letter deposited in the post-office within the said five days, addressed to the person inquiring at his proper post-office address, or where a name and address is given as aforesaid, addressed to such person by the name and at the post-office so given. (R. S. 1897, c. 169, s. 27.)

§ 32. If any manufacturer, bailor, or vendor of such chattel or chattels, or his successor in interest where there has been a conditional sale or promise of sale, take possession thereof for breach of condition, he shall retain the same for twenty days, and the bailee or his successor in interest may redeem the same within such period on payment of the full amount then in arrear, together with interest and the actual costs and expenses of taking possession which have been incurred. (R. S. 1897, c. 169, s. 28.)

§ 33. When the goods or chattels have been sold or bailed originally for a greater sum than thirty dollars, the same, when taken possession of, as in the last preceding section mentioned, shall not be sold without five days' notice of the intended sale being first given to the bailee or his successor in interest. The notice may be personally served or may, in the absence of such bailee or his successor in interest, be left at his residence or last known place of abode in British Columbia, or may be sent by registered letter deposited in the post-office at least seven days before the time when the said five days will elapse, addressed to the bailee or his successor in interest at his last known post-office address in Canada. The said five days or seven days may be part

of the twenty days in the last preceding section mentioned. (R. S. 1897, c. 169, s. 29.)

§ 34. (1) The proper officer, on receipt of the copy mentioned in section 28 of this Act, shall duly file the same and cause it to be properly entered in an index book to be kept for that purpose, and shall be entitled to charge twenty-five cents for every such filing, and ten cents for every search in respect thereof. In the event of any variance between the original document and the copy which has been filed, the copy filed shall prevail. (R. S. 1897, c. 169, s. 30.)

(2) The proper officer in whose office the copy of any instrument mentioned in section 28 of this Act is filed is hereby empowered to enter satisfaction upon the instrument, or copy thereof, upon being satisfied that the purchase or consideration money (if any) or condition of the bailment or sale for which such instrument is given as security has been paid or discharged, and upon payment of a fee of twenty-five cents; but in all cases where the consent of the seller or bailor, or person interested as such, as the case may be, has not been obtained, satisfaction shall not be entered without an order from a Judge of the Supreme or County Court obtained for that purpose. (Added by Laws 1917, ch. 55.)

§ 35. The manufacturer, bailor, or vendor shall leave a copy of the receipt note, hire receipt, order, or other instrument by which a lien on the chattel is retained, or which provides for a conditional sale, with the bailee or conditional vendee at the time of the execution of the instrument, or within twenty days thereafter. (R. S. 1897, c. 169, s. 31.)

MANITOBA

CONDITIONAL SALES.

Revised Statutes 1913, Chapter 115.

§ 1. This Act may be cited as "The Lien Notes Act." (R. S. M. c. 99, s. 1.)

Manufactured Goods.

§ 2. On, from and after the twenty-seventh day of July, in the year 1886, receipt notes, hire receipts and orders for chattels given by bailees of chattels, where the condition of the bailment is such that the possession of the chattels should pass without any ownership therein being acquired by the bailee, were and shall be only valid in the case of manufactured goods or chattels which, at the time the bailment is entered into, have the manufacturers'

name or some other distinguishing name painted, printed or stamped thereon or otherwise plainly attached thereto; and no such bailment shall be valid unless it be evidenced in writing, signed by the person thus taking possession of the chattel. (R. S. M. c. 99, s. 2.)

§ 3. Every manufacturer and his agents shall forthwith, on application, furnish to any applicant full information respecting the balance due on any such manufactured goods or chattels and the terms of payment of such balance, and in case he or they refuses or refuse, neglects or neglect, to furnish the information asked for, such manufacturer or agent shall be liable to a fine of not less than ten dollars nor more than fifty dollars on conviction before any justice of the peace. (R. S. M. c. 99, s. 3.)

As Affecting Lands.

§ 4. Notwithstanding anything contained in any statute of Manitoba, no lien notes, hire receipts, orders for chattels or documents or instruments containing as a portion thereof or having annexed thereto or endorsed thereon, any order, contract or agreement for the purchase or delivery of any chattel or chattels, shall be registered in any registry office or land titles office, and no caveat shall be registered or filed in any land titles office which has annexed thereto or endorsed thereon, or which refers to or is founded upon, any instrument or document, or part thereof, registration of which is prohibited by this section. (R. S. M. c. 99, s. 4.)

§ 5. It shall be the duty of every registrar and district registrar to whom any such lien note, hire receipt, order for chattels, document, instrument or caveat, the registration or filing whereof is prohibited by this Act, is presented to refuse to receive the same. (R. S. M. c. 99, s. 5.)

§ 6. If, notwithstanding the foregoing provisions of this Act, by inadvertence, accident, mistake or the non-performance of duty on the part of a registrar or district registrar, any such lien note, hire receipt, order for chattels, document, instrument or caveat, the registration or filing whereof is prohibited by section 4, be registered or filed in any registry office or land titles office in Manitoba, such registration or filing shall, nevertheless, be absolutely null and void. (R. S. M. c. 99, s. 6.)

§ 7. It is hereby declared that every lien note, hire receipt, order for chattels, document or instrument, the registration of which was or is prohibited by this Act or by any Act or Acts for which this Act is substituted, was and is since the eleventh day of

March in the year 1893, and shall thereafter be, in so far as the same purported or purports to affect land, absolutely null and void as against any person or corporation claiming an interest or estate in lands under a registered instrument. (R. S. M. c. 99, s. 7.)

§ 8. No notice, past, present or future, actual or constructive, to the person or corporation claiming under such registered instrument shall avail to prevent the operation of the preceding section. Notice, whether actual or constructive, in such cases shall be void and of no effect whatever. (R. S. M. c. 99, s. 8.)

§ 9. Nothing in this Act shall be construed to affect registration of conveyances under section 31 of "The Bills of Sale and Chattel Mortgage Act." (4–5 Ed. VII, c. 2, s. 1.)

§ 10. Where any machinery, the subject of or affected by any 2 of this Act, has been affixed to realty it shall remain subject receipt note, hire receipt or order for chattels mentioned in section to the rights of the manufacturer, bailor or vendor, or person claiming through or under them, as fully as it was before being so affixed, but the owner of such realty, or any purchaser or any mortgagee or other encumbrancer thereof, shall have the right as against the manufacturer, bailor or vendor, or other person claiming through or under them, to retain the machinery, upon payment of the amount owing on it.

(a) Nothing herein contained shall affect any machinery affixed to the realty and contained in any residence, tenement or apartment block. (Added by Laws 1915, ch. 38.)

Revised Statutes 1913, Chapter 17.

§ 31. Notwithstanding anything contained in this Act, any bill of sale, chattel mortgage, conditional sale, lease or other agreement of or respecting rolling stock and equipment, for use on railways, may be registered in the office of the Provincial Secretary of the Province of Manitoba, on payment of a fee of two dollars, by filing in such office a copy thereof, certified by a notary public to be a true copy and no other registration or filing shall be necessary, and upon being so filed the same shall be as valid and effectual as if filed or registered in accordance with the provisions of this Act, and the same shall have priority from the time of such filing, and no renewal thereof shall be required, and any discharge or partial discharge of any such bill of sale, chattel mortgage, conditional sale or other agreement may be registered in the said office in the same manner on payment of a like fee. 4–5 Ed. VII, c. 2, s. 1.)

NEW BRUNSWICK.

CONDITIONAL SALES.

Consolidated Statutes 1903, Chapter 143.

§ 1. Where in any sale of any chattel the condition of the sale is such that the possession of the chattel passes without any ownership therein being acquired by the vendee until the payment of the purchase or consideration money or some stipulated part thereof, such condition shall be valid only as against a subsequent purchaser or mortgagee from the vendee without notice, in good faith, and for valuable consideration, when the said sale is evidenced in writing signed by the bailee or his agent and a copy of such writing filed as provided by section 2 of this Chapter. (2 Edw. VII. c. 37, s. 1.)

§ 2. A copy of such writing shall be filed with the registrar of deeds of the county in which the bailee or conditional purchaser resided at the time of the bailment or conditional purchase, within fifteen days from the delivery of possession of the chattel mentioned in the agreement. (2 Edw. VII. c. 37, s. 2, am.)

§ 3. The registrar, on receipt of such copy, shall duly file the same, and cause it to be properly entered in an index book to be kept for that purpose, and shall be entitled to charge ten cents for every such filing, and five cents for every search in respect thereof. A clerical error which does not mislead, or an error in an immaterial or non-essential part of said copy so filed, shall not invalidate the said filing, or destroy the effect thereof. (62 V. c. 12, s. 3.)

§ 4. The vendor shall leave a copy of the instrument by which a lien on the chattel is retained, or which provides for a conditional sale, with the bailee or conditional vendee at the time of the execution of the instrument, or within twenty days thereafter. (62 V. c. 12, s. 4; 2 Edw. VII. c. 37, s. 3.)

§ 5. Every vendor shall, on demand by any creditor or interested person, file with said registrar, within twenty days from the making of said demand, a sworn statement of the amount due on the instrument by which a lien on a chattel is retained, or which provides for a conditional sale, and on failure to so file said statement, shall forfeit all rights accruing under the instrument by which a lien on the chattel is retained, or which provides for a conditional sale, as against such creditor or interested person. (62 V. c. 12, s. 5; 2 Edw. VII, c. 37, s. 4.)

§ 6. In case any manufacturer, bailor or vendor of any chattel in respect of which there has been a conditional sale or promise of sale, or his successor in interest takes possession thereof for breach of condition, he shall retain the same for twenty days, and the bailee, or his successor in interest, may redeem the same within such period, on payment of the full amount then in arrear, together with interest and the actual costs and expenses of taking possession which have been incurred. (62 V. c. 12, s. 6.)

§ 7. Where goods or chattels have been sold or bailed originally for a greater sum than $30, and the same have been taken possession of as in the preceding section mentioned, such goods or chattels shall not be sold without five days' notice of the intended sale being first given to the bailee or his successor in interest. The notice may be personally served, or may, in the absence of such bailee or his successor in interest, be left at his residence, or last known place of abode in New Brunswick, or may be sent by registered letter deposited in the post office at least seven days before the time when the said five days will elapse, addressed to the bailee or his successor in interest, at his last known post office address in Canada. The said five days or seven days, may be part of the twenty days in the last preceding section mentioned. (62 V. c. 12, s. 7.)

§ 8. When any goods or chattels have been sold or bailed under any receipt note, hire receipt, or other instrument by which it is agreed that no ownership therein shall be acquired by the purchaser or bailee until the payment of the purchase or consideration money, or some stipulated part thereof, and where a copy of such receipt note, hire receipt or other instrument shall have been filed, as is provided by Section 2 of this Chapter, in regard to the writing therein mentioned, and such goods or chattels are affixed to any realty without the consent in writing of the owner of the goods or chattels, such goods and chattels shall not be or become part of the realty, but shall continue to be and remain personal property, and the rights of the owner or owners thereof shall not be in any way altered or affected by such goods or chattels being so affixed to the realty, but the owner of such realty, or any purchaser or any mortgagee or other incumbrancer on such realty, shall have the right, as against the manufacturer, bailor or vendor of such goods or chattels, or any person claiming through or under them, to retain the said goods and chattels, upon payment of the amount due and owing thereon. (62 V. c. 12, s. 8 (1); amended by Laws 1912, c h. 30.)

Laws 1909, Chapter 31.

§ 1. When the purchase or consideration money mentioned in the first section of Chapter 143 of the Consolidated Statutes, 1903, has been paid, it shall be the duty of the vendor or bailor, on request to forthwith cancel the writing by which the sale or bailment of the chattel is evidenced, either by signing a memorandum acknowledging the receipt of the purchase money in the index book kept by the Registrar of Deeds, or by filing a document with the Registrar of Deeds to that effect, for which the said Registrar shall receive the sum of ten cents for each entry or filing of cancellation.

§ 2. If the vendor or bailor of any chattel, the subject of a conditional sale, do not within one month after demand in writing so to do, file with the Registrar of Deeds of the county where the writing evidencing such sale or bailment thereof is filed, a statement of the amount due thereon, the purchase or consideration money shall be deemed to be fully paid and satisfied and the said Registrar, upon being satisfied of said demand having been made, shall enter the cancellation of such writing in the index book provided to be kept by section 2 of said chapter, which shall be sufficient evidence of such payment.

NOVA SCOTIA.

CONDITIONAL SALES.

Laws 1918, Chapter 11 (An Act to Amend and Consolidate the Bills of Sale Act).

§ 8. (1) Every hiring, lease, bailment, or bargain for the sale of personal chattels, accompanied by an immediate delivery, and followed by an actual and continued change of possession, whereby it is agreed:

(a) That the property in the personal chattels; or

(b) In case of a bargain for sale, that a lien thereon for the price thereof, or any portion thereof.

shall remain in the person letting to hire, the lessor, the bailor, or the bargainor, until the payment in full of the hire, rental or price, agreed upon, by future payments or otherwise, and whereby the chattels delivered, or others equal in value thereto, or to be substituted therefor, may under the terms of such hiring, lease, bailment, or bargain for sale, become the property of the person into whose possession such chattels are delivered, shall be evidenced by instrument or instruments in writing showing the terms

of such agreement and be signed by the person to whom such personal chattels are hired, the lessee, bailee, bargainee, or his agent thereunto duly authorized in writing, and shall have written or printed therein the post office address of the person letting to hire, lessor, bailor or bargainor.

(2) Within ten days after the delivery of such chattel or chattels a true copy of such instrument or instruments in writing shall be filed in the registry of deeds for the registration district in which the person to whom such personal chattels are hired, the lessee, bailee, or bargainee resides at the time of the execution thereof, and the same shall be accompanied by an affidavit of either of the parties thereto, or, if such hiring, lease, bailment, or bargain for sale was made, by, with, or to an agent thereunto duly authorized in writing, the affidavit of such agent stating:

(a) That the said copy or copies of such instrument or instruments truly sets forth the terms, nature and effect of the agreement between the parties thereto with respect to the personal chattels therein mentioned; and,

(b) That said instrument or instruments was or were executed in good faith, and for the purpose of securing to the person letting to hire, the lessor, the bailor, or the bargainor, the payment in full of the amount therein mentioned as to be paid, and not for the mere purpose of protecting the personal chattels therein mentioned against the creditors of the person to whom such personal chattels are hired, the lessee, bailee, or bargainee, or of preventing such creditors from recovering any claim which they may have against him.

(3) Such affidavit shall be as nearly as may be in the form " D " in the schedule.

(4) The Registrar on receipt of such copy or copies and affidavit shall duly file the same, and cause them to be properly entered in the index book kept for that purpose.

(5) The person letting to hire, lessor, bailor or bargainor, shall leave a copy or copies of such instrument or instruments, in writing, with the person to whom such personal chattels are hired, the lessee, bailee, or bargainee, at the time of the execution of such writing or within twenty days thereafter.

(6) If the copy or copies of such instrument or instruments, in writing, and affidavit, be not filed as required by sub-section (2) of this section, the agreement between the parties that such property or such lien shall remain in such person letting to hire, lessor, bailor, or bargainor, as aforesaid, shall, as against the creditors,

purchasers and mortgagees of the person to whom such personal chattels are hired, of the lessee, of the bailee, or of the bargainee, be null and void.

(7) Every person letting to hire, lessor, bailor, or bargainor, shall, on demand by any creditor or interested person, file with the said registrar, within twenty days from the making of said demand, a sworn statement of the amount due on such agreement, and on failure to file said statement shall forfeit all rights accruing under the same as against such creditor or interested person, and as to such creditor or interested person, the agreement between the parties that such property or such lien shall remain in such person letting to hire, such lessor, bailor or bargainor as aforesaid, shall thenceforth be null and void. It shall be sufficient to make such demand, by mailing the same, postage prepaid and registered, to the post office address of the person letting to hire, lessor, bailor, or bargainor, as stated in the instrument or instruments filed in the registry of deeds, under the provisions of this Act.

(8) In case any person letting to hire, lessor, bailor, or bargainor of any personal chattels, as aforesaid, or his successors in interest, takes or take possession thereof for any breach of condition, he or they shall retain the same for three months; and the person to whom such personal chattels are hired, the lessee, bailee or bargainee or his successor in interest may redeem the same within such period on payment of the full amount then in arrears, together with interest.

(9) When personal chattels have been let to hire, leased, bailed, or bargained, originally as aforesaid, and a copy of the agreement between the parties filed according to the provisions of this Act, and the same have been taken possession of as in the next preceding sub-section mentioned, such chattels shall not be sold without twenty days' notice of the intended sale being first given to the person to whom such personal chattels are hired, the lessee, bailee, or bargainee, or his successor in interest. The notice may be personally served, or may, in the absence of such person to whom such personal chattels are hired, the lessee, bailee, or bargainee, or his successor in interest, be left at his residence, or last known place of abode in Nova Scotia, or be sent by registered letter deposited in the post office at least twenty-two days before the time when the said twenty days will elapse, addressed to the person to whom such personal chattels are hired, the lessee, bailee, or bargainee, or his successor in interest, at his last known post office address in Canada.

(10) Where any goods or chattels have been hired, sold or bailed under any bill of sale, receipt note, hire receipt or other instrument by which it was agreed that no ownership therein shall be acquired by the purchaser, lessee or bailee until the payment of the purchase or consideration money or some stipulated part thereof, and such goods or chattels are affixed to any realty, without the consent in writing of the owner, lessor or bailor of the goods and chattels, such goods or chattels shall not be or become part of the realty until such payment, but they shall until such payment continue to be and remain personal property, and the rights of the person letting to hire, the lessor, the bailor or the bargainor, or any person claiming through or under them, shall not be in any way aliened or affected by such goods or chattels being so affixed to the realty. Nevertheless the owner of such realty, or any purchaser or any mortgagee or other encumbrancer of such realty, may pay the persons letting to hire, the lessor, the bailor or the bargainor of said goods and chattels the amount due thereon, and thereupon said goods and chattels shall become part of said realty. The provisions of Section 8 of this Act shall extend to contracts made outside the Province of Nova Scotia. (Am. 1907, c. 42, ss. 1 & 2; 1908, c. 24; 1909, c. 10, s. 2; 1914, c. 36.)

(D)

Section 1 (8).

AFFIDAVIT OF BONA FIDES.

Canada,
Province of Nova Scotia,
County of .....

I, A. B., of ..... in the County of ..... (occupation) make oath and say as follows:—

1. I am .....(name)..... one of the parties mentioned in the written instrument, a true copy of which is hereto annexed (*or* I am the agent or attorney of .....(name)..... one of the parties mentioned in the written instrument, a true copy of which is hereto annexed, duly authorized in that behalf, in writing, and have a personal knowledge of the matters hereinafter deposed to).

2. Such written instrument truly sets forth the terms, nature and effect of the agreement between the parties thereto with respect to the personal chattels therein mentioned.

3. Such written instrument was executed in good faith and for the purpose of securing unto.....(name).....one of the parties thereto, payment in full of the amount therein mentioned as to be paid, and not for the mere purpose of protecting the personal chattels therein mentioned against the creditors of the said ..... the person to whom such chattels are hired (or the lessee, bailee or bargainee), or of preventing such creditors from recovering any claims which they may have against said person to whom said personal chattels are hired (*or*, the lessee, etc.).

Sworn to at ..... in the county
of ..... this ..... day
of ..... A. D., 19... before me,

.....

ONTARIO.

CONDITIONAL SALES.

Revised Statutes 1914, Chapter 136.

§ 1. This Act may be cited as *The Conditional Sales Act.* (1 Geo. V, c. 30, s. 1.)

§ 2. In this Act,

" Goods " shall include wares and merchandise. (1 Geo. V, c. 30, s. 2.)

§ 3. (1) Where possession of goods is delivered to a purchaser, or a proposed purchaser or a hirer of them, in pursuance of a contract which provides that the ownership is to remain in the seller or lender for hire until payment of the purchase or consideration money or part of it, as against a subsequent purchaser or mortgagee claiming from or under the purchaser, proposed purchaser or hirer, without notice in good faith and for valuable consideration, such provision shall be invalid, and such purchaser, or proposed purchaser or hirer, shall be deemed the owner of the goods, unless

(a) the contract is evidenced by a writing signed by the purchaser, proposed purchaser or hirer or his agent, stating the terms and conditions of the sale or hiring and describing the goods sold or lent for hire; and,

(b) within ten days after the execution of the contract a true copy of it is filed in the office of the clerk of the County or District Court of the county or district in which the purchaser, proposed purchaser or hirer resided at the time of the sale or hiring.

(2) Subsection 1 shall apply to the case of a hire receipt where the hirer is given an option to purchase.

(3) Where the delivery is made to a trader or other person for the purpose of resale by him in the course of business such provision shall also, as against his creditors, be invalid and he shall be deemed the owner of the goods unless the provisions of this act have been complied with.

(4) Where such trader or other person resells the goods in the ordinary course of his business the property in and ownership of such goods shall pass to the purchaser notwithstanding that the provisions of this Act have been complied with.

(5) Clause (b) of subsection 1 shall not apply to a contract respecting manufactured goods, including pianos, organs or other musical instruments which, at the time possession is delivered, have the name and address of the seller or lender painted, printed, stamped or engraved thereon or plainly attached thereto, nor to a contract respecting household furniture other than pianos, organs or other musical instruments.

(6) An error or inaccuracy in the name or address of the seller or lender which does not mislead shall not prevent the application of subsection 5.

(7) This section shall not apply to a contract for the sale by an incorporated company to a railway company of rolling stock if the contract or a copy of it is filed in the office of the Provincial Secretary within ten days from its execution. (1 Geo. V. c. 30, s. 3.)

§ 4. The seller or lender shall deliver a copy of the contract to the purchaser or hirer within twenty days after the execution thereof, and if, after request, he neglects or refuses to do so the Judge of the County or District Court of the county or district in which the purchaser or hirer resided when the contract was made may, on summary application, make an order for the delivery of such copy. (1 Geo. V. c. 30, s. 4.)

§ 5. The clerk of the County or District Court shall make a record of every contract of which a copy is filed in his office under this act in an index book to be kept for that purpose, and he shall be entitled to a fee of ten cents for making the record and to a fee of five cents for every search in respect thereof. (1 Geo. V. c. 30, s. 5.)

§ 6. An error of a clerical nature or in an immaterial or non-essential part of the copy of the contract which does not mislead shall not invalidate the filing or destroy the effect of it. (1 Geo. V. c. 30, s. 6.)

§ 7. (1) The seller or lender shall, within five days after the receipt of a request in writing from any proposed purchaser of any goods to which this act applies, or from any other person interested, furnish particulars of the amount remaining due to him and the terms of payment of it, and in default he shall incur a penalty not exceeding $50, recoverable under THE ONTARIO SUMMARY CONVICTIONS ACT.

(2) If the request is by letter the person making the request shall give a name and post office address to which a reply may be sent, and it shall be sufficient if the information is given by registered letter deposited in the post office within the prescribed time addressed to the person inquiring at his proper Post Office address, or, where the name and address is given by him, by the name and at the post office address so given. (1 Geo. V. c. 30, s. 7.)

§ 8. (1) Where the seller or lender retakes possession of the goods for breach of condition he shall retain them for twenty days, and the purchaser or hirer or his successor in interest may redeem the same within that period on payment of the amount then in arrear, together with interest and the actual costs and expenses of taking and keeping possession.

(2) Where the purchase price of the goods exceeds $30, and the seller or lender intends to look to the purchaser or hirer for any deficiency on a resale of the goods, they shall not be resold until after notice in writing of the intended sale has been given to the purchaser or hirer or his successor in interest.

(3) The notice shall be served personally upon or left at the residence or last known place of abode in Ontario of the purchaser or hirer or his successor in interest at least five days before the sale, or may be sent by registered post at least seven days before the sale addressed to the purchaser or hirer or his successor in interest at his last known post office address.

(4) The notice may be given during the twenty days mentioned in subsection 1.

(5) This section shall apply notwithstanding any agreement to the contrary. (1 Geo. V. c. 30, s. 8.)

§ 9. Where the goods have been affixed to realty they shall remain subject to the rights of the seller or lender as fully as they were before being so affixed, but the owner of such realty or any purchaser or any mortgagee or other encumbrancer thereof shall have the right as against the seller or lender or other person claiming through or under him to retain the goods upon payment of the amount owing on them. (1 Geo. V. c. 30, s. 9.)

§ 9a. Where the goods are in or upon premises with respect to which rent is in arrears, the landlord or other person exercising the right of distress, shall have the right to distrain the goods upon payment to the seller or lender or other person claiming through or under him of the amount owing thereon, and the landlord may add the amount so paid to his claim for the rent. (Added by Laws 1916, ch. 24; 6 Geo. V. 1916, ch. 24.)

PRINCE EDWARD ISLAND

CONDITIONAL SALES.

Laws 1896, Chapter 6.

§ 1. From and after the coming into force of this Act, receipt notes, hire receipts, and orders for chattels given by bailees of chattels, where the condition of the bailment is such that the possession of the chattel should pass without any ownership therein being acquired by the bailee until the payment of the purchase or consideration money, or some stipulated part thereof, shall only be valid as against subsequent purchasers or mortgagees, without notice in good faith for valuable consideration in the case of manufactured goods or chattels, which at the time possession is given to the bailee, have the name and address of the manufacturer, bailor or vendor of same painted, printed, stamped, or engraved thereon, or otherwise plainly attached thereto, and no such bailment shall be valid as against such subsequent purchaser or mortgagee as aforesaid, unless it is evidenced in writing, signed by the bailee or his agent.

§ 2. Every manufacturer, bailor or vendor shall, on application by any proposed purchaser or other interested person, within fifteen days furnish full information respecting the amount or balance due or unpaid on any such manufactured goods or chattels, and the terms of payment of such amount or balance, and in case of refusal or neglect to furnish the information asked for, such manufacturer, bailor or vendor shall be liable to a fine not exceeding Fifty dollars on conviction before a Stipendiary or Police Magistrate, or two Justices of the Peace. Any person convicted under this Act, shall have the right to appeal to the Supreme Court of this Island against such conviction. In addition to his being liable to said fine, no person who refuses or neglects to furnish the information required by this section, shall be entitled to the benefit of his lien on the property in question under any receipt

note, hire receipt, or order as aforesaid. The application mentioned in this section may be made personally or by registered letter deposited in the Post Office and the Postmaster's certificate that such letter was registered, together with the oath of the person who deposited the letter, shall be *prima facie* evidence of the date and service of such application.

§ 3. The person so enquiring (if by letter) shall give a name and post office address to which a reply may be sent, and it shall be sufficient if the information aforesaid be given by registered letter deposited in the post office within the said fifteen days, addressed to the person enquiring at his proper post office address, or where a name and address is given as aforesaid, addressed to such person by the name and at the post office so given. Provided always that the person or persons making such enquiry by letter shall, at the time of making such enquiry enclose with his letter of enquiry, postage stamps sufficient to pay the postage on a registered reply to such enquiry.

§ 4. If any manufacturer, bailor or vendor of such chattel or chattels, or his successor in interest where there has been a conditional sale or promise of sale, take possession thereof for breach of condition he shall retain the same for twenty days and the bailee or his successor in interest may redeem the same within such period on payment of the full amount then in arrear, together with interest and the actual costs and expenses of taking possession which have been incurred.

§ 5. When the goods or chattels have been sold or bailed originally for a greater sum than thirty dollars, the same when taken possession of as in the preceding section mentioned, shall not be sold without five days' notice of the intended sale being first given to the bailee or his successor in interest. The notice may be personally served or may, in the absence of such bailee or his successor in interest, be left at his residence or last known place of abode in this Island, or may be sent by registered letter, deposited in the post office at least seven days before the time when the said five days will elapse, addressed to the bailee or his successor in interest, at his last known post office address in Canada. The said five days or seven days may be part of the twenty days in section four mentioned.

§ 6. Section one of this Act shall not apply to household furniture; but pianos, organs or other musical instruments are not included in the term "household furniture," when it appears in this section; nor shall section one apply to chattels where the

manufacturer, bailor or vendor within ten days from the execution of a receipt note, hire receipt, order or other instrument evidencing the bailment or conditional sale given to secure the purchase money, or part thereof, shall file with the Prothonotary or Deputy Prothonotary of the county in which the bailee or conditional purchaser resided at the time of the bailment or conditional purchase, a copy of the said receipt note, hire receipt, order or other instrument evidencing the bailment or conditional sale.

§ 7. The Prothonotary, or Deputy Prothonotary, on receipt of such copy shall duly file the same and cause it to be properly entered in an index book to be kept for that purpose, and shall be entitled to charge fifty cents for every such filing and twenty cents for every search in respect thereof. A clerical error which does not mislead, or an error in an immaterial or non-essential part of the said copy so filed, shall not invalidate the said filing or destroy the effect thereof.

§ 8. The manufacturer, bailor or vendor shall leave a copy of the receipt note, hire receipt, order or other instrument by which a lien on the chattel is retained, or which provides for a conditional sale with the bailee, or conditional vendee at the time of the execution of the instrument, or within twenty days thereafter.

§ 9. This Act shall not come into force until the first day of July, one thousand eight hundred and ninety-six.

SASKATCHEWAN.

CONDITIONAL SALES.

Revised Statutes 1920, Chapter 201.

§ 1. This Act may be cited as *the Conditional Sales Act.*

§ 2. (1) Whenever on a sale or bailment of goods of the value of fifteen dollars or over it is agreed, provided or conditioned that the right of property or right of possession in whole or in part shall remain in the seller or bailor notwithstanding that the actual possession of the goods passes to the buyer or bailee the seller or bailor shall not be permitted to set up any such right of property or right of possession as against any purchaser or mortgagee of or from the buyer or bailee of such goods in good faith for valuable consideration or as against judgments, executions or attachments against the purchaser or bailee unless such sale or bailment with such agreement, proviso or condition is in writing signed by the bailee or his agent as registered as hereinafter provided. Such

writing shall contain such a description of the goods the subject of the bailment that the same may be readily and easily known and distinguished.

(2) Nothing in this section shall apply to any bailment where it is not intended that the property in the goods shall eventually pass to the bailee on payment of purchase money in whole or in part or the performance of some condition by the bailee.

(3) Nothing in this section shall apply in cases of conditional sales or bailments of incorporated companies to railway companies if the contract evidencing the conditional sale or bailments or a copy thereof certified under the hand of the president or vice president and secretary of the company and verified by an affidavit of the secretary thereto attached or indorsed thereon and having the corporate seal attached thereto is filed with the registrar of joint stock companies within thirty days from the execution thereof. (R. S. S. 1909, c. 145, s. 1; 1915, c. 43, s. 25.)

§ 3. (1) Such writing or a true copy thereof shall be registered in the office of the registration clerk for chattel mortgages in the registration district within which the buyer or bailee resides within thirty days from the time of the actual delivery of such goods to the bailee or buyer; and in the event of such goods being delivered in a registration district other than that in which the buyer or bailee resides at the time of such delivery such writing or a true copy thereof shall also be registered within thirty days from the time of the actual delivery of such goods in the registration district in which such goods are delivered.

(2) If such goods are after the delivery thereof removed by the buyer or bailee into another registration district a true copy of such agreement shall be filed in the registration district into which such goods are removed within sixty days after such removal.

(3) Every such agreement or true copy thereof shall upon every such registration be accompanied by an affidavit of the seller or bailor or his agent stating that the written agreement annexed thereto truly sets forth the agreement entered into between the parties and that the said agreement was entered into *bona fide* and not for the purpose of protecting the goods mentioned therein against the creditors of the buyer or bailee.

(4) Where a lien note is taken under the provisions of *The Farm Implement Act,* the registration of such note or a true copy thereof accompanied by an affidavit of the seller or bailor, or his agent, stating that the said lien note was given under the provisions of *The Farm Implement Act, bona fide,* and not for the purpose of

protecting the goods mentioned therein against the creditors of the buyer or bailee, shall be a sufficient compliance with the provisions of subsection (3).

(5) No goods or chattels comprised in a lien note or conditional sale agreement shall be removed into another registration district unless a notice of the intention to remove is mailed post paid and registered to the seller or vendor at his last known place of address not less than twenty days prior to such removal.

(6) Any person violating the provisions of subsection (5) shall be liable to a penalty not exceeding $100. (R. S. S. 1909, c. 145, s. 2; 1915, c. 43, s. 25 (2); 1916, c. 37, s. 23.)

§ 4. The seller or bailor shall upon payment or tender of the amount due in respect of such goods or performance of the conditions of the bailment sign and deliver to any person demanding it a memorandum in writing stating that his claims against the goods are satisfied and such memorandum shall thereupon operate to divest the seller or bailor of any further interest or right of possession, if any, in the said goods. Any such memorandum if accompanied by an affidavit of execution of an attesting witness may be registered. (R. S. S. 1909, c. 145, s. 6.)

§ 5. In case the seller or bailor shall retake possession of the goods he shall retain the same in his possession for at least twenty days and the buyer, bailee or anyone claiming by or through or under the buyer or bailee may redeem the same upon payment of the amount actually due thereon and the actual necessary expenses of taking possession. (R. S. S. 1909, c. 145, s. 7.)

§ 6. The goods or chattels shall not be sold without eight days' notice of the intended sale being first given to the buyer or bailee or his successor in interest. The notice may be personally served or may in the absence of such buyer, bailee or his successor in interest be left at his residence or last place of abode or may be sent by registered letter deposited in the post office at least ten days before the time when the said eight days will elapse addressed to the buyer or bailee or his successor in interest at his last known post office address in Canada. The said eight days or ten days may be part of the twenty days mentioned in section 5. (R. S. S. 1909, c. 145, s. 8; 1910–11, c. 41, s. 16.)

§ 7. Copies of any instrument filed under this Act certified by the registration clerk shall be received as *prima facie* evidence for all purposes as if the original instrument were produced and also as *prima facie* evidence of the execution of the original instru-

ment according to the purport of such copy. And the clerk's certificate shall also be *prima facie* evidence of the date and hour of registration or filing. (R. S. S. 1909, c. 145, s. 9.)

§ 8. For services under this Act each registration clerk shall be entitled to receive the following fees:

(1) For each registration, including stamping original or duplicate, if any, with registration stamp, 25 cents;

(2) For searching each name, 25 cents;

(3) For each certificate or abstract of search, 25 cents;

(4) For copies of documents, including certificate thereof, every 100 words, 10 cents. (R. S. S. 1909, c. 145, s. 10.)

§ 9. Nothing in this Act shall apply to the sale or bailment of any manufactured goods or chattels of the value of $15 or over which at the time of the actual delivery thereof to the buyer or bailee have the manufacturer's or vendor's name painted, printed or stamped thereon or plainly attached thereto by a plate or similar device; provided that such manufacturer or vendor (being the seller or bailor of such goods or chattels) keeps an office in Saskatchewan where inquiry may be made and information procured concerning the sale or bailment of such goods or chattels; and provided further that such manufacturer or vendor or his agent does within five days after receiving a request so to do either made in person to him or by registered letter furnish to any applicant therefor a statement of the amounts (if any) paid thereon and the balance remaining unpaid; the person so inquiring shall if such inquiry is by letter give a name and post office address to which a reply may be sent; and it shall be sufficient if the information aforesaid is given by registered letter deposited in the post office within the said five days addressed to the person inquiring at his proper post office address or where a name and address is given as aforesaid addressed to such person by the name and at the post office so given. (R. S. S. 1909, c. 145, s. 11; 1915, c. 43, s. 25 (3) [redrawn].)

§ 10. Subject to the rights of third persons accrued by reason of such omissions as are hereinafter defined a judge of the Court of King's Bench or the judge of the district court of the judicial district within which such goods and chattels are situate on being satisfied that the omission to register any instrument under this Act within the time prescribed by this Act or the omission or misstatement of the name, residence or occupation of any person was accidental due to inadvertence or impossibility in fact, may in

his discretion order such omission or misstatement to be rectified by the insertion of the true name, residence or occupation or by extending the time for such registration on such terms and conditions, if any, as to security, notice by advertisement or otherwise or as to any other matter as he thinks fit to direct. (R. S. S. 1909, c. 145, s. 12.)

§ 11. All oaths required for this Act may be taken and administered by the registration clerk or his deputy and the sum of 25 cents shall be payable for every oath thus administered. (R. S. S. 1909, c. 145, s. 13.)

§ 12. Where the goods have been affixed to realty they shall remain subject to the rights of the seller or bailor as fully as they were before being so affixed, but the owner of such realty or any purchaser or any mortgagee or other incumbrancee thereof shall have the right as against the seller or bailor or other person claiming through or under him to retain the goods upon payment of the amount owing on them. (1915, c. 43, s. 25 (4).)

§ 13. A valid assignment of a lien note or conditional sale agreement shall transfer the assignor's rights of property, in the goods therein comprised, his rights of seizure, removal and sale and all other rights with regard to the enforcement of the security possessed by him. (1915, c. 43, s. 25(5).)

COLORADO.

CHATTEL MORTGAGES.

Laws 1917, Chapter 43.

§ 1. Except as hereinafter provided, no mortgage of personal property shall be valid against the rights and interests of any third person or persons unless possession of such property be delivered to and remain with the mortgagee, or the mortgage be acknowledged and certified, and filed or recorded as provided in this act.

§ 2. The mortgagor of any such mortgage shall acknowledge the execution of the same before some officer authorized to take and certify acknowledgments of deeds to real estate in this state, who shall certify the same substantially as follows:

"This mortgage was acknowledged before me this ..... day of ....., 19...., by ....., mortgagor." If the mortgagor is a co-partnership, the officer shall certify substantially as follows:

"This mortgage was acknowledged before me this ..... day of ....., 19...., by ..... for (naming co-partnership), mortgagor." If the mortgagor is a corporation, the officer shall certify substantially as follows:

"This mortgage was acknowledged before me this ..... day of ....., 19...., by ..... (President or other head officer), for (naming corporation), mortgagor."

§ 3. Every chattel mortgage shall be good and valid between the parties thereto until the indebtedness secured thereby is paid, or barred by the statute of limitations.

§ 4. Any person who buys or otherwise obtains an interest in any personal property covered by a mortgage, which is valid and effective between the parties thereto, with actual notice of such mortgage, shall be considered to have bought or obtained such interest subject to the mortgage, the same as if the mortgage had been executed and filed or recorded pursuant to the provisions of this Act.

§ 5. No mortgage or deed of trust heretofore or hereafter executed by a corporation organized under the laws of the State of Colorado or authorized to do business therein, mortgaging or conveying in trust real property situate in this state and including any personal property of such corporation, shall be deemed to be a chattel mortgage, nor shall it be subject to any provisions of this act; but nothing in this section contained shall be construed as impairing the lien of any such mortgage or deed of trust upon the personal property included therein.

§ 6. No sale or mortgage of household goods used by the family shall be valid unless the transaction is evidenced by an instrument in writing executed by husband and wife jointly, but the provisions of this section shall not apply in case husband and wife are not residing together.

§ 7. Any chattel mortgage, acknowledged and certified as provided in section two (2) of this act, may be filed in the office of the clerk and recorder of the county in which the mortgaged property is situated, or, at the option of the mortgagee, may be recorded at length in the public records of said county and thereupon, whether filed or recorded, if bona fide, shall be good and valid from the time of such filing or recording until the maturity of the last installment of the mortgage indebtedness, notwithstanding the mortgage property remains in the possession of the mortgagor pursuant to provision therefor in the mortgage, but not exceeding

two years if the principal of the mortgage debt does not exceed $2,500; and not exceeding five years if the principal of the mortgage debt is more than $2,500, and not more than $20,000; and not exceeding ten years if the principal of the mortgage debt exceed $20,000; provided, that, if such mortgage is made to secure a sum in excess of $2,500, there shall be filed annually, beginning with the third anniversary of the filing or recording of such mortgage, in the office of said clerk and recorder, a sworn statement of the mortgagee, or one of the mortgagees if there be more than one, or by the assignee of such mortgage, showing:

First: That said mortgage was given in good faith to secure the payment of the sum of money mentioned therein;

Second: That said sum of money is still unpaid; or if a part has been paid, how much thereof remains unpaid.

A mortgage executed and filed in conformity with the provisions of this act shall have the same force and effect as if recorded at length in the public records of the county.

§ 8. Every mortgage of live stock may cover and bind the increase of such live stock, or any part thereof, thereafter to be born, as may be provided therein.

§ 9. If the mortgaged property is situated in two or more counties, the original, a duplicate original or a certified copy of such mortgage shall be filed or recorded in each county.

§ 10. The mortgagee of any chattel mortgage, his agent or attorney, shall be allowed thirty days after the maturity of the debt secured by said mortgage, or thirty days after the day to which the payment of said debt is extended in conformity with the provisions of this act, within which to take possession of the mortgaged property, and such mortgage shall during such period of time be good and valid the same as if possession had been taken at maturity; and during said period of thirty days or until possession is taken by the mortgagee, his agent or attorney, the mortgagor shall have the right to pay the debt and upon payment the mortgage shall be discharged the same as if the debt had been paid at maturity.

§ 11. The lien of any chattel mortgage filed or recorded, as provided by this act, may, at any time within thirty days after the maturity of the last installment of the indebtedness secured thereby, be extended for the unpaid portion of such debt by the mortgagee or his assignee filing with the clerk and recorder of the county wherein the mortgage is filed or recorded, a sworn statement, showing:

First: The total payments made on the debt and the amount remaining unpaid.

Second: That the debt, or the part thereof stated, is still due the mortgagee or his assignee, as the case may be, and that said mortgagee or assignee consents to extend the time of payment of said debt for some definite period of time, stating it, not exceeding two years.

Thereupon the lien of the mortgage shall be extended for the period of time designated. At any time within thirty days after the expiration of said extended period of time the lien of said mortgage may be again extended for another period not exceeding two years, with like effect, by filing a sworn statement as provided above, and other extensions may be made from time to time in the same manner and with like effect, until the debt secured by the mortgage is paid or barred by the statute of limitations.

§ 12. The clerk and recorder of each and every county in this State shall procure and keep separate index books, alphabetically and scientifically arranged, in which shall be entered in proper order all mortgages, extensions of mortgages and sworn statements executed and filed or recorded pursuant to the provisions of this act. Whenever the clerk and recorder shall receive for filing in his office any sworn statement made pursuant to the provisions of sections 7 or 11 of this act he shall note a memorandum in red ink on the original index entry of the mortgage to which the statement relates, showing the date of filing such statement, and shall also make a new index entry for such statement in the general index for chattel mortgages. A copy of any such mortgage, extension or statement, duly certified by the clerk and recorder, may be used in foreclosure proceedings, or otherwise, in all respects the same as the original instrument, and if it shall appear from the affidavit of any credible witness that the original is lost or that it is not within the power of the person wishing to use the same to produce it, such certified copy may be read in evidence in any court of this state without further proof of the execution of the original.

Any mortgage executed pursuant to the provisions of this act may be released by an appropriate notation on the margin of the mortgage or on the margin of the record thereof, or by a separate instrument suitably executed.

§ 13. The county clerk and recorder shall be entitled to the following fees:

For recording and indexing any mortgage, or making a certified copy of any mortgage or sworn statement, the same fees allowed by law for recording or making copies of deeds of real estate.

For filing and indexing any chattel mortgage, or any release of chattel mortgage, twenty-five cents.

For filing and indexing any sworn statement made pursuant to the provisions of sections 7 or 11 of this act, twenty-five cents.

For attesting a marginal release, twenty-five cents.

§ 14. Any person having conveyed any article of personal property to another by mortgage, who shall during the existence of the lien or title created by such mortgage, sell the personal property to a third person for a valuable consideration, without informing him of the existence and effect of such mortgage, shall forfeit and pay to the purchaser twice the value of such property so sold, which forfeiture may be recovered in an action of debt in any court having jurisdiction thereof.

§ 17. Except as provided in section 5, above, the provisions of this act shall extend to all bills of sale, deeds of trust and other conveyances of personal property intended by the parties to have the effect of a mortgage or lien upon such property.

§ 18. Sections 512 to 525, inclusive, of the Revised Statutes of Colorado 1908, an act entitled "An Act to amend Sections 2, 7 and 9 of Chapter XXIII of the Revised Statutes of Colorado 1908 relating to Chattel Mortgages," approved April 1st, 1915, being chapter 50 of the Laws of 1915, and all acts and parts of acts in conflict herewith, are hereby repealed; but nothing in this act contained shall modify or impair the effect or validity of any chattel mortgage, or the lien thereof, filed or recorded, pursuant to law, prior to the time when this act becomes effective.

Railroad Equipment.

Mills Annotated Statutes 1912.

§ 6172. *Title not pass until railroad appliances paid for — contract — limitation.*— That in any written contract, of or for the sale of railroad equipment, or rolling stock, deliverable immediately, or subsequently, at stipulated periods, by the terms of which the purchase money, in whole or in part, is to be paid in the future, it may be agreed that the title to the property so sold, or contracted to be sold, shall not pass to, or vest in, the vendee, until the purchase money shall have been fully paid, or that the vendor

shall have and retain a lien thereon for the unpaid purchase money, notwithstanding delivery thereof to, and possession by, the vendee, for a period not to exceed twenty-five years in any one contract, which term shall be expressed in said contract; Provided, That the situs or location of all such property shall for the purposes of taxation and revenue, be deemed to be within the State of Colorado.

§ 6173. *Lease may stipulate sale.*— In any written contract for the leasing, or renting, of railroad equipment, or rolling stock, it shall be lawful to stipulate for a conditional sale thereof at the termination of such lease, and to stipulate that the rentals received may, as paid, or when paid in full, be applied and treated as purchase-money, and that the title to such property shall not vest in such lessee, or vendee, until the purchase-money shall have been paid in full, notwithstanding delivery to, and possession by, such lessee, or vendee.

§ 6174. *Such contract valid — proviso.*— Every such contract, specified in sections one and two [§§ 6172, 6173] shall be good, valid and effectual, both in law and equity, against all purchasers and creditors; Provided, First — The same shall be acknowledged by the vendee, or lessee, before some officer authorised by law to take acknowledgments of deeds. Second — Such instrument shall be recorded, or a copy thereof filed, in the office of the secretary of state, and in the office of the recorder of each of the counties in which the said railroad may be operated in this state. Third — Each locomotive engine, or car, so sold, or contracted to be sold, or leased, as aforesaid, shall have the name of the vendor, or lessor, or the assignee of such vendor, or lessor, plainly placed, or marked on each side thereof, or be otherwise marked so as to indicate the ownership thereof, or that the same is covered by such special contract.

§ 6175. *Legalize former contracts.*— This act shall be held to validate and legalize all contracts, of the character described in the first section [§ 6172] of this act, heretofore made wherein the parties have attempted to preserve to the vendor a lien for a period of time longer than ten years, but less than twenty-five years. This act shall be held neither to invalidate any contract heretofore made, of the character described in the first or second sections [§§ 6172, 6173], nor to apply to any contract where the lien has become barred before the passage hereof.

CRIMINAL PROVISIONS.

Laws 1917, Chapter 43.

§ 15. If any mortgagor of personal property which has been mortgaged in pursuance of this act, during the existence of such mortgage, shall sell, transfer, or in any way encumber such mortgaged property, or any part thereof, or cause the same to be sold, transferred or encumbered, such sale, transfer or encumbrance shall be deemed a larceny of such mortgaged property so sold, transferred or encumbered, and the mortgagor shall be deemed guilty of such larceny, the same, to all intents and purposes, as though there had been a felonious taking and conversion of such property by such mortgagor, and on conviction thereof shall be punished accordingly; unless at the time of making such sale, transfer or encumbrance such mortgagor shall fully advise and acquaint the person to whom such sale, transfer or encumbrance may be made, with the fact of the prior encumbrance and mortgage, and also first fully apprise the mortgagees of the intended sale, giving to such mortgagees the name and place of residence of the party to whom the sale, transfer or encumbrance is to be made.

§ 16. If the mortgagor of any chattels, or other person, during the existence of the lien or title created by such mortgage, shall transfer, conceal, take, drive, carry away, or otherwise dispose of any of the mortgaged property, contrary to the provisions of the mortgage, and without written consent of all mortgagees, he shall be deemed guilty of larceny of such property, and upon conviction be punished accordingly.

CONNECTICUT.

CONDITIONAL SALES GENERALLY.

General Statutes 1918.

§ 4744. *Conditional sales of personal property to be recorded.*— All contracts for the sale of personal property, conditioned that the title thereto shall remain in the vendor after delivery, shall be in writing, describing the property and all conditions of said sale, and shall be acknowledged before some competent authority and filed within a reasonable time in the town clerk's office in the town where the vendee resides; but the provisions of this section shall not apply to household furniture, musical instruments, phonographs and phonograph supplies, bicycles or property exempt from attachment and execution. (As amended by Laws 1921, ch. 116.)

§ 4745. *Recording instruments affecting personal property.*— Notices of intent to sell, bills of sale, conditional sales, chattel mortgages and all other instruments relating to personal property, when left for filing with any town clerk shall be indexed by him and kept in files used exclusively for the filing of such instruments. A filing fee of one dollar shall be collected for each such instrument. (As amended by Laws 1921, ch. 116.)

§ 4746. *Conditional sales held absolute sales when.*— All conditional sales of personal property not made in conformity with the provisions of section 4744 shall be held to be absolute sales, except as between the vendor and vendee or their personal representatives, and all such property shall be liable to be taken by attachment and execution for the debts of the vendee, in the same manner as any other property not exempted by law.

RAILROAD EQUIPMENT.

General Statutes 1918.

§ 4747. *Conditional sale of railway equipment to be recorded.*— In any contract for the sale of railroad or street railway equipment or rolling stock, it shall be lawful to agree that the title to the property sold, or contracted to be sold, although possession thereof may be delivered immediately or at any time or times subsequently, shall not vest in the vendee until the purchase price shall be fully paid, or that the vendor shall have and retain a lien thereon for the unpaid purchase money. In any contract for the leasing or hiring of such property, it shall be lawful to stipulate for a conditional sale thereof, at the termination of such contract, and that the rentals or amounts to be received under such contract may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price shall have been paid in full, and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee; *provided,* no such contract shall be valid as against any subsequent attaching creditor, or any subsequent *bona fide* purchaser for value and without notice, unless the same be evidenced by an instrument executed and duly acknowledged by the parties thereto before some person authorized by law to take acknowledgment of deeds, and in the same manner as deeds are acknowledged, and duly recorded in the office of the secretary of the state, nor unless each locomotive engine or car, so sold, leased or hired or contracted to be

sold, leased or hired, as aforesaid, shall have the name of the vendor, lessor or bailor, plainly marked on each side thereof, followed by the word " owner " or " lessor " or " bailor," as the case may be.

§ 4748. *Performance of conditions; record of release.*— The contracts authorized by section 4747 shall be recorded by the secretary of the state in a book of records to be kept for that purpose. On payment in full of the purchase money and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect, or a proper quit-claim deed, shall be made, executed and acknowledged by the vendor, lessor or bailor, or his or its assignee, and recorded in the office of the secretary of the state. For such services the secretary shall be entitled to receive the same fees as in case of railroad mortgages.

ATTACHMENT.

General Statutes 1918.

§ 5870. *Attachment of property purchased on condition.*— Any property sold upon condition and put by the vendor into the visible possession of the vendee, unless otherwise exempt from execution, may be attached and levied upon and sold or set out on execution in any suit against such vendee, subject to the rights of the vendor to its possession or ownership. The party attaching or levying shall have the same rights which the vendee would otherwise have had to tender to the vendor performance of the conditions of sale; and all parties deriving title under the execution shall succeed to all the rights of the vendee in relation to such property.

§ 5871. *Disclosure by vendor of claim on the property.*— Such attaching or levying creditor may summon said vendor to appear before the judge of the court or justice of the peace before whom the suit shall be or may have been pending, to disclose fully on oath what claim he has on said property, which summons shall be signed by such judge or justice, be returnable at such times and place as he may appoint, and be served as other civil process, at least six days before such time. If such vendor shall be absent from the state when such summons shall be served, such judge or justice shall make a reasonable order or notice to him; and if such summons shall have been duly served, and such order if any duly complied with, and such vendor shall fail to disclose as aforesaid, such neglect shall be prima facie evidence that he has no interest in said property.

PAWNBROKERS.

General Statutes 1918.

§ 3013. *Pawnbrokers' security not defeated by conditional sale.*— Whenever any duly licensed pawnbroker doing business in this state shall, in good faith, loan money secured by pledge of any watch, jewelry or precious stone, such security shall not, as to the amount of such loan and the interest thereon, be defeated or affected because such property so pledged has been sold on conditional sale to the person pledging the same, provided, the original conditional sale shall have been made outside the state.

CRIMINAL PROVISIONS.

General Statutes 1918.

§ 6306. *Concealment or conveyance of property sold on condition.*— Every person who shall, with intent to place personal property, sold on condition that the title shall remain in the vendor after delivery, beyond the control of the vendor, remove, conceal or aid or abet the removal or concealment of any such property, and any vendee of such property who assents to such removal or concealment, shall be fined not more than five hundred dollars or imprisoned not more than six months. Every vendee of such conditional sale who shall sell or convey such property, or any part thereof, without the consent of the vendor, and without informing the person to whom he sells or conveys that the same is subject to such conditional sale, shall be imprisoned not more than five years. (As amended by Laws 1919, ch. 28.)

DISTRICT OF COLUMBIA.

CONDITIONAL SALES GENERALLY.

Code 1919.

§ 547. *Conditional sales.*— No conditional sale of chattels in virtue of which the property is delivered to the purchaser, but by the terms of which the title is not to pass until the price of said chattels is fully paid, where the purchase price exceeds one hundred dollars, shall be valid as against third persons acquiring title to said property from said purchaser without notice of the terms of said sale, unless the terms of said sale are reduced to writing and signed by the parties thereto and acknowledged by the purchaser and recorded in the same manner as a chattel mortgage, as hereinabove provided [see section 546, post]; and said

writing shall be indexed as if the purchaser were a mortgagor and the seller a mortgagee of such chattels, and shall be operative as to third persons without actual notice of it from the time of being so recorded.

§ 546. *Recording.*—No bill of sale or mortgage or deed of trust to secure a debt of any personal chattels whereof the vendor, mortgagor, or donor shall remain in possession, shall be valid and effectual to pass the title therein, except as between the parties to such instrument and as to other persons having actual notice of it, unless the same be executed, acknowledged, and within ten days from the date of such acknowledgment recorded in the same manner as deeds of real estate, as hereon directed, and as to third persons not having notice of it, as aforesaid, such instrument shall be operative only from the time within said ten days when it is delivered to the recorder of deeds to be recorded.

CRIMINAL PROVISIONS.

Code 1919.

§ 833a. Whoever, being in possession of personal property received upon a written and conditional contract of sale, with intent to defraud, sells, conveys, conceals, or aids in concealing the same, or removes the same from the District of Columbia without the consent of the vendor, before performance of the conditions precedent to acquiring the title thereto, shall be punished by a fine of not more than one hundred dollars, or by imprisonment for more than ninety days.

FLORIDA.

CONDITIONAL SALES GENERALLY.

Revised General Statutes 1920.

§ 3871. *Fraudulent loans void.*—When any loan of goods and chattels shall be pretended to have been made to any person with whom or those claiming under him, possession shall have remained for the space of two years without demand and pursued by due process of law on the part of the pretended lender, or where any reservation or limitation shall be pretended to have been made of a use or property by way of condition, reversion, remainder or otherwise in goods and chattels, and the possession thereof shall have remained in another as aforesaid, the same shall be taken, as to the creditors and purchasers of the persons aforesaid so

remaining in possession, to be fraudulent within this chapter, and the absolute property shall be with the possession, unless such loan, reservation or limitation of use or property were declared by will or deed in writing proved and recorded.

RAILROAD EQUIPMENT.

Revised General Statutes 1920.

§ 4534. *Contracts for sale of railroad.*— In any contract for the sale of railroad or street railway equipment or rolling stock, it shall be lawful to agree that the title to the property sold, or contracted to be sold, although possession thereof may be delivered immediately, or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money. And in any contract for the leasing or hiring of such property it shall be lawful to stipulate for a conditional sale thereof at the termination of such contract, and that the rentals or amounts to be received under such contract may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price shall have been paid in full, and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee: Provided, That no such contract shall be valid as against any subsequent judgment creditor, or any subsequent bona fide purchaser for value and without notice, unless:

1. The same shall be evidenced by an instrument executed by the parties and duly acknowledged by the vendee or lessee or bailee, as the case may be, or duly proved, before some person authorized by law to take acknowledgment of deeds, and in the same manner as deeds are authorized or proved.

2. Such instrument shall be filed for record in the office of the Secretary of State of this commonwealth.

3. Each locomotive engine or car so sold, leased or hired or contracted to be sold, leased or hired, as aforesaid, shall have the name of the vendor, lessor or bailor plainly marked on each side thereof, followed by the word " owner " or " lessor " or " bailor " as the case may be.

§ 4535. *Record of contract.*— The contracts herein authorized shall be recorded by the Secretary of State, in a book of records

to be kept for that purpose. And on payment in full of the purchase money and the performance of the terms and conditions stipulated in such contract, a declaration in writing to that effect may be made by the vendor, lessor, or bailor, or his or its assignee, which declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument to be acknowledged by the vendor, lessor, or bailor, or his or its assignee, and recorded as aforesaid. And for such services the Secretary of State shall be entitled to a fee for such services as for similar services, for recording each of said contracts and each of said declarations, and a fee of one dollar for noting such declarations on the margin of the record. This section shall not be held to invalidate or affect in any way any contract heretofore made of the kind referred to herein, and any such contract heretofore made may, upon compliance with the provisions of this section, be recorded as herein provided."

CRIMINAL PROVISIONS.

Revised General Statutes 1920.

§ 5202. *Disposing of personal property under lien.*— Whoever shall pledge, mortgage, sell or otherwise dispose of any personal property, to him belonging, or which shall be in his possession, which shall be subject to any written lien, or which shall be subject to any statutory lien, whether written or not, without the written consent of the person, firm or corporation holding such lien, and whoever shall remove or cause to be removed beyond the limits of the county any such property without the consent aforesaid, shall be punished by a fine not exceeding five hundred dollars or imprisonment not exceeding one year."

§ 5204. *Removing such property beyond the limits of county.* — Whoever shall knowingly and without the written consent of the person, firm or corporation having such a lien thereon, as mentioned in Section 5202, buy, take, receive or remove or cause to be removed beyond the limits of the county, any personal property subject to such lien from the owner or any person in possession thereof, and whoever shall wilfully conceal such property or obstruct, delay or hinder such lien holder in prosecuting his rights against any of such property, shall be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding one year."

GEORGIA.

CONDITIONAL SALES GENERALLY.

Park's Annotated Code 1914 — Civil Code.

§ 3318. *Conditional sales, how executed.*— Whenever personal property is sold and delivered with the condition affixed to the sale that the title thereto is to remain in the vendor of such personal property until the purchase-price thereof shall have been paid, every such conditional sale, in order for the reservation of title to be valid as against third parties, shall be evidenced in writing, and not otherwise. And the written contract of every such conditional sale shall be executed and attested in the same manner as mortgages on personal property; as between the parties themselves, the contract as made by them shall be valid and may be enforced, whether evidenced in writing or not.

§ 3319. *How recorded.*— Conditional bills of sale must be recorded within thirty days from their date, and in other respects shall be governed by the laws relating to the registration of mortgages.

§ 3257. *Form and execution.*— No particular form is necessary to constitute a mortgage. It must clearly indicate the creation of a lien, specify the debt to secure which it is given, and the property upon which it is to take effect. It must be executed in the presence of, and attested by, or proved before, a notary public or justice of any court in this State, or a clerk of the superior court (and in case of real property by one other witness), and recorded.

§ 3259. *Registry.*— Mortgages on realty must be recorded in the county where the land lies; on personalty, in the county where the mortgagor resided at the time of its execution, if a resident of this State. If a nonresident, then in the county where the mortgaged property is. If a mortgage be executed on personalty not within the limits of this State, and such property is afterwards brought within the State, the mortgage shall be recorded according to the above rules within six months after such property is so brought in. All chattel mortgages of stocks of goods, wares, and merchandise, or other personal property, shall be recorded, in case the same is upon property or goods located in some other county than that of the mortgagor's residence, in the county where said goods or personal property is located at the time of the execution of said mortgage, in addition to the record of said mortgage

in the county of the mortgagor's residence. And in cases where a mortgage either upon realty or personalty is executed to secure the payment of money or other thing of value, and the same is not recorded as now provided by law, but such mortgage is renewed or re-executed, in every case of renewal or re-execution of a mortgage which has not been recorded, such mortgage shall operate as a lien upon the property of the mortgagor only as against the mortgagor himself and those having actual notice of such mortgage, except from the date of the record of such mortgage.

§ 3260. *Effect of failure to record.*— Mortgages not recorded within the time required remain valid as against the mortgagor, but are postponed to all other liens created or obtained, or purchases made prior to the actual record of the mortgage. If, however, the younger lien is created by contract, and the party receiving it has notice of the prior unrecorded mortgage, or the purchaser has the like notice, then the lien of the older mortgage shall be held good against them.

§ 3320. *Instruments requiring record take effect, when.*— Deeds, mortgages, and liens of all kinds, which are now required by law to be recorded in the office of the clerk of the superior court of each county within a specified time, shall, as against the interests of third parties acting in good faith and without notice, who may have acquired a transfer or lien binding the same property, take effect only from the time they are filed for record in the clerk's office. And the said clerk is required to keep a docket for such filing, showing the day and hour thereof, which docket shall be open for examination and inspection as other records of his office.

§ 4123. *Loss must fall on the owner.*— Where property is sold and delivered, but title is not to pass until payment in full of the purchase money, and the property is lost, damaged, or destroyed without the vendee's fault, he is entitled to a rescission of the contract or to an abatement in the price, unless it is otherwise agreed in the contract of sale.

Railroad Equipment.

Park's Annotated Code 1914 — Civil Code.

§ 2790. *Contract for conditional sale of rolling stock, etc.*— Any person or corporation may make a contract in writing with any railroad company or person owning or operating a railroad in this State to furnish said company or person with rolling stock

or other equipment, deliverable either immediately or subsequently at stipulated periods; by the terms of which contract the purchase-money for said property, in whole or in part, is to be paid thereafter, and in which contract it may be agreed that the title to the property so sold or contracted to be sold shall not pass to or vest in the vendee until the purchase-money for the same shall have been fully paid, notwithstanding the delivery of such property to and the possession of the same by the vendee; but that until said purchase-money shall have been fully paid, the title to said property shall remain in said vendor and his or its assigns.

§ 2791. *Contracts for the lease of rolling stock.*— The manufacturer, owner, or assigns of any railroad equipment or rolling stock may make a written contract for the lease of such equipment or rolling stock to any railroad company or person owning or operating a railroad in this state; and in such contract it shall be lawful to stipulate for a conditional sale of said property to the said lessee on the termination of such lease, and to stipulate that the rental received for said property may as paid, or when fully paid, be applied and treated as purchase-money, and that the title to such property shall not vest in such lessee or vendee until the amount of such purchase-money shall have been paid in full to the lessor or vendor, or to his or its assigns, notwithstanding the delivery of such property to and possession of the same by such lessee or vendee, but that until such purchase-money shall have been fully paid the title to such property shall remain in said lessor or vendor, or in his or its assigns.

§ 2792. *Validity and record of contracts.*— Every such contract hereby authorized shall be good, valid, and effectual to retain the title to said property in said vendor or lessor, or in his or its assigns, as against the said vendee or lessee, and against all persons claiming thereunder. Such contracts, if made within this State, shall be executed in the presence of, and attested by, or be proved before a notary public, or justice of any court in this State, or a clerk of the superior court. If made without this State, it shall be executed in the presence of, and attested by, or proved before a commissioner of deeds for the State of Georgia, or a consul or vice-consul of the United States (the certificates of the foregoing officers, under their seals, being evidence of the fact), or by a judge of a court of record in the State where executed; such contract shall be recorded, within six months after the date of its execution, in the office of the clerk of the superior court of

the county where is situated the principal office, in this State, of the said railroad company. Each locomotive engine and each car so sold or contracted to be sold or leased, as aforesaid, shall have the name of the vendor or lessor, or the assignee of such vendor or lessor, plainly placed or marked on the same, or be otherwise so marked as to plainly indicate the ownership thereof.

CRIMINAL PROVISIONS.

Park's Annotated Code 1914—Penal Code.

§ 722. *Selling or encumbering personal property held under conditional purchase.*— When a person holds personal property under a conditional purchase and sale, and by the terms of the purchase the title is retained by the vendor until the purchase price is paid, he shall not, without the consent or approval of the vendor, sell or encumber the property with intent to defraud the vendor or defeat his rights, or when such selling or encumbering the property tends to the injury of the vendor. A violation of this section shall be a misdemeanor.

§ 723. *Settlement of cases.*— The presiding judge may permit the parties at interest to settle the prosecution, prior to conviction, upon payment of the amount due the vendor and the costs of the prosecution.

§ 723a. *Removal or concealment of property, held under conditional purchase.*— When a person holds personal property under conditional purchase and sale, and by the terms of the purchase the title is retained by the vendor until the purchase price is paid, he, the vendee, shall not remove, cause to be removed or procure to be removed, beyond the limits of this State any personal property subject to such contract of sale without the consent of the vendor, or the approval of the said vendor, with intent to defraud the vendor, or defeat his rights, or when such removing tends to the injury of the vendor, and he shall not willfully conceal such property. A violation of this law shall be punished as for a misdemeanor.

HAWAII.

CHATTEL MORTGAGES.

Revised Laws 1915.

§ 3120. *Chattel mortgage, etc.*— Every mortgage or other conveyance of personal property, not accompanied by immediate possession and followed by an actual and continued change of

possession of the things mortgaged or conveyed, shall be void as against creditors of the mortgagor, and as against subsequent purchasers or mortgagees, in good faith and for a valuable consideration, unless such mortgage or other conveyance shall be recorded in the office of the registrar of conveyances.

CRIMINAL PROVISIONS.

Revised Laws 1915.

§ 4003. *Sale or concealment of personalty sold on condition; penalty.*— Whoever being in possession of personal property received upon a written and conditional contract of sale, with intent to defraud, sells, conveys, conceals or aids in concealing the same before the performance of the conditions precedent to acquiring the title thereto, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than one year.

IDAHO.

CONDITIONAL SALES GENERALLY.

Laws 1921, Chapter 153.

§ 1. That all sales of personal property where the possession is delivered to vendee on condition, that the title shall remain in the vendor until the purchase money is paid, shall vest such title in the vendee as to third persons, unless such contract is in writing and said contract or a true copy thereof is filed with the County Recorder of the county where such property is located and kept. PROVIDED, when such personal property is thereafter removed from the county wherein it was situated at the time of the execution of said contract, by the written consent of the seller, it is, except as between the parties of the contract, exempt from the operation thereof, unless, either, (1) the seller, within ten days after such removal cause the contract or a true copy thereof to be filed in the county to which the property has been removed, or, (2) the seller within ten days after such removal takes possession of the property.

§ 3. For the purpose of filing, and satisfaction of record, contracts for sales upon conditions shall be treated as chattel mortgages; and the Recorder shall keep a book in which shall be entered a minute of all conditional sale contracts. Such book shall be ruled off into separate columns with the headings as follows: " Time

of Reception," " Vendor," " Vendee," " Date of Instrument," "Amount of Sale," " When due," " Property Subject to Contract," " Remarks." The proper entry shall be made under each such heading and an index showing both Vendee and Vendor shall be maintained by the Recorder. The Recorder shall receive the sum of twenty-five cents, and no more, for filing any such contract, which amount he may demand before filing any such contract.

§ 4. For filing a satisfaction or release of a conditional sale contract the Recorder shall be entitled to a fee of 10 cents.

§ 5. This act does not apply to a conditional sale of household goods and furniture, musical instruments, motor vehicles, farm implements and machinery, property exempt from attachment or execution, nor to any conditional sale where the consideration is less than $100.00.

Railroad Equipment.

Compiled Statutes 1919.

§ 4826. *Lien of vendor or lessor.*— In any contract for the sale of railroad or street railway equipment or rolling stock it shall be lawful to agree that the title to the property sold or contracted to be sold, although possession thereof may be delivered immediately, or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money. And in any contract for the leasing or hiring of such property, it shall be lawful to stipulate for a conditional sale thereof at the termination of such contract, and that the rentals or amounts to be received under such contract, may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price shall have been paid in full, and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee: *Provided,* That no such contract shall be valid as against any subsequent judgment creditor, or any subsequent bona fide purchaser for value and without notice, unless:

1. The same shall be evidenced by an instrument executed by the parties and duly acknowledged by the vendee or lessee or bailee, as the case may be, or duly proved before some person authorized by law to take acknowledgment of deeds, and in the same manner as deeds are acknowledged or proved.

2. Such instrument shall be filed for record in the office of the secretary of state.

3. Each locomotive, engine or car so sold, leased or hired, or contracted to be sold, leased or hired as aforesaid, shall have the name of the vendor, lessor or bailor plainly marked on each side thereof, followed by the word " owner " or " lessor " or " bailor," as the case may be.

§ 4827. *Same: Record of contract.*— The contracts herein authorized shall be recorded by the secretary of state in a book of records to be kept for that purpose. And on payment in full of the purchase money, and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect may be made by the vendor, lessor or bailor, or his or its assignee, which declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument, to be acknowledged by the vendor, lessor or bailor, or his or its assignee, and recorded as aforesaid. And for such services the secretary of state shall be entitled to a fee of $2 for recording each of said contracts and each of said declarations, and a fee of $1 for noting such declaration on the margin of the record.

§ 4828. *Prior contracts not affected.*— This article shall not be held to invalidate or affect, in any way, any contract of the kind referred to in the first section hereof, made prior to the 3d day of May, 1905, and any such contract theretofore made may, upon compliance with the provisions of this article, be recorded as herein provided.

Criminal Provisions.

Laws 1921, Chapter 153.

§ 2. If the purchaser of any property sold in pursuance of the provisions of this article, removes from the county or counties where said contract or copy is filed, destroys, conceals or in any manner disposes of the property so sold or any part thereof before the full purchase money has been paid without first securing the written consent of the seller of such property, he is guilty of larceny and such sale or transfer is void.

ILLINOIS.

CHATTEL MORTGAGES.

Jones & Addington's Annotated Statutes 1912.

Paragraph 7576. *What necessary to validity — Definition.*

§ 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That no mortgage, trust deed or other conveyance of personal property having the effect of a mortgage or lien upon such property, shall be valid as against the rights and interests of any third person, unless possession thereof shall be delivered to and remain with the grantee, or the instrument shall provide for the possession of the property to remain with the grantor, and the instrument is acknowledged and recorded as hereinafter directed; and every such instrument shall, for the purposes of this Act, be deemed a chattel mortgage.

Paragraph 7577. *Acknowledgment.*

§ 2. Such instruments shall be acknowledged before a justice of the peace or the county judge where the mortgagor resides or before the clerk or any deputy clerk of the municipal court of the city of Chicago, or if the mortgagor is not a resident of the State at the time of making the acknowledgment, then before any officer authorized by law to take acknowledgments of deeds: Provided, however, that in counties having a population of more than two hundred thousand, such instrument, if the mortgagor is a resident of the State at the time of making the acknowledgment, shall be acknowledged before a justice of the peace of the town or precinct where the mortgagor resides, or if there be no justice of the peace in such town or precinct, such instrument shall be acknowledged before the clerk or any deputy clerk of the municipal court in the district in which the mortgagor resides, or if there be no such clerk or deputy clerk, before the county judge of the county in which the mortgagor resides: Provided, further, that such acknowledgment may be made either by the mortgagor or a person duly authorized by said mortgagor to act as his attorney in fact. The instrument authorizing such acknowledgment shall be substantially in the following form:

I, ..., the mortgagor, do hereby make, constitute and appoint ..... (Name of Attorney in Fact) my attorney in fact, to appear for ..... and in ..... behalf before ..... (Here give name of officer and official title

before whom the acknowledgment is to be made) and acknowledge the execution of the within instrument in my name and for me for all purposes as I might do, with the same force and effect.

Given under ..... hand and seal this ..... day of ....., A. D. 19...

.....(Seal)
Mortgagor.

The certificate of acknowledgment if made by the mortgagor in person shall be in the following form:

This (name of instrument) was acknowledged before me by (name of grantor) (when acknowledgment is made of a resident insert the words " and entered by me ") this ..... day of ....., 19... Witness my hand and seal.

.....(Seal)
Name of Officer.

If the acknowledgment is made by an attorney in fact, the certificate of acknowledgment shall be substantially in the following form:

This (name of instrument) was acknowledged before me by the within named ..... by .....
(Name of attorney)

h..... attorney in fact for all purposes named in said instrument, and entered by me this.....day of....., 19...

.....(Seal)
Name of Officer.

Said instrument, authorizing the acknowledgment by attorney in fact as herein specified, shall be signed by the mortgagor and shall be acknowledged before any officer authorized to take acknowledgments of deeds. (As amended by Laws 1915, p. 528.)

Paragraph 7578. *Acknowledgment docketed.*

§ 3. If the acknowledgment is by a resident of this State the justice of the peace, clerk or deputy clerk of the municipal court, or county judge, shall enter in his docket or in some book kept for that purpose a memorandum thereof, substantially as follows:

A. B. (name of mortgagor) to C. D. (name of mortgagee); mortgage of (here insert description of the property as in the mortgage). Acknowledged this ..... day of ....., 19...

Paragraph 7579. *Record—Effect of—Three years' limitation —Extension of period.*

§ 4. Such mortgage, trust deed or other conveyance of personal property acknowledged as provided in this act, shall be admitted to record by the recorder of the county in which the mortgagor shall reside at the time when the instrument is executed and recorded, or in case the mortgagor is not a resident of this State, then in the county where the property is situated and kept, and shall thereupon, if bona fide, be good and valid from the time it is filed for record until the maturity of the entire debt or obligation, or extension thereof made so hereinafter specified: Provided, such time shall not exceed three years from the filing of the mortgage unless within thirty days next preceding the expiration of such three years, or if the debt or obligation matures within such three years, then within thirty days next preceding the maturity of said debt or obligation the mortgagor and mortgagee, his or their agent or attorney, shall file for record in the office of the recorder of deeds of the county where the original mortgage is recorded, also with the justice of the peace, or his successor, upon whose docket the same was entered, an affidavit setting forth particularly the interest which the mortgagee has by virtue of such mortgage in the property therein mentioned, and if such mortgage is for the payment of money, the amount remaining unpaid thereon, and the time when the same will become due by extension or otherwise; which affidavit shall be recorded by such recorder and be entered upon the docket of said justice of the peace, and thereupon the mortgage lien originally acquired shall be continued and extended for and during the term of one year from the filing of such affidavit, or until the maturity of the indebtedness or extension thereof secured by said mortgage: Provided, such time shall not exceed one year from the date of filing such affidavit.

Paragraph 7580. *Certified copies evidence.*

§ 5. A copy of any such mortgage or other instrument acknowledged, filed and recorded as aforesaid, including any affidavits annexed thereto in pursuance of this chapter, certified by the proper recorder, from the records thereof, and also any copies of such affidavits filed with the justice of the peace before whom such mortgage or other instrument was acknowledged or his successor in office, in pursuance of this chapter, may be read in evidence in like cases, and upon the same conditions as copies of deeds and conveyances of lands so certified.

Paragraph 7581. *Sale without notice to purchaser — Forfeiture.*

§ 6. Any person having so conveyed any personal property who shall, during the existence of the title or lien created by such instrument, sell the same or any part thereof to another person for a valuable consideration, without informing him of the existence of such conveyance, shall forfeit and pay to the purchaser twice the value of the property so sold, which sum may be recovered by such purchaser, in an action of debt, in any court of competent jurisdiction, or before a justice of the peace, if within his jurisdiction.

Paragraph 7583. *Release on margin of record.*

§ 8. Every mortgagee of real or personal property, his assignee of record, or other legal representative, having received full satisfaction and payment of all such sum or sums of money as are really due to him from the mortgagor, and every trustee, or his successor in trust, in a deed of trust in the nature of a mortgage, the notes, bonds or other indebtedness secured thereby having been fully paid, shall, at the request of the mortgagor, or grantor, in a deed of trust in the nature of a mortgage, his heirs, legal representatives or assigns, enter a release or satisfaction upon the margin of the record of such mortgage or deed of trust in the recorder's office, which release or satisfaction shall be attested upon the margin of said record by the recorder of said county, and when so attested shall forever thereafter discharge and release the same, and shall bar all actions or suits brought or to be brought thereupon. All releases of mortgages and deeds of trust which have heretofore been made on the margin of record, in accordance with the provisions of this section, shall be held legal and valid, and shall have the same force and effect as if made under the provisions of this section as amended.

Paragraph 7584. *Release by deed.*

§ 9. A mortgage or trust deed of real or personal property may be released by an instrument in writing executed by the mortgagee, trustee or his executor, administrator, heirs or assignee of record, and such instrument may be acknowledged or proved in the same manner as deeds for the conveyance of land.

Paragraph 7585. *Failure to release — Penalty.*

§ 10. If any mortgagee or trustee, in a deed in the nature of a mortgage, of real or personal property, or his executor or

administrator, heirs or assigns, knowing the same to [be] paid, shall not, within one month after the payment of the debt secured by such mortgage or trust deed, and request and tender of his reasonable charges, release the same, he shall, for every such offense, forfeit and pay to the party aggrieved the sum of $50, to be recovered in an action of debt before a justice of the peace.

Paragraph 7586. *Sale by sheriff.*

§ 11. It shall be lawful for the mortgagor of real estate or personal property to insert in his mortgage a clause authorizing the sheriff of the county in which the property, or some part thereof, is situated, to execute the power of sale therein granted to the mortgagee or his assigns or legal representatives, in which case the sheriff, at the time of such sale, of such county may advertise and sell the mortgaged premises pursuant to such power, and may execute all proper conveyances of the property so sold, in the name of and as the attorney in fact of the mortgagor; and at any sale made as aforesaid, the mortgagee, his assigns or legal representatives, may fairly and in good faith purchase the property, or any part thereof.

Paragraph 7600. *Household effects — Foreclosure in court required.*

§ 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly: That no chattel mortgage on the necessary household goods, wearing apparel or mechanic's tools of any person or family shall be foreclosed except in a court of record. No such household goods, wearing apparel or mechanic's tools covered by a chattel mortgage shall be seized or taken out of the possession of the mortgagor before foreclosure, except by a sheriff and then only after the mortgagee or his agent shall present an affidavit to a judge of any court of record, setting forth that the mortgage is due or that he is in danger of losing his security, giving the facts upon which he relies, and shall obtain an order from such judge directing such sheriff to seize such household goods, wearing apparel or mechanic's tools, and hold them subject to the order of court: Provided, that nothing herein shall apply to the sale of furniture by regular dealers on the so-called instalment plan: Provided, this Act shall not apply to the foreclosure of chattel mortgages executed prior to the time this Act shall take effect.

Paragraph 7601. *Household effects — Husband and wife to join in mortgage.*

§ 2. No chattel mortgages executed by a married man or married woman on household goods shall be valid unless joined in by the husband or wife as the case may be.

Paragraph 7602. *Notes secured by chattel mortgages so to state upon their faces — Defenses.*

§ 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly: That all notes secured by chattel mortgages shall state upon their face that they are so secured, and when assigned by the payee therein named, shall be subject to all defenses existing between the payee and the payor of said notes the same as if said notes were held by the payee therein named, and any chattel mortgage securing notes which do not state upon their face the fact of such security shall be absolutely void.

Paragraph 7603. *Sales under power contained in chattel mortgages.*

§ 2. That all sales of personal property under the power of sale contained in any chattel mortgage, shall be made in the county where the mortgagor resides, or where the property is situated when mortgaged. If there are more than one mortgagor, then in the county where the mortgagor in possession of the property resides at the time of taking possession by the mortgagee, and in every case where the mortgagor can be found or his or her post office address can be ascertained, notice of the time and place of said sale shall be given to one or more of the mortgagors three days prior to said sale and by posting a copy of said notice at the place where said goods secured by said mortgage are located at least three days prior to said sale, and upon making the said sale the mortgagee shall make out a statement showing the items of personal property sold, the names of each purchaser and the amount for which each article sold, and also an itemized statement of the necessary reasonable expenses incurred in taking, keeping and selling said property, and shall deliver the same to the mortgagor or some one of them in person or by mail, and if he fails so to do within ten days after said sale, the owner of said property may sue for and recover one-third of the value of the property so sold, from the mortgagee or person making said sale as assignee of said mortgage: Provided, that nothing in this Act shall apply to the sale of furniture by regular dealers on the so-called installment plan: Provided, also, that no sale made as hereinabove provided

shall be valid as against the creditors of the mortgagor, unless such mortgage shall be recorded at least five days prior to the taking of possession of the goods and chattels in said mortgage described, and any such sale made within five days of the recording of said mortgage shall be fraudulent and void as against the creditors of the mortgagor. (As amended by Laws 1915, p. 530.)

RAILROAD EQUIPMENT.

Jones & Addington's Annotated Statutes 1912.

§ 8799. *Vendor's lien on rolling-stock invalid except upon conditions.*— § 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly: That whenever any railroad or street-car equipment or rolling-stock shall hereafter be sold, leased or loaned on the condition that the title to the same, notwithstanding the possession and use of the same by the vendee, lessee or bailee, shall remain in the vendor, lessor or bailor, until the terms of the contract as to the payment of the instalments, amounts or rentals payable or the performance of other obligations thereunder, shall have been fully complied with, but also providing that title thereto shall pass to the vendee, lessee or bailee on full performance of said terms, such contract shall be invalid as to any subsequent judgment creditor or any subsequent purchaser for a valuable consideration without notice, unless

To be in writing — acknowledged. First — The same shall be evidenced by writing, duly acknowledged by the vendee, lessee or bailee before some person authorized by law to take acknowledgments of deeds and in the form proper for acknowledgments of deeds.

Record made or copy filed with Secretary of State. Second — Such writing shall be recorded, or a copy thereof filed, in the office of the Secretary of State, who shall be entitled to receive one dollar for each such copy filed by him.

Rolling-stock shall be marked. Third — Each locomotive or car so sold, leased or loaned shall have the name of the vendor, lessor or bailor plainly marked upon both sides thereof, followed by the word "owner," "lessor," "vendor" or "bailor," as the case may be.

§ 8800. *Prior contracts.*— § 2. This Act shall not be held to apply to or invalidate any contract heretofore made of the character described in the first section, but the same shall be and remain valid if recorded according to the provisions of this Act within ninety days from the time this Act takes effect.

CRIMINAL PROVISIONS.

Jones & Addington's Annotated Statutes 1912.

Paragraph 7582. *Sale without consent of mortgagee — Punishment.*

§ 7. Any person having so conveyed any personal property who shall, during the existence of such title or lien, sell, transfer, conceal, take, drive or carry away, or in any manner dispose of such property or any part thereof, or cause or suffer the same to be done without the written consent of the holder of such incumbrance, shall be guilty of a misdemeanor, and on conviction may be fined in a sum not exceeding twice the value of the property so sold or disposed of, or confined in the county jail not exceeding one year, or both, at the discretion of the court.

INDIANA.

CHATTEL MORTGAGES.

Barnes's Annotated Statutes 1914.

§ 7472. *Chattel mortgages — Recording.*— No assignment of goods by way of mortgage shall be valid against any other person than the parties thereto, where such goods are not delivered to the mortgagee or assignee and retained by him, unless such assignment or mortgage shall be acknowledged as provided in case of deeds of conveyance, and recorded in the recorder's office of the county where the mortgagor resides, if he resides in this state, and if not a resident of the state, then in the county where said property is situated, within ten days after the execution thereof.

§ 8636. *Mortgage of household goods — Sale.*— That no mortgage of household goods which may be executed after this act shall take effect, shall authorize the mortgagee to sell such mortgaged property; and any provision in any such mortgage giving the mortgagee the power of sale, shall be void. But every sale of household goods to satisfy a mortgage thereon shall be under a judicial proceeding, in which such mortgage shall be foreclosed, in the circuit or superior court.

§ 8637. *Possession and title of goods.*— The mortgagee of household goods shall not be entitled to the possession of the mortgaged property unless the mortgage specially provides that the mortgagee shall have possession of the mortgaged property from the time the mortgage is executed until sale, as provided in

this act, and the mortgagee takes actual possession of such property when the mortgage is executed, and holds it continuously until sale. In all other cases the possession of the mortgaged property shall remain in the mortgagor until he is divested of his title by sale, as provided in section one (1) [8636] of this act.

§ 8638. *Receipt for payments.*— It shall be the duty of the holder of any mortgage on household goods or the agent of such holder or mortgagee whose duty it is to receive money on such mortgage, when any money, check or anything taken in payment on such mortgage or interest due thereon is received by them from the mortgagor, or from any person acting for the mortgagor, to execute a receipt to the mortgagor, which receipt shall be dated and signed by the mortgagee or his agent, and shall state the date and the amount of the loan secured by such mortgage, the amount of money actually paid to the mortgagor on such loan, the amount of money charged by the mortgagee or his agent for services and expenses in connection with said loan, the rate of interest, the amount of the payment received and how applied, and the amount yet unpaid on said loan, and when it will be due. If any such holder or mortgagee or the agent of such holder or mortgagee, whose duty it is to receive such payments, shall fail to execute and deliver such receipt to the mortgagor such mortgage shall be void.

§ 8277f. *Chattel mortgage, contents.*— Every chattel mortgage or other instrument taken by a petty money lender shall state fully the amount of such loan, the rate of interest thereon, the period or periods at or within which the same is to be repaid, the amount of money actually received by the borrower as a result of said loan, and the cost to the borrower. It shall be the duty of the holder of any mortgage on household goods or the agent of such holder or mortgagee whose duty it is to receive money on such mortgage, when any money, check or anything taken in payment on such mortgage or interest due thereon is received by them from the mortgagor, or from any person acting for the mortgagor, to execute a receipt to the mortgagor, which receipts shall be dated and signed by the mortgagee or his agent, and shall state the date and amount of the loan secured by such mortgage, the amount of money actually paid to the mortgagor on such loan, the amount of money charged by the mortgagee or his agent for services and expenses in connection with said loan, the rate of interest, the amount of the payment received and how applied, and the amount yet unpaid on said loan, and when it will be due. If any such

holder or mortgagee or the agent of such holder or mortgagee whose duty it is to receive such payments, shall fail to execute and deliver such receipt to the mortgagor, such mortgage shall be void.

RAILROAD EQUIPMENT.

Barnes's Annotated Statutes 1914.

§ 5526. *Sale of Rolling Stock — Vendor's lien.*— That in any written contract of or for the sale of railroad equipment or rolling stock, deliverable immediately or subsequently at stipulated periods, by the terms of which the purchase-money, in whole or in part, is to be paid in the future, it may be agreed that the title to the property so sold or contracted to be sold, shall not pass to or vest in the vendee until the purchase-money shall have been fully paid, or that the vendor shall have and retain a lien thereon for the unpaid purchase-money, notwithstanding delivery thereof to and possession by the vendee: *Provided,* That the terms of credit for the payment of the purchase-money shall not exceed fifteen years from the execution of the contract.

§ 5527. *Conditional sale.*— In any written contract for the leasing or renting of railroad equipment or rolling stock it shall be lawful to stipulate for a conditional sale thereof at the termination of such lease, and to stipulate that the rental received may, as paid or when paid in full, be applied and treated as purchase-money, and that the title to such property shall not vest in such lessee or vendee until the purchase-money shall have been paid in full, notwithstanding delivery to and possession by such lessee or vendee, subject, however, to the proviso contained in section 1 [5526] of this act.

§ 5528. *When valid.*— Every such contract specified in sections 1 and 2 [5526 and 5527] shall be good, valid and effectual, both in law and equity, against all purchasers and creditors: *Provided,* First, the same shall be acknowledged by the vendees or lessees before some officer authorized to take acknowledgments of deeds; second, such instrument shall be recorded within sixty (60) days after its execution in the office of the secretary of state in Indianapolis, Indiana, and when so recorded in the office of the secretary of state, shall be valid and binding so far as all property covered by the same is concerned, no matter in what part or portion of the state the same may be at any time; third, each locomotive engine or car so sold or contracted to be sold or leased as aforesaid, shall have the name of the vendor or lessor, or the assignee of such vendor or lessor plainly placed or marked on each

side thereof, or be otherwise marked so as to indicate the ownership thereof, and when the vendor is a citizen of Indiana then, in addition to the recording hereinbefore required, the vendor shall record in the county where the vendor lives.

§ 5529. *Prior contracts.*— This act shall not be held to apply to or invalidate any contract heretofore made of the character described in the first or second section, but the same shall be and remain valid, if already acknowledged and recorded as herein provided, or if acknowledged and recorded as herein provided within six months from the passage of this act.

§ 5530. *Acknowledgments.*— The acknowledgments of such contracts may be made in the form required as to conveyances of real estate.

§ 5700. *Sale, lien for purchase-money.*— That in any written contract of or for the sale of cars, or rolling stock and of electrical equipment to such street or interurban street railroad company, by the terms of which the purchase-money, in whole or in part, is to be paid in the future, it may be agreed that the title to the property so sold or contracted to be sold shall not pass to or vest in the vendee until the purchase-money shall have been fully paid, or that the vendor shall have and retain a lien thereon for the unpaid purchase-money, notwithstanding delivery thereof to and possession by the vendee.

§ 5701. *Conditional sale, title.*— In any written contract for the leasing or renting of cars, of rolling stock and of electrical equipment to any such street or interurban street railroad company it shall be lawful to stipulate for a conditional sale thereof at the termination of such lease, and to stipulate that the rental received may, as paid or when paid in full, be applied and treated as purchase money, and that the title to such property shall not vest in such lessee or vendee until the purchase money shall be paid in full, notwithstanding delivery to and possession by such lessee or vendee.

§ 5702. *Recording of contract.*— Every such contract specified in sections 3 and 4 [5700 and 5701] shall be good, valid and effectual, both in law and equity, against all purchasers and creditors: *Provided,* First, the same shall be acknowledged by the vendee or lessee before some officer authorized by law to take acknowledgments of deeds; second, such estimate shall be recorded in thirty days after such execution, in the miscellaneous record in the office of the recorder of the county in which such street railroad is located and operated.

CRIMINAL PROVISIONS.

Laws 1919, Chapter 201.

§ 1. *Be it enacted by the General Assembly of the State of Indiana,* That whoever purchases any personal property under a written conditional sale, or title reservation note or contract, wherein the legal title to the property agreed to be sold and purchased is reserved in the seller until the full purchase price therefor is paid and who thereafter, without the written consent of the owner of the legal title to the property described in said conditional sale or title reservation note or contract, removes any of the property so agreed to be purchased and sold out of the State of Indiana where it was situated at the time of the making of said contract or note, or secretes or converts the same, or any part thereof, to his own use or sells the same, or any part thereof, to any person without the written consent of the owner of the legal title to said property first had and obtained, shall, upon conviction, be fined not exceeding one hundred dollars ($100), to which may be added imprisonment in the county jail not exceeding thirty days.

IOWA.

CONDITIONAL SALES GENERALLY.

Compiled Code 1919.

§ 6317. *Conditional sales.*—No sale, contract or lease, wherein the transfer of title or ownership of personal property is made to depend upon any condition, shall be valid against any creditor or purchaser of the vendee or lessee in actual possession obtained in pursuance thereof, without notice, unless the same be in writing, executed by the vendor and vendee, or by the lessor and lessee, acknowledged by the vendor or vendee, or by the lessor and lessee, and recorded or filed and deposited the same as chattel mortgages.

§ 6318. *Sales or mortgages—recording.*—No sale or mortgage of personal property, where the vendor or mortgagor retains actual possession thereof, is valid against existing creditors or subsequent purchasers, without notice, unless a written instrument conveying the same is executed, acknowledged like conveyances of real estate, and such instrument, or a true copy thereof, is duly recorded or filed and deposited with the recorder of the county where the property shall then be situated, or if the mort-

gagor be a resident of this state, then of the county where the holder of the property resides. No incumbrance of personal property which may be held exempt from execution by the head of a family, if a resident of this state, under the provisions of law, shall be of any validity as to such exempt property only, unless the same be by written instrument, and unless the husband and wife, if both be living, concur in and sign the same joint instrument. But incumbrances on the property sold, given to secure the purchase price, need only be signed and acknowledged by the purchaser.

§ 6319. *Filing equivalent of recording.*— Upon receipt of any such instrument, the recorder shall indorse thereon the time of receiving it, and shall file the same in his office for the inspection of all persons, and such filing shall have the same force and effect as if recorded at length; upon request of person presenting instrument for filing, the county recorder shall issue a receipt therefor, and such receipt shall describe instrument as to grantor, grantee, date consideration and date filed.

§ 6320. *Void after five years — extension.*— Every mortgage so filed shall be void as against the creditors of the person making the same, or as against subsequent purchasers or mortgagees in good faith, after the expiration of five years after the maturity of the debt thereby secured, unless an extension agreement, duly executed by the mortgagor shall be filed with the instrument to which it relates, and such extension agreement shall operate to continue the lien in the same manner as the original instrument.

§ 6321. *Copy furnished on request.*— A duplicate or copy of such mortgage, bill of sale, or other instrument filed under the provision of this chapter, shall be supplied by the county recorder upon request of any party in interest, and the payment of fees therefor, as hereinafter stipulated. Such duplicate or copy shall be duly certified by the county recorder and may be filed in other counties of the state in the same manner as herein provided.

§ 6322. *Copy receivable in evidence.*— A copy of such original instrument, duly certified by the county recorder in whose office the same shall have been filed, shall be received in evidence in all suits or actions to which it may be applicable; and if in any suit or action, the due execution of such instrument or its genuineness be questioned in such manner as to render the production of the original instrument desirable or necessary, then the same may be produced by the recorder of the county in obedience to a proper judicial process or court order.

§ 6323. *Recorder to keep index book.*— The county recorder shall keep an index book in which shall be entered a list of mortgages of personal property, or extensions thereof, bills of sale, and other instruments affecting title to or incumbrances of personal property, which may be filed under this chapter. Such book shall be ruled into separate columns with appropriate heads, and shall set out:

1. The time of reception.
2. The name of mortgagor.
3. The name of mortgagee.
4. The date of instrument.
5. The amount secured.
6. When due.
7. The nature of the property mortgaged.
8. Where located.
9. Extension.
10. When released.
11. Remarks.

The proper entry shall be made under each of such heads. Under the head of " property mortgaged," it will be sufficient to enter a general description of the kind or nature of the property.

§ 6324. *How released.*— Any mortgage or pledge of personal property may be released of record, by filing with the original instrument, a duly executed satisfaction piece or release of mortgage; or by the mortgagee or his authorized agent indorsing a satisfaction of said mortgage on the index book under the head of " remarks " in the same manner as mortgages are now released by marginal satisfaction, and when so released on index book, the recorder shall enter a memorandum thereof on the original instrument.

§ 6325. *Original returned to maker when satisfied.*— When any chattel mortgage or other instrument of writing or indebtedness which may have been filed as herein provided shall have been satisfied, it shall be the duty of the recorder, after making a proper entry of such satisfaction in the index book or record where the original instrument is recorded, to return the original instrument, with any extension, or release, thereto attached, to the mortgagor or person executing the same, upon request therefor.

§ 6326. *Originals destroyed after five years.*— In case such instrument, with the extension or release thereof, if any, be not returned as hereinbefore provided within five years from the

maturity thereof, or the maturity of any extension thereof, the recorder shall destroy such chattel mortgages with the extension or releases thereto attached, or other instruments or writing relating thereto, by burning the same in the presence of the board of county supervisors, or a committee appointed by the board of supervisors from their own number, to superintend the same, and when so destroyed the date shall be entered on the index record under "remarks."

§ 6327. *Fees.*— The fees to be collected by the county recorder under this chapter shall be as follows: For filing any mortgage, bill of sale, extension agreement, release of mortgage or other instrument affecting the title to or incumbrance of personal property, twenty-five cents each. For certified copies of such instruments, fifty cents for the first four hundred words and ten cents for each one hundred additional words or fraction thereof.

§ 6328. *Index.*— The recorder must keep an index book for instruments of the above description, having the pages thereof ruled so as to show in parallel columns, in the manner hereinafter provided in case of deeds for real property:

1. Each mortgagor or vendor.
2. Each mortgagee or vendee.
3. The date of filing the instrument.
4. The date of the instrument.
5. Its nature.
6. The page and book where the record is to be found.

§ 6329. *Time of filing noted.*— When any written instrument of the character above contemplated is filed for record, the recorder shall note thereon the day and hour of filing the same, and forthwith enter in his index book all the particulars required in the preceding section, except the sixth; and from the time of said entry the sale or mortgage shall be deemed complete as to third persons, and have the same effect as though it had been accompanied by the actual delivery of the property sold or mortgaged.

§ 6330. *Transfers by person acting in representative capacity.*— In indexing transfers of personal property made by an administrator, executor, guardian, referee, receiver, sheriff, commissioner or other person acting in a representative capacity, the recorder shall enter upon such index book the name and capacity of each person executing such instrument, and the owner of the property, if disclosed therein

§ 6331. *Recording.*— The recorder shall, as soon as practicable, record such instrument, and enter in his index book in its proper place the page and book where the record may be found.

§ 6332. *Mortgagee entitled to possession.*— In the absence of stipulations in the mortgage, the mortgagee of personal property is entitled to the possession thereof, but the title shall remain in the mortgagor until divested by sale as provided by law.

Railroad Equipment.

Compiled Code 1919.

§ 5071. *Conditional sale or lease of equipment or rolling stock.*— In any contract for the sale of railroad or street railway equipment or rolling stock or power house, electric or other equipment of street or interurban railways or of electric light and power companies or of steam heating companies, such equipment including engines, boilers, generators, switchboards, transformers, motors and other machinery and appliances, it may be agreed that the title thereto, although possession thereof be delivered immediately or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money. In any contract for the leasing or hiring of such property, it may be stipulated for a conditional sale thereof at the termination of such contract, and that the rentals or amounts to be received under such contract may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price shall have been paid in full, and until the terms of the contract shall have been fully performed, notwithstanding delivery to the possession by such lessee or bailee; but no such contract shall be valid as against any subsequent judgment creditor, or subsequent bona fide purchaser for value without notice, unless:

1. The same shall be evidenced by an instrument executed by the parties and acknowledged by the vendee, or lessee, or bailee, as the case may be, in the same manner as deeds are acknowledged or proved.

2. Such instrument shall be filed for record in the office of the secretary of state.

3. Each locomotive engine, stationary engine, boiler, switchboard, transformer, motor, other piece of machinery or appliance or car sold, leased or hired as aforesaid shall have the name of the vendor,

lessor or bailor plainly marked on each side thereof, followed by the word " owner ", " lessor " or " bailor ", as the case may be.

§ 5072. *Recording.*— The contracts herein authorized shall be recorded by the secretary of state in a book of records to be kept for that purpose, and, on payment in full of the purchase money and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect may be made by the vendor, lessor or bailor, or his or its assignee, which declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument, to be acknowledged by the vendor, lessor or bailor, or his or its assignee, and recorded as aforesaid. For such services the secretary of state shall be entitled to a fee of ten cents per hundred words for recording each of the contracts and each of said declarations, but in no case shall the fee be less than one dollar and a fee of one dollar for noting such declaration on the margin of the record.

CRIMINAL PROVISIONS.

Compiled Code 1919.

§ 8669. *Embezzlement of mortgaged property — punishment.*— If any mortgagor of personal property or purchaser under a conditional bill of sale, while the mortgage or conditional bill of sale upon it remains unsatisfied, wilfully and with intent to defraud, destroys, conceals, sells, or in any manner disposes of the property covered by such mortgage or conditional bill of sale without the written consent of the then holder of such mortgage or conditional bill of sale, he shall be guilty of larceny and punished accordingly.

KANSAS.

CONDITIONAL SALES GENERALLY.

General Statutes 1915.

§ 6508. *Sale notes, etc., void against innocent purchasers or creditors of vendee unless original instrument or copy recorded in county where property shall be kept; remain in effect until amount paid without renewal; conditional verbal sale, etc., void as to creditors, etc.*— That any and all instruments in writing or promissory notes now in existence or hereafter executed evidencing the conditional sale of personal property, and that retains the title to the same in the vendor until the purchase price is paid in full,

shall be void as against innocent purchasers, or the creditors of the vendee, unless the original instrument, or a true copy thereof, shall have been deposited in the office of the register of deeds of the county wherein the property shall be kept, and shall be entered upon the records the same as a chattel mortgage, and when so deposited shall remain in full force and effect until the amount of the same is fully paid, without the renewal of the same by the vendor; and any conditional verbal sale of personal property reserving to the vendor any title in the property sold shall be void as to creditors and innocent purchasers for value. (Laws 1889, ch. 255, as amended by Laws 1901, ch. 396.)

§ 6509. *Vendor shall release such notes, etc., when paid, under same terms, conditions and penalties as chattel mortgages.*— When the amount of the note or evidence of indebtedness referred to in section 1 shall have been fully paid by the vendee, the vendor shall release the same under the same terms, conditions and penalties as are now required by the law relating to chattel mortgages. (Laws 1901, ch. 396.)

§ 6510. *Repeal of L.* 1889, *ch.* 255.— An act entitled "An Act to regulate the recording of title notes or evidences of conditional sales," approved March 1, 1889, is hereby repealed. (Laws 1901, ch. 396.)

RAILROAD EQUIPMENT.

General Statutes 1915.

§ 8714. *Sale of railroad or street railway equipment or rolling stock; retention of title by seller until purchase price fully paid; contract for leasing or hiring containing stipulation for conditional sale; contract not valid against subsequent judgment creditor or bona fide purchaser, etc., unless evidenced by instrument executed and acknowledged, filed with the secretary of state for record and each engine and car marked.*— In any contract for the sale of railroad or street railway equipment or rolling stock it shall be lawful to agree that the title to the property sold or contracted to be sold, although possession thereof may be delivered immediately or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money. And in any contract for the leasing or hiring of such property it shall be lawful to stipulate for a conditional sale thereof at the termination of such contract, and that the rentals or amounts to be received under such contract may, as paid, be applied and treated as purchase money, and that the title to the property shall

not vest in the lessee or bailee until the purchase price shall have been paid in full, and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee: *Provided,* That no such contract shall be valid as against any subsequent judgment creditor, or any subsequent bona fide purchaser for value and without notice, unless: (1) the same shall be evidenced by an instrument executed by the parties and duly acknowledged by the vendee or lessee or bailee, as the case may be, or duly proved before some person authorized by law to take acknowledgment of deeds, and in the same manner as deeds are acknowledged or proved; (2) such instrument shall be filed for record in office of the secretary of state of this commonwealth; (3) each locomotive engine or car so sold, leased or hired, or contracted to be sold, leased or hired as aforesaid, shall have the name of the vendor, lessor or bailor plainly marked on each side thereof, followed by the word "owner," or "lessor," or "bailor," as the case may be. (Laws 1895, ch. 196.)

§ 8715. *Recording of such contracts by secretary of state; declaration of receipt of payment and performance of conditions; recording of such declaration; fees of secretary of state.*— The contracts herein authorized shall be recorded by the secretary of state in a book of records to be kept for that purpose. And on payment in full of the purchase money, and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect may be made by the vendor, lessor or bailor, or his or its assignee, which declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument, to be acknowledged by the vendor, lessor or bailor, or his or its assignee, and recorded as aforesaid. And for such services the secretary of state shall be entitled to a fee of two dollars for recording each of said contracts and each of said declarations, and a fee of one dollar for noting such declaration on the margin of the record. (Laws 1895, ch. 196.)

§ 8716. *Act not to invalidate or affect prior contracts; prior contracts may be recorded upon compliance with act.*— This act shall not be held to invalidate or affect in any way any contract heretofore made of the kind referred to in the first section hereof, and any such contract heretofore made may, upon compliance with the provisions of this act, be recorded as herein provided. (Laws 1895, ch. 196.)

§ 8717. *Repeal of acts in conflict.*—All acts and parts of acts inconsistent with the provisions of the first section of this act are hereby repealed. (Laws 1895, ch. 196.)

CRIMINAL PROVISIONS.

General Statutes 1915.

§ 6513. *Injuring, destroying or concealing mortgaged property or selling or disposing of same without written consent of mortgagee, etc.; guilty of larceny; penalty when value of property or lien thereon is twenty dollars and under; penalty when value and lien are twenty dollars or over.*— That any mortgagor of personal property or any other person who shall injure, destroy or conceal any mortgaged property, or any part thereof, with intent to defraud the mortgagee, his executors, administrators, personal representatives, or assigns, or shall sell or dispose of the same without the written consent of the mortgagee or his executors, administrators, personal representatives or assigns, shall be deemed guilty of larceny, and on conviction thereof shall be punished as follows: For selling, injuring, destroying, concealing or disposing of such property of the value of twenty dollars and under, on which the mortgagee has a lien, or of the value of over twenty dollars, on which the mortgagee has a lien of not more than twenty dollars, such person shall be deemed guilty of petty larceny, and on conviction shall be punished by imprisonment in the county jail not exceeding one year, or by fine not exceeding one hundred dollars, or by both such fine and imprisonment; for selling, injuring, destroying, concealing or disposing of such property of the value of twenty dollars and over, on which the mortgagee has a lien to the amount of (over) twenty dollars, such person shall be deemed guilty of grand larceny, and on conviction shall be punished by confinement and hard labor not exceeding five years. (Laws 1901, ch. 105, as amended by Laws 1911, ch. 236.)

KENTUCKY.

CHATTEL MORTGAGES.

Carroll's Statutes 1915.

§ 495. *Instruments to be recorded in county where property situated — Deed must show source of title — Penalty.*—All deeds and mortgages and other instruments of writing which are required by law to be recorded to be effectual against purchasers without notice, or creditors, shall be recorded in the clerk's office of the court of the county in which the property conveyed, or the greater part thereof, shall be. But it shall be unlawful for any county clerk or deputy county clerk to admit to record in such

office any deed of conveyance of any interest in real estate equal to or greater than a life estate, unless such deed shall plainly specify and refer to the next immediate source from which the grantor or grantors therein derived title to the said real estate or the interest conveyed therein.

If such source of title be a deed or other recorded writing, then the deed offered for record shall refer to such former deed or writing, and give the office, book and page where recorded, and the date thereof, if dated. If the property or interest therein be obtained by inheritance or in any other way than by recorded instrument of writing, then the deed offered for record shall state clearly and accurately how and from whom the title thereto was obtained by the grantor or grantors.

And if the title to such property or interest conveyed be obtained from two or more sources, then the deed offered for record shall plainly specify and refer to each of said sources in the manner above set out, and shall show which part of said property, or interest therein, was obtained from each of said sources.

It shall be unlawful for any grantor to lodge for record, or for any county court clerk or deputy to receive and permit to be lodged for record, any deed that does not comply with the provisions of this section.

Any grantor who shall lodge for record, and any county court clerk or deputy county court clerk, who shall receive and permit to be lodged for record, any deed contrary to the provisions of this section shall be fined not less than twenty-five dollars nor more than fifty dollars for each offense. The clerk or deputy who actually receives and files such deed for record, shall be the one to incur the penalty of this section: PROVIDED, That nothing in this act shall be construed to make any clerk or deputy clerk liable to the fine imposed herein because of any erroneous or false reference in any such deed, nor because of the omission of a reference required by this act where it does not appear on the face of such deed that the title to the property or interest conveyed was obtained from more than one source; and this act shall not apply to deeds made by any court commissioner, sheriff or by any officer of court in pursuance of his duty as such officer, nor to any deed or instrument made and acknowledged before the passage of this act, nor shall anything in this act be construed to invalidate any deed lodged contrary to the provisions hereof.

All fines collected under this section shall go into the common school fund for this State.

§ 496. *Deeds and mortgages not valid against purchasers or creditors until recorded — Who are creditors.*— No deed or deed of trust or mortgage conveying a legal or equitable title to real estate or personal estate shall be valid against a purchaser for a valuable consideration, without notice thereof, or against creditors, until such deed or mortgage shall be acknowledged or proved according to law and lodged for record.

The word " creditors " as used herein shall include all creditors irrespective of whether or not they may have acquired a lien by legal or equitable proceedings or by voluntary conveyance. (As amended by Laws 1916, ch. 41.)

RAILROAD EQUIPMENT.

Carroll's Statutes 1915.

§ 2496. *Rolling stock of railroads — Lien of person furnishing — Agreement to be recorded.*— In any written contract of or for the sale of railroad equipment or rolling stock, deliverable immediately or subsequently, at stipulated periods, by the terms of which the purchase money, in whole or in part, is to be paid in the future, it may be agreed that the title to the property so sold, or contracted to be sold, shall not pass to or vest in the vendee, until the purchase money shall have been fully paid, or that the vendor shall have and retain a lien thereon for the unpaid purchase money, notwithstanding delivery thereof to the vendee; but the terms of credit for the payment of the purchase money shall not exceed twenty-five years from the execution of the contract. Such agreement shall not be valid as against subsequent purchasers for value without notice, or against creditors until such contract shall have been acknowledged or proved as deeds of trust and mortgages are required to be and lodged for record in the office of the Secretary of State, where they shall be recorded.

§ 2497. *Contract may stipulate for conditional sale and renting.*— In any written contract for the leasing or renting of such property, it shall be lawful to stipulate for a conditional sale thereof at the termination of such lease, and to stipulate that the rentals received may, as paid, or when paid in full, be applied and treated as purchase money, and that the title to such property shall not vest in such lessee or vendee, notwithstanding delivery to him, until the purchase money shall have been paid in full, subject, however, to the provisos contained in section 2495.

§ 2498. *Release of lien — Assignment of obligations.*— On

payment in full of the purchase money, and the performance of the terms and conditions stipulated in any contract authorized herein, a declaration in writing to that effect shall be made by the vendor; or if he shall have assigned or transferred the notes or bonds for the purchase money, it shall be made by such assignee only. Such declaration may be made by a writing on the margin of the record of the contract, attested by the Secretary of State, or it may be made by a separate instrument, to be acknowledged and recorded as the original contract is required to be. The assignment of the purchase money, notes or bonds, may be noted of record, as in cases of assignment of lien notes in deeds.

§ 2499. *Words to be printed on engine and cars.*— On each locomotive or car that may be sold or leased, in accordance with the provisions of this article, the name of the vendor or lessor shall be distinctly marked, followed by the word " owner " or " lessor ", as the case may be.

CRIMINAL PROVISIONS.

Carroll's Statutes 1915.

§ 1358. *Sale or concealment of personal property subject to mortgage or statutory lien.*— If any person shall fraudulently sell, conceal or dispose of any personal property on which there is at the time, a mortgage of record or any lien given under the statute laws of the Commonwealth of Kentucky, with intent to prevent the enforcement of the lien thereon, or the foreclosure of the mortgage or lien and sale of the property, he shall be fined not less than ten nor more than one thousand dollars or imprisoned not less than fifteen nor more than ninety days, or both so fined and imprisoned. (As amended by Laws 1918, ch. 134.)

§ 1358b. *Personal property, sale of forbidden without consent of title holder — Penalty.*— It shall be unlawful for any person having the possession of personal property, the title to which is vested in another, to sell or otherwise dispose of such property without the written consent of the person in whom the title is vested. Any person guilty of such offense shall be fined not less than one hundred dollars, nor more than five hundred dollars for each offense. Any person having notice of the manner in which such property is held, who shall purchase it of the person having the possession thereof, or of any other person, without the written consent of the person in whom the title is vested, shall be fined not less than one hundred dollars, nor more than one thousand dollars for each offense.

LOUISIANA.

CHATTEL MORTGAGES.

Laws 1918, Act No. 198.

§ 1. Be it enacted by the General Assembly of the State of Louisiana that from and after the passage of this Act it shall be lawful to mortgage lumber, logs, staves, crossties, bricks, live stock, all kinds of vehicles and the equipment, accessories and parts thereunto belonging, all kinds of machinery, oil well casing, line pipes, drilling rigs, tanks, tank cars, iron and steel safes, adding machines, cash registers, musical instruments, store fixtures and shelving, buildings on leased ground, farming implements, tractors, slips, barges, dry docks or any kind of water crafts or materials to be used in the construction thereof and all other movable property not specifically named herein, for debts or for money loaned or to secure future advances, or to guarantee the performance of any other contractual obligations, by complying with the provisions of this act.

§ 2. Be it further enacted, etc., that every such mortgage of property mentioned in Section 1 shall be in writing, setting out a full description of said property to be mortgaged, so that same may be identified, and also stating definitely the time when the obligation shall mature. In order to affect third persons without notice, said instrument must be passed by notarial act and the original or a certified copy thereof shall be recorded in the office of the Recorder of Mortgages in the parish where the property shall then be situated, and also in the parish in which the mortgagor is a resident.

§ 3. Be it further enacted, etc., that upon the receipt of such instrument, the Recorder shall note thereon the date, hour and minute of receiving same; and he shall record it in his office. It shall be further the duty of the Recorder to cause to be endorsed on the said instrument his certificate of recordation. For these services, he shall receive fifty cents.

§ 4. Be it further enacted, etc., that every mortgage shall be a lien on the property mortgaged from the time same is filed for recordation, which filing shall be notice to all parties of the existence of such mortgage, and said lien shall be superior in rank to any privilege or lien arising subsequently thereto.

§ 5. Be it further enacted, etc., that the mortgagor shall not move the property mortgaged from the parish where said

mortgage is given without the written consent of the mortgagee designating the parish or parishes to which same may be taken, and to preserve such mortgage against third persons in such cases, it shall be the duty of the mortgagee to have a copy thereof recorded in the parish or parishes to which said removal is permitted. It shall be unlawful for a resident of any parish to purchase the movable property described in Section 1 from any nonresident of such parish, without first obtaining an affidavit from the nonresident that there is no mortgage on the property, nor any money due for the purchase price thereof; and the purchaser who shall buy the above referred to movable property, without having obtained the said affidavit, shall be liable to the creditor for the debt secured by the property.

§ 6. Be it further enacted, etc., that for the purpose of this Act, it shall be sufficient for the Recorder of each Parish to keep a book to be known as the Chattel Mortgage Book, which shall be ruled off into columns, with headings as follows: " Time of Filing for Recordation "; " Name of Mortgagor "; " Name of Mortgagee "; " Date of Instrument "; "Amount Secured "; " When Due "; " Property Mortgaged "; " Remarks ".

Under the head of " Property Mortgaged ", it shall be sufficient to enter a general description of the property and the particular place where located.

In the event that the mortgage instrument also includes an act of sale whereby the vendor reserves a vendor's lien, it shall be the duty of the recorder to so segregate the mortgage from the vendor's lien so as to record the instrument merely as a mortgage, for which he shall make no additional charge, unless the vendor shall wish to have his vendor's lien also recorded, in which event the Recorder shall be entitled to make the charge now fixed by law.

An index to the Chattel Mortgage Book shall be kept in the same manner as required for other records.

§ 7. Be it further enacted, etc., that when any mortgage under this Act shall have been fully paid off or satisfied, the mortgagee or beneficiary, his assignee or personal representative, or any holder or owner of any notes that may be secured by such mortgage, may enter satisfaction, or cause satisfaction thereof to be entered of record, under the head of " Remarks "; provided, however, that mortgages created under this Act may also be cancelled and released in the manner now provided for by law for the cancellation of mortgages on immovable property. The said

Recorder of Mortgages shall receive for the cancellation of mortgages under this Act the sum of twenty-five cents for each cancellation.

§ 8. Be it further enacted, etc., that any owner or other person who shall sell or dispose of property mortgaged under this Act with fraudulent intent to defeat said mortgage, or shall remove same from where so mortgaged to another parish, without complying with the provisions of this Act, or shall remove same out of said parish without the written consent of said mortgagee, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in a sum not exceeding Five Hundred Dollars ($500.00), or be imprisoned not exceeding twelve months, or both, at the discretion of the Court. If any mortgagor of movable property or any other persons shall injure, destroy, or conceal any property mortgaged under this Act, or part thereof, with intent to defraud the mortgagee, his executor, administrator, personal representative, successor, or assigns, he shall be deemed guilty of a violation of this Act, and upon conviction thereof shall be punished in the manner above provided. If any mortgagee named in a chattel mortgage not being at the time the owner and holder of the deed secured, shall execute a release or satisfaction of said chattel mortgage, he shall be deemed guilty of a violation of this Act, and upon conviction he shall be punished as above provided. If any person shall give or attempt to give a mortgage on the movable property described in Section 1 hereof, without being the lawful owner, or without having the proper authority to represent the lawful owner of the above referred to property, or if any person shall give a mortgage under this Act without fully disclosing and causing to be written into the Act of mortgage the description and amount of any existing liens, privileges or encumbrances on the property mortgaged, he shall be deemed guilty of a violation of this Act, and upon conviction thereof he shall be punished as above provided; and in case the mortgagor shall be guilty of any of the fraudulent practices denounced by this Section, the mortgage shall forthwith mature and become due and payable, and the mortgagee shall be entitled to enforce the collection of the debt secured by the mortgage immediately in the manner hereinafter provided.

§ 9. Be it further enacted, etc., that mortgages created under this Act shall be enforced " via ordinaria " or " via executive."

§ 10. Be it further enacted, etc., that should any provisions of this Act be declared by the Judicial Department of the Gov-

ernment to be unconstitutional, the provisions of the act not unconstitutional shall remain in full force and effect.

§ 11. Be it further enacted, etc., that nothing in the provisions of this Act shall in any way affect the validity of or the method of procedure in enforcing chattel mortgages executed prior to the passage of this Act.

§ 12. Be it further enacted, etc., that all laws or parts of laws in conflict herewith are hereby repealed and especially Act No. 18 of the Extraordinary Session of the General Assembly for the year 1915, Act 155 of 1914, Act 65 of 1912 and Act 151 of 1916; provided no offense heretofore committed against the laws so repealed shall be condoned by this repeal, or the prosecution thereof in any wise abated or affected.

Railroad Equipment.

Laws 1894, Act No. 111.

§ 1. Be it enacted by the General Assembly of the State of Louisiana, That in any contract for the sale of railroad or street railway equipment or rolling stock, it shall be lawful to agree that the title to the property sold or contracted to be sold, although possession thereof may be delivered immediately or at any times subsequently, shall not vest in the purchaser until the price be fully paid; or that the seller shall have and retain against any and all persons a lien and privilege thereon for the unpaid purchase money. And in any contract for the leasing or hiring of such property, it shall be lawful to stipulate for conditional sale thereof after termination of such contract; and that the rentals, or amount to be received under such contracts may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price shall have been paid in full, and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such vendee, lessee or bailee; provided that no such contract shall be valid against any subsequent judgment creditor, or any subsequent bona fide purchaser for value and without notice, unless;

1. The same shall be evidenced by an instrument executed by the parties and duly acknowledged by the vendee, lessee or bailee, as the case may be, or duly proved before some person authorized by law to take acknowledgment of deeds, and in the same manner as deeds are acknowledged or proved.

2. Such instrument shall be filed for record in the office of the recorder of the parish of East Baton Rouge, in a book to be kept by him for the purpose, to be called Railroad Conditional Sales Book, if the vendee, lessee or bailee therein is a railroad or railway company whose line is situated in more than one parish; and if such vendee, lessee or bailee is a railroad or railway company whose line is situated in only one parish, then in the office of the recorder of the parish wherein such railroad or railway is situated, in the ordinary mortgage book.

3. Each locomotive engine or cars so sold, leased or hired, or contracted to be sold, leased or hired, as aforesaid, shall have the name of the vendor, lessor, or bailor plainly marked on each side thereof, followed by the word owner or lessor, or bailor, as the case may be.

§ 2. Be it further enacted, etc., That this act shall not be held to invalidate or effect in any way any contract heretofore made of the kind referred to in the first section hereof, and any such contract heretofore made may upon compliance with the provisions of this act be recorded as herein provided.

§ 3. Be it further enacted, etc., That in case of a failure on the part of any vendee, lessee or bailee to make the payments, or perform the covenants in any such contract contained, it shall be lawful for the lessor, vendor or bailor, or his or its assignee to retake the property in accordance with the contract; and in case of such retaking the vendee, lessee or bailee or his or its assignee shall have no right of redemption, and all payments made under such a contract shall be forfeited to the vendor, lessor, or bailor, or the party to whom they may have been made.

§ 4. Be it further enacted, etc., That on payment in full of the purchase money, and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect may be made by the vendor, lessor or bailor or his or its assignee, which declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument, to be acknowledged by the vendor, lessor, or bailor, or his or its assignees, and recorded as aforesaid.

§ 5. Be it further enacted, etc., That all laws or parts of laws in conflict herewith be and the same are hereby repealed.

Laws 1918, Act No. 119.

§ 1. Be it enacted by the General Assembly of the State of Louisiana; That in any contract for the sale of a tank car or tank

cars it shall be lawful to agree that the title to the property sold or contracted to be sold, shall not vest in the purchaser until the purchase price shall have been fully paid and until the terms of the contract shall have been fully performed, notwithstanding that such purchaser may have been given possession or control of such property. And in any contract for the leasing and hiring of such property it shall be lawful to stipulate for a conditional sale thereof, to take effect and to become an absolute and unconditional sale after the termination of such contract. And in such contracts it shall be lawful to stipulate and agree that the rentals or amounts to be received under such contracts may be paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price shall have been paid in full and until the terms of the contracts shall have been fully performed, notwithstanding that such a lessee or bailee may have been given possession or control of such property.

§ 2. Be it further enacted, etc., That in case of a failure on the part of any vendee, lessee or bailee to make the payment or to perform the covenants in any such contract contained, it shall be lawful for the vendor, lessor or bailor, or his or its assignee to retake the property in accordance with the terms of the contract; and in case of such retaking, the vendee, lessee, or bailee or his or its assignee shall have no right of redemption and all payments under such contract shall be forfeited to the vendor, lessor or bailor, or to the party to whom they may have been made.

§ 3. Be it further enacted, etc., That all laws or parts of laws in conflict herewith be and the same are hereby repealed.

MAINE.

Conditional Sales Generally.

Revised Statutes 1916, Chapter 114.

§ 8. *Agreement that goods sold and delivered shall remain the property of the seller; record.*— No agreement that personal property bargained and delivered to another, shall remain the property of the seller till paid for, is valid unless the same is in writing and signed by the person to be bound thereby. And when so made and signed, whether said agreement is, or is called a note, lease, conditional sale, purchase on instalments, or by any other name, and in whatever form it may be, it shall not be valid, except

as between the original parties thereto, unless it is recorded in the office of the clerk of the city, town or plantation organized for any purpose, in which the purchaser resides at the time of the purchase; but if any of the purchasers are not residents of the state, or reside in an unorganized place in the state, then in the registry of deeds in the county where the seller resides at the time of the sale. The fee for recording the same shall be the same as that for recording mortgages of personal property. All such property, whether said agreements are recorded or not, shall be subject to redemption and to trustee process as provided in section fifty of chapter ninety-one, but the title may be foreclosed in the same manner as is provided for mortgages of personal property.

RAILROAD EQUIPMENT.

Revised Statutes 1916, Chapter 57.

§ 88. *Contract for conditional sale of railroad equipment.*— In any contract for the sale of equipment or rolling-stock for a railroad of any kind, it shall be lawful to agree that the title to the property sold or contracted to be sold, although possession thereof may be delivered immediately, or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money. And in any contract for the leasing or hiring of such property, it shall be lawful to stipulate for a conditional sale thereof at the termination of such contract, and that the rentals or amounts to be received under such contract, may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price shall have been paid in full, and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee; provided, that no such contract shall be valid as against any subsequent judgment creditor, or any subsequent bona fide purchaser for value and without notice, unless:

I. The same shall be evidenced by an instrument executed by the parties and duly acknowledged by the vendee or lessee or bailee as the case may be, or duly proved, before some person authorized by law to take acknowledgment of deeds, and in the same manner as deeds are acknowledged or proved.

II. Such instrument shall be filed for record in the office of the secretary of state of this state.

III. Each locomotive engine, or car so sold, leased or hired, or contracted to be sold, leased or hired as aforesaid, shall have the name of the vendor, lessor or bailor plainly marked on each side thereof, followed by the word " owner " or " lessor " or " bailor," as the case may be.

§ 89. *Contracts and declarations shall be recorded by secretary of state.*— The contracts herein authorized shall be recorded by the secretary of state in a book of records to be kept for that purpose. And on payment in full of the purchase money, and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect may be made by the vendor, lessor or bailor, or his or its assignee, which declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument, to be acknowledged by the vendor, lessor or bailor, or his or its assignee, and recorded as aforesaid.

§ 90. *Provisions of c.* 114, *sec.* 8, *and c.* 96, *shall not apply to such contracts; property subject to trustee process.*— The provisions of section eight of chapter one hundred and fourteen shall not apply to any contract specified in section eighty-eight, nor shall any contract specified in said section be construed a mortgage or any instrument under chapter ninety-six, requiring foreclosure and entitling the holder of property thereunder to an equity of redemption, but any personal property held under any contract specified in section eighty-eight shall be subject to trustee process as provided in section fifty of chapter ninety-one.

§ 91. *Contracts made before April* 29, 1893, *not affected.*— The three preceding sections shall not be held to invalidate or affect in any way, any contract of the kind referred to in section eighty-eight, made before the twenty-ninth day of April, in the year eighteen hundred and ninety-three, and any such contract theretofore made may, upon compliance with the provisions hereof, be recorded as herein provided.

Criminal Provisions.

Revised Statutes 1916, Chapter 128.

§ 5. *Removal or concealment of mortgaged personal property, how punished — R. S. c.* 127, § 4.— Whoever with fraudulent intent to place mortgaged personal property, or property legally attached on original writ beyond the control of the mortgagee or the attaching officer, removes or conceals, or aids or abets in remov-

ing or concealing the same, and any mortgagor of such property, who assents to such removal or concealment, shall be punished by fine not exceeding one thousand dollars, or by imprisonment not exceeding one year. (As amended by Laws 1921, ch. 158.)

MARYLAND.

CONDITIONAL SALES GENERALLY.

Bagby's Annotated Code, Article 21.

§ 53A. Every note, sale or contract for the sale of goods and chattels, wherein the title thereto, or a lien thereon, is reserved until the same be paid in whole or in part, or the transfer of title is made to depend upon any condition therein expressed, and possession is to be delivered to the vendee, shall, in respect to such reservation and condition, be void as to third persons without notice until such note, sale or contract be in writing, signed by the vendee, and be recorded in the Clerk's Office of Baltimore City, or the Counties, as the case may be, where bills of sale are now recorded; and such recording shall be sufficient to give actual or constructive notice to third persons when a memorandum of the paper writing, setting forth the date thereof, the amount due thereon, when and how payable and a brief description of the goods and chattels therein mentioned shall have been recorded, but it shall not be necessary that said paper writing be acknowledged or an affidavit made to the consideration therein expressed as in the case of bills of sale. (Added by Laws 1916, ch. 355.)

Bagby's Annotated Code, Article 17.

§ 2A. It shall be the duty of the Courts of Baltimore City and the Counties, where bills of sale are recorded, to provide a well bound and suitable book, to be styled "Conditional Contracts of Sales Docket," in which all notes, sales or contracts for the sale of goods and chattels, wherein the title thereto, or a lien thereon, is reserved until the same be paid in whole or in part, or the transfer of title is made to depend upon any condition therein expressed, and possession is to be delivered to the vendee, is to be recorded; and such recording shall contain a brief description of the goods and chattels in such paper writing mentioned, the date thereof, the amount due thereon, when and how payable and the names of the vendor, vendee, payee, guarantor and witness, if any, or such names in plural if they so appear; and the said Clerk shall index the names of the parties to said paper writing and shall receive therefor a reasonable and just compensation but not more

for said work than is now provided by law for the recording of other conveyances which require the same amount of work. (Added by Laws 1916, ch. 327.)

Bagby's Annotated Code, Article 63.

§ 54. Whenever a motor vehicle or any part thereof is left by the owner thereof or by any other person with his authority, express or legally implied, in the custody of any corporation, firm or individual for storage, or for the purpose of having furnished for or on account of the same any accessories, or tires, the corporation, firm or individual in whose custody said automobile or part thereof is left for all or any of the purposes aforesaid, shall have a lien on said motor vehicle or part thereof for all charges so incurred, and may lawfully retain the same until said charges have been paid, or until said lien is extinguished or discharged as hereinafter provided. Said lien shall be superior to the rights of the holders of conditional sale contracts, bills of sale, chattel mortgages or other liens or claims of any kind which are not executed and recorded as required by law, but shall be subordinate to the rights of holders of such conditional sale contracts, bills of sale, chattel mortgages or liens or claims where the same have been executed and recorded as required by law. Surrender or delivery of any motor vehicle subject to the lien aforesaid shall operate as a waiver or extinguishment of the same as against third persons without notice thereof, but shall not operate as such waiver or extinguishment as against the owner, or as against third persons with notice.

In the case of a dispute as to the amount of the charge of such garage keeper or other custodian as aforesaid, such dispute shall be determined by appropriate legal proceedings, and the lien of such custodian shall continue until the final determination of such action, whereupon execution may issue and the property be sold under the same.

The remedies for enforcing the aforesaid lien herein provided shall not be taken to preclude any other remedies allowed by law for the enforcement of a lien against personal property, nor bar the right to recover so much of the custodian's claim as shall not be paid by the proceeds of the sale of the property. (Added by Laws 1918, ch. 403.)

RAILROAD EQUIPMENT.

Bagby's Annotated Code, Article 21.

§ 91. In all cases where any railroad equipment and rolling stock, or other personal property to be used in or about the opera-

tion of any railroad shall be sold to any person, firm or corporation, to be paid for in whole or in parts by instalments, or shall be leased, rented, hired or delivered on condition that the said shall be used by the person, firm or corporation purchasing, leasing, renting, hiring or receiving the same, the title to the same to remain in the vendor, lessor, renter, hirer or deliverer of the same until the agreed-upon price of such property shall have been paid, such condition in regard to the title so remaining in the vendor, lessor, renter, hirer or deliverer, notwithstanding delivery to and possession by the other party, until such payments are fully made, shall be valid for all intents and purposes as to subsequent purchasers in good faith, and creditors; provided, the term during which the rent or instalments are to be paid shall not exceed twenty years. Such contracts shall be in writing and shall be acknowledged and recorded as deeds in the county in which the said vendee or lessee has its principal office in this State.

CRIMINAL PROVISIONS.

Bagby's Annotated Code, Article 27.

§ 184. Any mortgagor of personal property in possession of the same, or any purchaser of personal property under a recorded or unrecorded, conditional, written contract, in possession of said property, or any execution debtor in possession of personal property levied on and taken in execution, who, in the case of mortgaged personal property, without the consent of the mortgagee or his assigns, first had and obtained in writing, or who, in the case of the purchaser of personal property under a recorded or unrecorded, conditional, written contract, without the consent first had and obtained in writing of the conditional vendor in said contract, or his assigns, or who, in the case of personal property levied on and taken in execution, without the consent of the execution creditor, his assigns or lawfully authorized agents, first had and obtained in writing, and with intent to defraud the mortgagee, or with intent to defraud the said vendor of personal property in a recorded or unrecorded, conditional, written contract, or his assigns, or with intent to defraud the execution creditor or his assigns, and defeat his or their lien under said execution, shall remove any of the personal property so mortgaged or purchased under said recorded or unrecorded, conditional, written contract, or levied on and taken in execution as aforesaid, as the case may be, beyond the limits of the city or county where it is located when

so mortgaged or purchased under said recorded or unrecorded, conditional, written contract, or levied on and taken in execution, or who, with intent as aforesaid, removes, secretes, hypothecates, destroys or sells the same shall be deemed guilty of a misdemeanor, and on indictment therefor and conviction thereof shall be imprisoned in the city or county jail not more than six months, or shall be fined not more than five hundred dollars, or both, in the discretion of the court; but nothing herein contained shall be construed to relieve the sheriff or other officer holding said execution from his responsibility to the execution creditor for the safe keeping of any personal property by him levied on and taken in execution as aforesaid. (As amended by Laws 1920, ch. 210.)

MASSACHUSETTS.

CONDITIONAL SALES GENERALLY.

General Laws 1920, Chapter 255.

§ 11. Except as otherwise provided in chapter one hundred and fifty-nine, if a contract for the sale of personal property is made on condition that the title thereto shall not pass until the purchase money has been fully paid and the vendor upon default takes from the vendee possession of the property, the vendee may, within fifteen days after such taking, redeem the property so taken by paying to the vendor the full amount then unpaid, with interest and all lawful charges and expenses due to the vendor.

§ 12. Such contracts for the sale of furniture or other household effects in the form of a lease or otherwise shall be in writing and a copy thereof shall be furnished to the vendee by the vendor at the time of such sale; and all payments made by or in behalf of the vendee and all charges in the nature of interest or otherwise, as they accrue, shall, if the vendee so requests, be indorsed by the vendor or his agent upon such copy. A failure of the vendor through negligence to comply with any of the provisions of this section shall suspend his rights under the contract while the failure continues. His refusal or wilful or fraudulent failure so to comply shall be a waiver by him of the condition of the sale.

§ 13. Thirty days at least before taking possession of said furniture or effects for default of the vendee, the vendor shall demand in writing of the vendee or other person in charge of said furniture or effects the balance then due, and shall furnish to said vendee or other person an itemized statement of the account showing the amount due thereon. If said vendee or other person can

by the exercise of reasonable care and diligence be found by the vendor, the fifteen days during which his right of redemption exists under section eleven shall not begin to run until said demand has been made, said statement furnished and said thirty days have expired. If seventy-five per cent or more of the contract price has been paid by a vendee whose right of redemption has expired, the furniture or effects shall, if the vendee or his legal representative in writing so requests the vendor, be sold by public auction after due advertisement, which shall be published at least three days prior to the sale in one of the principal newspapers, if any, published in the town, otherwise in one of the principal newspapers published in the county, where the furniture or effects are situated. If the vendor refuses or neglects to make the sale as provided herein, the right of redemption shall not be foreclosed. If a balance of the proceeds of the sale remains after deducting the actual expenses of the sale by auction and paying from said proceeds to the vendor the balance of the contract price due him, it shall be paid to the vendee or his legal representative.

General Laws 1920, Chapter 184.

§ 13. No conditional sale of heating apparatus, plumbing goods, ranges or other articles of personal property, which are afterward wrought into or attached to real estate, whether they are fixtures at common law or not, shall be valid as against any mortgagee, purchaser or grantee of such real estate, unless not later than ten days after the delivery thereon of such personal property a notice such as is herein prescribed is recorded in the registry of deeds for the county or district where the real estate lies. The notice shall be signed by the vendor or a person claiming under him and shall contain the names of the contracting parties, the name of the record owner of the real estate at the time of recording the notice, the fact that it is agreed that title to such personal property shall remain in the vendor until the purchase price is paid, the terms of payment and the amount of such purchase price remaining unpaid, and descriptions, sufficiently accurate for identification, of such real estate and the personal property delivered or to be delivered thereon. If the sale is of several articles for a lump sum greater than the value of the personal property delivered or to be delivered on the real estate, the notice shall also state such lump sum and such value. The notice shall be indexed under the name of such record owner, and a release of title in any such article of personal property may be recorded at any time.

Laws 1920, Chapter 590.

§ 7. As against a conditional vendor or lessor, or person claiming under him, the lien of a bailee of the vendee or lessee or person claiming under him on property exceeding twenty dollars in value, for consideration furnished, without actual notice of the conditional sale or lease, shall prevail, provided that the property was delivered to the bailee prior to the breach of any condition of the sale or lease.

RAILROAD EQUIPMENT.

General Laws 1920, Chapter 159.

§ 55. A contract for the sale of railroad or railway rolling stock may stipulate that the title to the property sold or contracted to be sold shall not vest in the purchaser until the purchase price is fully paid, or that the vendor shall have and retain a lien thereon for the unpaid purchase money although possession thereof may be delivered immediately or at any subsequent time, and a contract for the leasing or hiring of such property may stipulate for a conditional sale thereof at the termination of such contract, and that the rentals or amounts to be received thereunder may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price is paid in full and until the terms of the contract are performed, notwithstanding delivery to and possession by such lessee or bailee. No such contract shall be valid, as against any subsequent attaching creditor or any subsequent bona fide purchaser for value and without notice, unless it is in writing executed by the parties and acknowledged by the vendee, lessee or bailee in the same manner as deeds are acknowledged, and recorded in the office of the state secretary; nor unless each locomotive, engine or car so sold, leased or hired, or contracted to be sold, leased or hired as aforesaid, shall have the name of the vendor, lessor or bailor plainly marked on each side thereof, followed by the word " owner ", " lessor " or " bailor ", as the case may be. Chapter two hundred and fifty-five shall not apply to such contract.

§ 56. A contract authorized by the preceding section shall be recorded by the state secretary in a book kept therefor; and upon payment in full of the purchase money and the performance of the terms and conditions stipulated in such contract, a written declaration thereof may be made by the vendor, lessor or bailor, or his assignee on the margin of the record of the contract, attested, or it may be made by a separate instrument, acknowledged by the vendor, lessor or bailor, or his assignee, and recorded as aforesaid.

Five dollars shall be paid to the state secretary for recording such contract or declaration, and one dollar for noting such declaration on the margin of the record.

CRIMINAL PROVISIONS.

General Laws 1920, Chapter 266.

§ 87. Whoever, being in possession of personal property received upon a written and conditional contract of sale, with intent to defraud, sells, conveys, conceals or aids in concealing the same before performance of the conditions precedent to acquiring the title thereto, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than one year.

MICHIGAN.

CONDITIONAL SALES GENERALLY.

Laws 1915, No. 64.

§ 1. Whenever any personal property is sold and delivered to any person, firm or corporation regularly engaged or about to engage in the business of buying and selling such personal property, with the condition affixed to the sale that the title thereto is to remain in the vendor of such personal property until the purchase price thereof shall have been paid, with the agreement express or implied, that the same may be resold, every such conditional sale in order for the reservation of title to be valid except as between the vendor and vendee shall be evidenced in writing and the written contract of every such conditional sale or a true copy thereof shall be filed and discharged in the same manner as chattel mortgages are required to be filed and discharged.

Compiled Laws 1915.

§ 11988. Every mortgage or conveyance intended to operate as a mortgage of goods and chattels which shall hereafter be made which shall not be accompanied by an immediate delivery and followed by an actual and continued change of possession of the things mortgaged, shall be absolutely void as against the creditors of the mortgagor, and as against subsequent purchasers or mortgagees in good faith, unless the mortgage or a true copy thereof shall be filed in the office of the township clerk of the township, or city clerk of the city, or city recorder of cities having no officer known as city clerk, where the goods or chattels are located, and also where the mortgagor resides, except when the mortgagor is a non-resident of the state, when the mortgage or a true copy thereof

shall be filed in the office of the township clerk of the township, or city clerk of the city, or city recorder of cities having no officer known as city clerk, where the property is; and unless the mortgagor named in such mortgage or conveyance intended to operate as a mortgage, or some person for him having knowledge of the facts shall, before the filing of the same, make and annex thereto an affidavit setting forth that the consideration of said instrument was actual and adequate, and that the same was given in good faith for the purposes in such instrument set forth. No officer shall receive such instrument or file the same in his office until such affidavit is made and annexed thereto. Every person who shall knowingly make any false statement in any such affidavit, upon conviction thereof shall be deemed guilty of the crime of perjury: *Provided,* That in case of corporations engaged in transporting passengers or freight, or conveying electricity or gas or telephonic or telegraphic communications, all that is or shall be required is the filing of the copy of such mortgage with the register of deeds of each county through which the lines or property thereof passes, and such mortgages shall not require any affidavit or renewal: *Provided, further,* that when such mortgage or other conveyance intended to operate as a mortgage is given upon a stock of merchandise or merchandise and fixtures or any part thereof purchased for resale at retail, then such instrument or a true copy thereof, and the affidavit thereto attached, shall also be filed in the office of the register of deeds of the county where the goods and chattels are located.

§ 11989. It shall be the duty of the register of deeds and township or city clerk upon the presentation of any such instrument or copy for that purpose, and the payment of his fees, to endorse thereon the time of receiving the same, and to deposit such instrument or copy in his office, to be kept for the inspection of all persons interested.

§ 11990. Such register of deeds and township or city clerk shall also enter in a book to be provided by him for that purpose, the names of all the parties to such instruments, arranging the names of the mortgagors alphabetically, and shall note therein the time of filing each instrument or copy.

§ 11991. Every such mortgage shall cease to be valid as against the creditors of the person making the same, or subsequent purchasers or mortgagees in good faith, after the expiration of one year from the filing of the same, or a copy thereof, unless within thirty days next preceding the expiration of the year, the mort-

gagee, his agent or attorney shall make and annex to the instrument or copy on file as aforesaid, an affidavit setting forth the interest which the mortgagee has by virtue of said mortgage in the property therein mentioned, upon which affidavit the register of deeds and township or city clerk shall endorse the time when the same was filed; *Provided*, that such affidavit being made and filed before any purchase of such mortgaged property shall be made, or other mortgage received or lien obtained thereon in good faith, shall be as valid to continue in effect such mortgage, as if the same were made and filed within the period as above provided.

§ 11992. The effect of any such affidavit shall not continue beyond one year from the time when such mortgage would otherwise cease to be valid, as against subsequent purchasers or mortgagees in good faith; but within thirty days next preceding the time when any such mortgage would otherwise cease to be valid as aforesaid, a similar affidavit may be filed and annexed as provided in the preceding section, and with the like effect.

§ 11993. A copy of any such instrument, or of any copy thereof, so filed as aforesaid, including any affidavits annexed thereto in pursuance of this chapter, certified by the clerk, in whose office the same shall be filed, shall be received in evidence, but only of the fact that such instrument, copy or affidavit was received and filed, according to the endorsement of the clerk thereon, and of no other fact.

§ 11994. The register of deeds, township and city clerks shall be entitled to receive the following fees for services under the provisions of this chapter: For filing each instrument, copy or affidavit, six cents; for entering the same in a book, six cents for each party to such instrument; for searching for each paper, six cents, and the like fees for certified copies of such instruments, copies or affidavits as are allowed by law for copies of records kept by registers of deeds.

§ 11996. Any chattel mortgage, or any instrument intended to operate as a chattel mortgage, that has been or may hereafter be filed, may be discharged by an entry on the book, kept by the township or city clerk, as provided in section four thousand seven hundred and eight of the Compiled Laws of eighteen hundred and seventy-one, where the time of filing such instrument has been entered, signed by the mortgagee or his personal representative or assignee, acknowledging the satisfaction of the mortgage in the presence of the township or city clerk, or city recorder, as the case

may be, or his deputy, who shall subscribe the same as a witness thereto; and such entry shall have the same effect as a deed or instrument of release, duly acknowledged and filed, and whereupon said chattel mortgage, or the copy thereof which may have been filed, shall, at the request of the mortgagor, be delivered to him by such clerk, recorder, or his deputy, and such clerk or recorder shall make an entry of the date of such delivery, and to whom delivered.

§ 11997. If any mortgagee, or his personal representative or assignee, as the case may be, after full performance of the conditions of a chattel mortgage, whether before or after the breach thereof, or if the same be entirely due and payable, after a tender of the whole amount so due and payable thereon, and a tender of the lawful charges of such mortgagee, personal representative or assignee, shall for the space of seven days after being requested so to do in writing by the parties interested, refuse or neglect to discharge the same, as provided in this act, or to deliver up such chattel mortgage to the mortgagor after performance or tender as aforesaid, or to execute and deliver a discharge or release of such chattel mortgage, he shall be liable to the mortgagor, his heirs or assigns, in the sum of twenty-five dollars damages, and also for all actual damages occasioned by such neglect or refusal, to the person who shall perform the conditions of such mortgage, or make such tender to the mortgagee, his representative or assigns, or to any one who may have an interest in the mortgaged property, to be recovered in an action on the case, or be awarded by a court of equity, upon a bill filed to procure a discharge or a release of such mortgage, with double costs, in the discretion of the court.

Railroad Equipment.

Compiled Laws 1915.

§ 8432. In any contract for the sale of railroad or street railway equipment or rolling stock, it shall be lawful to agree that the title to the property sold or contracted to be sold, although possession thereof may be delivered immediately, or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money. And in any contract for the leasing or hiring of such property, it shall be lawful to stipulate for a conditional sale thereof at the termination of such contract, and that the rentals or amounts to be

received under such contract, may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price shall have been paid in full, and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee: *Provided*, That no such contract shall be valid as against any subsequent judgment creditor, or any subsequent bona fide purchaser for value and without notice, unless:

First, The same shall be evidenced by an instrument executed by the parties and duly acknowledged by the vendee or lessee or bailee, as the case may be, or duly proved, before some person authorized by law to take acknowledgment of deeds, and in the same manner as deeds are acknowledged or proved;

Second, Such instrument shall be filed for record in the office of the secretary of state of this commonwealth;

Third, Each locomotive engine, or car so sold, leased or hired or contracted to be sold, leased or hired as aforesaid, shall have the name of the vendor, lessor or bailor plainly marked on each side thereof, followed by the word " owner " or " lessor " or " bailor ", as the case may be.

§ 8433. The contracts herein authorized shall be indexed by the secretary of state in a book of records to be kept for that purpose; and on payment in full of the purchase money, and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect shall be made by the vendor, lessor, or bailor, or his or its assignee, which declaration shall be made on the margin of the index of the contract, duly attested, or it may be made by a separate instrument, to be acknowledged by the vendor, lessor, or bailor, or his assignee, filed and indexed, and for such services the secretary of state shall be entitled to a fee of one dollar for indexing each of said contracts and each of said declarations, and a fee of one dollar for noting such declaration on the margin of the index, and twenty cents per folio for furnishing certified copies: *Provided*, That if said vendor, or lessor, or bailor, or his or its assignee fails or refuses to make such declaration in writing on the margin of the index of contracts that such purchase money has been paid in full within thirty days said vendor, lessor, or bailor, or his or its assignee shall be liable to a fine of not more than five hundred dollars.

§ 8434. This act shall not be held to invalidate or affect in any way any contract heretofore made of the kind referred to in

the first section hereof, and any such contract heretofore made may, upon compliance with the provisions of this act, be recorded as herein provided.

CRIMINAL PROVISIONS.

Compiled Laws 1915.

§ 15385. Any person who shall embezzle, fraudulently remove, conceal or dispose of any goods, chattels or effects leased or let to him by any written lease or instrument in writing intended to operate as a lease, or any personal property or effects of another in his possession under a contract of purchase not yet fulfilled, and any person in possession of such goods, chattels or effects, knowing them to be subject to such lease or contract of purchase, who shall so embezzle, remove, conceal or dispose of the same, with the intent to injure or defraud the lessor or owner thereof, shall be deemed guilty of a felony, if of the value of twenty-five dollars or more, and shall upon conviction thereof be punished by imprisonment in state prison not more than two years or by fine not more than two hundred and fifty dollars, or by imprisonment in the county jail not more than six months. If the property embezzled, removed, concealed or disposed of, as aforesaid, shall not be of the value of twenty-five dollars, the person so offending shall be deemed guilty of a misdemeanor, and be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding ninety days, or both fine and imprisonment, in the discretion of the court.

MINNESOTA.

CONDITIONAL SALES GENERALLY.

General Statutes 1913.

§ 6981. *When void unless filed.*— Every promissory note or contract of sale, conditioned that the title to the property for or on account of which the same was given shall remain in the vendor, shall be valid as to creditors of the vendee and subsequent purchasers and mortgagees of such property in good faith, unless the note or contract, or a copy thereof, or if the contract be oral, a memorandum, signed by the purchaser and expressing its terms and conditions, be filed as in the case of a chattel mortgage.

§ 6982. *Notice — Limit of time.*— Every such note, contract, copy, or memorandum so filed shall be notice to all parties interested of the existence and conditions thereof, until the expiration of six years from date of filing thereof.

§ 6983. *Same.*— Every note or other evidence of indebtedness, or contract, filed pursuant to the provisions of this act, shall be held and considered to be full and sufficient notice to all parties interested of the existence and conditions thereof, but shall cease to be notice as against the creditors of the vendee and subsequent purchasers and mortgagees of the property in good faith after the expiration of six years from the day on which said note or other evidence of indebtedness or contract, or the last installment of the sum secured thereby, becomes due.

§ 6984. *Satisfaction.*— When any such contract has been fully performed on the part of the vendee, the vendor, his representatives or assigns, shall give duplicate satisfactions thereof, one of which he shall deliver to the person entitled thereto, and the other he shall file, at his own expense, with the officer having custody of the instrument so satisfied. Thereupon such officer shall deliver up the note, contract, memorandum, or copy to which the satisfaction relates. Such satisfaction need not be witnessed or acknowledged.

Statutes, 1917 Supplement.

[6993–]1. *Instruments to be filed with register of deeds.*—Any bill of sale, instrument evidencing a lien on or reserving title to personal property and satisfactions of liens on personal property, shall be filed with the Register of Deeds in the county in which the said personal property is situate. (Laws 1915, ch. 364, as amended by Laws 1917, ch. 158.)

[6993–]2. *Same — Duty of register — Fees, etc.*— Every register of deeds on and after July 1st, 1915, shall receive and file any such instrument, which shall be executed, witnessed, and acknowledged according to law, or a true copy thereof and shall immediately number and index the same, and certify on each instrument the exact time of receipt, which certificate shall be prima facie evidence of the facts stated therein. No such instrument shall be removed from the office where filed until cancelled, released, or satisfied. The fees for filing such instruments shall be twenty-five cents for each instrument and twenty-five cents for a certified copy thereof, when copy is furnished, said amount to be paid to the register of deeds at the time of filing, and such fee shall be retained by the register of deeds, as additional salary and compensation for filing such instruments. (Laws 1915, ch. 364.)

[6993–]3. *Same — Index book.*— Every register of deeds shall keep in his office an index book in which he shall enter the num-

ber given to every such instrument, the names in alphabetical order of the lien debtor and lien creditor and vendee and vendor, and the exact time of filing the instrument. He shall also enter the sum for which a lien is claimed and the satisfaction of the same when made. (Laws 1915, ch. 364.)

[6993-]4. *Same — Clerk or recorder to deliver documents to register.*— Each municipal clerk or recorder shall, on the first day of July, 1915, deliver all instruments evidencing liens on or reserving title to personal property, then on file with him, and all records of the same in his custody, to the register of deeds of his county, and said register of deeds shall thereafter be the custodian of the same, and of the records thereof, and no new filing, indexing, or record thereof need be made by said register of deeds. (Laws 1915, ch. 384.)

[6993-]5. *Same — Register to receive, etc., notice — Expenses.* — Each municipal clerk or recorder shall be paid out of the treasury of his county, the sum of ten cents per mile in traveling from his place of business to and returning from the county seat of his county, for delivering said instruments and records to the register of deeds of his county. The register of deeds of each county shall receive the said instruments and records as delivered to him by the several municipal clerks and recorders of his county, and safely keep and preserve the same in his office, and endorse on each instrument and record book the date of the receipt of the same by him, and thereafter said instruments and records shall be notice to all persons of the existence and terms thereof. (Laws 1915, ch. 364.)

[6993-]7. *Same — Not applicable to certain cities and counties.*— This act shall not apply to cities of the first class, nor to counties wherein the salary of the register of deeds is fixed by special law. (Laws 1915, ch. 384.)

Railroad Equipment.

General Statutes 1913.

§ 6225. *Rolling stock, etc.— Lien for purchase money.*—In any contract for the purchase and sale of railroad equipment or rolling stock, whether deliverable at once or at future stated times, by the terms of which the purchase money is to be paid wholly or partly after such delivery, it may be agreed that the title to such property shall not pass to the vendee until the purchase price shall have been fully paid, or that the vendor shall

have and retain a lien thereon for the unpaid purchase money, notwithstanding delivery thereof: Provided, that the term of credit for purchase money, shall not exceed ten years from the execution of the contract.

§ 6226. *Same — Lease — Conditional sale.*— In any contract for the leasing of railroad equipment or rolling stock, the parties may stipulate for a conditional sale thereof at the termination of such lease, that the rentals, as paid or when paid in full, may be treated and applied as purchase money, and that the title to such property shall not vest in the lessee or vendee until the purchase money shall have been fully paid, subject, however, to the proviso in § 6225.

§ 6227. *Same — Contracts — Requisites of validity.*— Every such contract shall be acknowledged by the vendee or lessee as in the case of a conveyance of land, and shall be filed for record with the secretary of state and with the register of deeds of the county in which, at the time of its execution, the principal office or place of business of the vendee or lessee is situated in this state. Each locomotive, engine or car so sold or leased shall have the name of the vendor or lessor plainly marked on each side, or be otherwise so marked as to indicate the ownership thereof. And upon compliance with this section, such contract shall be valid and effectual, both in law and equity, against all purchasers and creditors.

CRIMINAL PROVISIONS.

General Statutes 1913.

§ 8907. *Selling or concealing mortgaged property — "Chattel mortgage" defined.*— Every person who, with intent to place mortgaged personal property beyond the reach of the mortgagee or his assigns, shall remove or conceal, or aid or abet in removing or concealing, any such property, and any mortgagor of such property who shall assent to or knowingly suffer such removal or concealment, or, at any time before the debt secured by a chattel mortgage has been fully paid, shall sell, convey, or in any manner dispose of the personal property so mortgaged, or any part thereof, without the written consent of the mortgagee, or his assigns, or without informing the person to whom he shall sell, convey, or dispose of the same that it is mortgaged, and the true amount then due on the debt secured by such mortgage, shall be punished by imprisonment in the state prison or county jail for not more than one year, or by fine of not more than five hundred dollars.

Chattel mortgage within the meaning of this act shall include every written instrument whether in form a chattel mortgage or contract of conditional sale, whereby the title of personal property therein described is mortgaged, held or reserved as security for a debt; mortgaged personal property shall include all personal property which is described in or covered by any such instrument; and the provisions and penalties of this act shall apply to all vendors and vendees of personal property, the title to which is so held or reserved, in the same manner and with the same force and effect as applicable to mortgagors and mortgagees. (As amended by Laws 1917, ch. 90.)

§ 8908. *Same — Indictment.*— In any prosecution under § 8907, it shall be a sufficient allegation and description of the mortgage and the mortgaging of personal property to state that such property was duly mortgaged by a certain chattel mortgage, giving the date thereof and the names of the mortgagor and mortgagee.

MISSISSIPPI.

CONDITIONAL SALES GENERALLY.

Hemingway's Annotated Code 1917.

§ 3121. *Fraudulent loans of goods.*— . . . where any loan of goods and chattels shall be pretended to have been made to any person with whom, or those claiming under him, possession shall have remained for the space of three years without demand made and pursued by due course of law on the part of the pretended lender, or where any reservation or limitation shall be pretended to have been made of a use or property by way of condition, reversion, remainder, or otherwise in goods or chattels, the possession whereof shall have so remained in another for said time, the same shall be taken, as to the creditors and purchasers of the persons so remaining in possession, to be fraudulent within this statute, and that the absolute property is with the possession; unless such loan, reservation, or limitation of use or property were declared by will or by writing, proved or acknowledged, and filed for record.

§ 2289. *Where conveyance of personal property recorded.*— Every writing respecting the title to personal property which by law ought to be recorded, shall be recorded in the office of the clerk of the chancery court of the county in which such property may remain; and if, afterwards, the person claiming title under

such writing shall permit any other person, in whose possession the property may be, to remove the same, or any part thereof, out of the county in which the writing is recorded, and shall not, within twelve months after such removal, cause the writing to be duly certified to the county into which the property may be removed, and to be delivered to the clerk of the chancery court, to be recorded, the writing, for so long as it remains without being recorded or delivered for record in the last mentioned county, and for so much of the property as may have been removed, shall be void as to all purchasers for a valuable consideration without notice, and as to all creditors.

RAILROAD EQUIPMENT.

Hemingway's Annotated Code 1917.

§ 6732. *Vendor of railroad equipment may retain title till money paid.*— In any written contract of or for the sale of railroad equipment and rolling stock deliverable immediately or subsequently at stipulated periods by the terms of which the purchase-money, in whole or in part, is to be paid in the future, it may be agreed that the title to the property so sold or contracted to be so sold shall not pass to or vest in the vendee until the purchase-money shall have been paid, and the vendor may retain a lien thereon for the unpaid purchase-money, notwithstanding the delivery thereof to and possession by the vendee; provided, that the terms of credit for the payment of the purchase-money shall not exceed fifteen years from the execution of the contract.

§ 6733. *How rental money treated and applied.*— In any written contract for the leasing or renting of any railroad equipment or rolling-stock, it shall be lawful to stipulate for a conditional sale thereof at the termination of such lease, and to stipulate that the rentals received may, as paid, or when paid in full, be applied and treated as purchase-money, and that the title to such property shall not vest in such vendee or lessee until the purchase-money shall have been paid in full, notwithstanding delivery to and possession by such lessee or vendee, subject, however, to the proviso contained in section 6732.

§ 6734. *Such contract good against creditors.*— Every such contract specified in the two preceding sections shall be good, valid, and effectual, both in law and in equity, against all purchasers and creditors; provided, first, the same shall be acknowledged by the vendee or lessee before some officer authorized by

law to take acknowledgments of deeds; second, such instrument shall be recorded in the office of the clerk of the chancery court in which, at the time of the execution thereof, is situated the principal office of the vendee or lessee in this state, or in the office of the secretary of state; third, each locomotive-engine or car so sold or contracted to be sold or leased as aforesaid, shall have the name and residence of the vendor or lessor plainly placed or marked on each side thereof, and also the word "vendor" or "lessor" as the case may be, or shall be conspicuously marked so as to indicate the residence and character of interest therein, or shall be otherwise marked so as to indicate the ownership thereof.

§ 6735. *Not to affect existing contracts.*— These provisions shall not be held to apply to or to invalidate any contract heretofore made, or the character described in sections 6732 or 6733, but the same shall be and remain valid if already acknowledged and recorded as herein provided. Acknowlegments of such contracts may be made before the officers, and in the form required as to conveyances of real estate.

Criminal Provisions.

Hemingway's Annotated Code 1917.

§ 990. *Larceny — Removing property subject to lien out of state.*— If any person shall move, or cause to be removed, to any place beyond the jurisdiction of this state, any personal property which shall at the time of such removal be under written pledge, or mortgage, or deed of trust, or lien by judgment, or any other lien in this state, with intent to defraud the pledgee, mortgagee, trustee, cestui que trust, or creditor, he shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than one thousand dollars or imprisoned in the county jail not more than twelve months, or both.

§ 992. *Larceny — Removing property subject to lien out of the county — Selling.*— Any person who shall remove, or cause to be removed, or aid or assist in removing from the county in which it may be, any personal property which may be the subject of a pledge, mortgage, deed of trust, lien of a lessor of lands, or lien by judgment, or any other lien of which such party has notice, without the consent of the holder of such encumbrance or lien, or who shall conceal or secrete such property, or who shall sell or dispose of the same or any part thereof without the consent of the mortgagee or beneficiary, whether any of these acts shall

be done before or after the maturity of the debt secured by the lien, and shall not immediately discharge such encumbrance or lien or pay to the holder of such lien or encumbrance the value of such property in event same is less than the amount of such lien or encumbrance, shall, upon conviction, be imprisoned in the county jail not more than one year, or be fined not exceeding the value of such property, or both.

MISSOURI.

Conditional Sales Generally.

Revised Statutes 1919.

§ 2284. *Conditional sales void as to creditors unless recorded.* — In all cases where any personal property shall be sold to any person, to be paid for in whole or in part in installments, or shall be leased, rented, hired or delivered to another on condition that the same shall belong to the person purchasing, leasing, renting, hiring or receiving the same whenever the amount paid shall be a certain sum, or the value of such property, the title to the same to remain in the vendor, lessor, renter, hirer or deliverer of the same, until such sum, or the value of such property, or any part thereof, shall have been paid, such condition, in regard to the title so remaining until such payment, shall be void as to all subsequent purchasers in good faith, and creditors, unless such condition shall be evidenced by writing executed, acknowledged and recorded as provided in cases of mortgages of personal property.

§ 2285. *Duty of vendor before taking possession of property.* — Whenever such property is so sold or leased, rented, hired or delivered, it shall be unlawful for the vendor, lessor, renter, hirer or deliverer, or his or their agent or servant, to take possession of said property without tendering or refunding to the purchaser, lessee, renter or hirer thereof, or any party receiving the same, the sum or sums of money so paid, after deducting therefrom a reasonable compensation for the use of such property, which shall in no case exceed twenty-five per cent. of the amount so paid, anything in the contract to the contrary notwithstanding, and whether such condition be expressed in such contract or not, unless such property has been broken or actually damaged, and then a reasonable compensation for such breakage or damage shall be allowed.

§ 2282. *Possession to follow sale of goods and chattels.*— Every sale made by a vendor of goods and chattels in his possession or under his control, unless the same be accompanied by delivery in a reasonable time, regard being had to the situation of the property, and be followed by an actual and continued change of the possession of the things sold, shall be held to be fraudulent and void, as against the creditors of the vendor, or subsequent purchasers in good faith, and no sale of goods and chattels, where possession is delivered to the vendee, shall be subject to any condition whatever as against creditors of the vendee, or subsequent purchasers from such vendee in good faith, unless such condition shall be evidenced by writing, executed and acknowledged by the vendee, and recorded as now provided in cases of mortgages of personal property.

§ 2256. *Mortgages, etc., of personalty, invalid unless recorded.* —No mortgage or deed of trust of personal property hereafter made shall be valid against any other person than the parties thereto, unless possession of the mortgaged or trust property be delivered to and retained by the mortgagee or trustee or *cestui que trust,* or unless the mortgage or deed of trust be acknowledged or proved and recorded in the county in which the mortgagor or grantor resides, in such manner as conveyances of land are by law directed to be acknowledged or proved and recorded, or unless the mortgage or deed of trust, or a true copy thereof, shall be filed in the office of the recorder of deeds of the county where the mortgagor or grantor executing the same resides, and in the case of the City of St. Louis, with the recorder of deeds for said city, or, where such grantor is a non-resident of the state, then in the office of the recorder of deeds of the county or city where the property mortgaged was situated at the time of executing such mortgage or deed of trust; and such recorder shall indorse on such instrument or copy the time of receiving the same, and shall keep the same in his office for the inspection of all persons; and such mortgage or deed of trust, or copy thereof, may be so filed, although not acknowledged, and shall be as valid as though the instrument were fully spread upon the records of the county, or, in case of the city of St. Louis, upon the records of said city, in the office of the recorder of deeds; and such instrument, when acknowledged and recorded, or when the same, or a copy thereof, shall have been filed, as above provided, shall thenceforth be notice of the contents thereof to all the world.

RAILROAD EQUIPMENT.

Revised Statutes 1919.

§ 10117. *Sales of railway equipment and rolling stock — Conditional sales.*— In any contract for the sale of railroad or street railway equipment, or rolling stock, it shall be lawful to agree that the title to the property sold, or contracted to be sold, although possession thereof may be delivered immediately, or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money; and in any contract for the leasing or hiring of such property, it shall be lawful to stipulate for a conditional sale thereof at the termination of such contract, and that the rentals or amounts to be received under such contract may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price shall have been paid in full and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee; *Provided,* that no such contract shall be valid as against any subsequent judgment creditor, or any subsequent *bona fide* purchaser for value and without notice, unless:

First, the same shall be evidenced by an instrument executed by the parties, and duly acknowledged by the vendee or lessee or bailee, as the case may be, or duly proved before some person authorized by law to take acknowledgments of deeds, and in the same manner as deeds are acknowledged or proved;

Second, such instrument shall be filed for record in the office of the secretary of state;

Third, each locomotive engine or car so sold, leased or hired, or contracted to be sold, leased or hired, as aforesaid, shall have the name of the vendor, lessor or bailor plainly marked on each side thereof, followed by the word " owner ", or " lessor ", or " bailor ", as the case may be, which mark or marks shall be effaced immediately upon the payment or satisfaction of the indebtedness or encumbrance thereon; and every corporation, person or persons, which shall fail, neglect or refuse to comply with this provision, shall forfeit and pay for such failure, neglect or refusal the sum of five dollars for every day the same shall be continued, for each piece of property so marked, to be sued for and recovered in the name of the people of the state, by the attorney-general, in any court of cognizance thereof, to be paid into the state treasury in the same manner as fees hereinafter provided by this article.

§ 10118. *Conditional contracts of sale or lease to be recorded.*— The contracts herein authorized shall be recorded by the secretary of state in a book of records to be kept for that purpose. And on payment in full of the purchase money, and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect may be made by the vendor, lessor or bailor, or his or its assignee, which declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument, to be acknowledged by the vendor, lessor or bailor, or his or its assignee, and recorded as aforesaid. And for such services the secretary of state shall be entitled to a fee of twenty-five dollars, and one dollar in addition for every hundred words in excess of one thousand words, for recording each of said contracts, and each of said declarations, and a fee of ten dollars for noting such declaration on the margin of the record; and all such fees shall be paid by him into the state treasury and added to the " seminary fund ", in accordance with the provisions of article XXII of chapter 102 of the Revised Statutes of 1919.

§ 10119. *Certain sections not to invalidate existing contracts.*— Sections 10117 to 10120, inclusive, shall not be held to invalidate, or affect in any way, any contract heretofore made of the kind referred to in section 10117, and any such contract heretofore made may, upon compliance with the provisions of said sections 10117 to 10120, inclusive, be recorded as herein provided.

§ 10120. *Sections* 2282, 2284, *and* 2285 *not to apply to such contracts.*— Sections 2282, 2284 and 2285 of the Revised Statutes of Missouri shall not be held to apply to contracts of the kind referred to in section 10100 [10117(?)] of this article.

Criminal Provisions.

Revised Statutes 1919.

§ 3348. *Disposing of chattels mortgaged — penalty.*— Every mortgagor or grantor in any chattel mortgage or trust deed of personal property who shall sell, convey or dispose of the property mentioned in said mortgage or trust deed, or any part thereof, without the written consent of the mortgagee or beneficiary, and without informing the person to whom the same is sold or conveyed that the property is mortgaged or conveyed by such deed of trust, or who shall injure or destroy such property, or any part

thereof, or aid or abet the same, for the purpose of defrauding the mortgagee, trustee or beneficiary or his heirs or assigns, or shall remove or conceal, or aid or abet in removing or concealing such property, or any part thereof, with intent to hinder, delay or defraud such mortgagee, trustee or beneficiary, his heirs or assigns, shall, if the property be of the value of fifty dollars or more, be deemed guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the penitentiary not exceeding five years, or by imprisonment in the county jail not exceeding six months, or by a fine of not less than one hundred dollars, or by both such fine and imprisonment. And if such property be of a less value than fifty dollars he shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one hundred dollars, or by both such fine and imprisonment.

MONTANA.

CONDITIONAL SALES GENERALLY.

Revised Codes 1907.

§ 5092. *Filing contracts.*— All contracts, notes and instruments for the transfer or sale of personal property, where the title is stipulated to remain in the vendor until the payment of the purchase price or some part thereof, shall be in writing, and the original or true copy thereof, certified by the County Clerk and Recorder, shall be filed with the County Clerk and the Recorder of the county wherein the property is situated; otherwise, any such contract, note or instrument is void as to bona fide purchasers, mortgagees, or attaching creditors of such property prior to such filing. (As amended by Laws 1911, ch. 52.)

§ 5093. *Duty of county recorder.*— The County Clerk and Recorder shall keep an index record of all such contracts, notes or instruments, filed in his office and shall note the payment and satisfaction thereof upon the request of the vendor, or his duly authorized agent or attorney. A fee of fifty (50) cents shall be paid for every such instrument filed.

§ 5094. *Release of obligation.*— Upon receipt of the purchase price the vendor shall cause the clerk and recorder to enter satisfaction and discharge the obligations of such contract, note or instrument, and a failure for thirty (30) days to cause such satisfaction to be made shall render the vendor liable for any actual damage sustained by any person by reason thereof.

§ 5094-a. Upon default being made by the vendee in any of the terms and conditions of any contract, note or instrument for the transfer or sale of personal property where the title to said property is stipulated to remain in the vendor until the payment of the purchase price, the vendor may recover the possession of said property in an action of claim and delivery, brought and conducted as provided by law for such action; and in addition thereto, it shall also be lawful for the vendor of any such personal property to insert in any such conditional sale contract, note or instrument, and make a part thereof, a clause authorizing the Sheriff of the County in which said property, or any part thereof, may be, upon request of the vendor and the delivery to him of a copy of such contract, note or instrument certified by the county clerk and recorder of the county where the same is on file as being a true copy, to take possession of such property in case of such default, and sell the same after notice given therefor for such time and in the manner provided by law for sheriff's sale of personal property under execution, and apply the proceeds thereof first to the payment of the expenses of such sale, and second, to the payment of the amount due on said contract, note or instrument, and the remainder, if any, shall be paid to the vendee or assigns, and if such clause is inserted in said contract, note or instrument, as aforesaid, and said vendor complies with the terms thereof, it is hereby made the duty of such sheriff upon the request of said vendor, to take said property and sell the same and apply the proceeds as therein set forth. The said sheriff may require a reasonable indemnity bond from the vendor or his assigns before taking possession of or selling said property. For his services in taking and selling the said property, the sheriff shall be entitled to fees and mileage as in the case of sale of personal property under chattel mortgage, and such fees and costs when paid by the vendor shall become part of the indebtedness of the vendee to the vendor and should the proceeds of said sale not be sufficient to pay the balance due on said contract, note or instrument, including said costs, the remainder due thereon, if any, may be recovered by the vendor in an appropriate action on the original contract, note or instrument. (Added by Laws 1919, ch. 146.)

Railroad Equipment.

Revised Codes 1907.

§ 4301. *Conditional sale valid.*— In all cases where railroad equipment and rolling stock may have been, or shall be sold, to

any person, firm, or corporation, to be paid for, in whole or in part, in installments, or shall be leased, rented, hired, or delivered, on condition that the same may be used by the person, firm or corporation purchasing, leasing, renting, hiring, or receiving the same, and that the title to the same shall remain in the vendor, lessor, renter, hirer, or deliverer of the same until the agreed upon price, or rent for such property shall have been fully paid, such condition in regard to title so remaining in the vendor, lessor, renter, hirer, or deliverer, until such payments are fully made, shall be valid for all intents and purposes as to subsequent purchasers in good faith, and creditors: Provided, The term during which the installments or rent are to be paid, shall not exceed ten years, and such contract shall be in writing, duly executed, acknowledged, and recorded, as hereafter provided.

§ 4302. *Contract to be recorded.*— Such contract shall be recorded in the office of the secretary of state, and in the office of the county clerk of the county in which is located the principal office or place of business of such vendee or lessee, and on each locomotive or car that may have been so sold or leased the name of the vendor, or lessor, or assignee of the vendor or lessor, shall be marked, followed by the word " Owner," or " Lessor," as the case may be.

§ 4304. *Satisfaction.*— Upon payment in full of the purchase price and the performance of the terms and conditions stipulated in any such contract, a declaration to that effect shall be made by the vendor, or his assignee, which declaration may be made on the margin of the record of the contract, attested by the secretary of state, or county clerk, as the case may be, or the satisfaction may be made by a separate instrument, which shall be acknowledged and recorded in the offices in which the original contract was recorded, and thereupon the secretary of state and county clerk shall write in the margin of the record the word " Satisfied," together with the date of satisfaction, and the page, and book of record of the declaration of the satisfaction.

§ 4305. *Conditional sale of equipment.*— In any contract for the sale of railroad or street railway equipment or rolling stock, it shall be lawful to agree that the title to the property sold or contracted to be sold, although possession thereof may be delivered immediately, or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid

purchase-money, and in any contract for the leasing or hiring of such property, it shall be lawful to stipulate for a conditional sale thereof at the termination of such contract, and that the rentals or amounts to be received under such contract, may, as paid, be applied and treated as purchase-money and that the title to the property shall not vest in the lessee or bailee until the purchase-price shall have been paid in full, and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee; Provided, That no such contract shall be valid as against any subsequent judgment creditor, or any subsequent bona fide purchaser for value and without notice unless:

First: The same shall be evidenced by an instrument executed by the parties and duly acknowledged by the vendee or lessee, or bailee, as the case may be, or duly proved, before some person authorized by law to take acknowledgment of deeds, and in the same manner as deeds are acknowledged or proved.

Second: Such instrument shall be filed for record in the office of the secretary of state of this state, and also in the office of the county clerk and recorder in each county of this state in which the line of such railroad or street railway company extends.

Third: Each locomotive engine, or car so sold, leased or hired or contracted to be sold, leased or hired as aforesaid, shall have the name of the vendor, lessor or bailor plainly marked on each side thereof followed by the word " Owner " or " Lessor " or " Bailor " as the case may be.

§ 4306. *Contract to be recorded.*— The contracts herein authorized shall be recorded by the secretary of state in a book of records to be kept for that purpose, and on payment in full of the purchase-money, and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect, may be made by the vendor, lessor, or bailor, or his or its assignee, which declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument to be acknowledged by the vendor, lessor, or bailor, or his or its assignee, and recorded as aforesaid, and for such services the secretary of state shall be entitled to a fee of fifteen dollars, for recording each of said contracts and each of said declarations, and a fee of one dollar for noting such declaration on the margin of the record.

§ 4307. *Limitations.*— This act shall not be held to invalidate or affect in any way any contract heretofore made of the kind

referred to in the first section hereof, and any such contract heretofore made, may upon compliance with the provisions of this act, be recorded as herein provided. Nor shall it interfere with the provisions of chapter thirty-six of the fifth division of the compiled statutes of this state, so far as to impair any mortgage or rolling-stock or equipment of any railroad therein provided for, or repeal the provisions therein contained, providing for the making of such mortgages.

CRIMINAL PROVISIONS.

Revised Codes 1907.

§ 8689. *Removal of mortgaged property.*—Every person who, after mortgaging any personal property, except railroad locomotives, railroad engines, rolling stock of a railroad, steamboat machinery in actual use and vessels, removes or causes to be removed or permits the removal of such mortgaged property from the county, where it was situated at the time it was mortgaged, without the written consent of the mortgagee, with the intent to deprive the mortgagee of his claim thereto and interest therein; and every person who, after mortgaging any personal property of any kind or character whatsoever, voluntarily sells or transfers any such mortgaged property without the written consent of the mortgagee, and with the intent to defraud such mortgagee of his claim thereto and interest therein, or with the intent to defraud the purchaser thereof, of any money or thing of value, is guilty of larceny. (As amended by Laws 1909, ch. 7.)

NEBRASKA.

CONDITIONAL SALES GENERALLY.

Revised Statutes 1913.

§ 2636. *Sales upon conditions void unless signed and filed.*—No sale, contract or lease, wherein the transfer of the title or ownership of personal property is made to depend upon any condition, shall be valid against any purchaser or judgment creditor of the vendee or lessee in actual possession, obtained in pursuance of such sale, contract, or lease without notice, unless the same be in writing, signed by the vendee or lessee, and a copy thereof filed in the office of the clerk of the county within which such vendee or lessee resides; said copy shall have attached thereto an affidavit of such vendor or lessor, or his agent or attorney, which shall set

forth the names of the vendor and vendee, or lessor and lessee, or description of the property transferred and the full and true interest of the vendor or lessor therein. All such sales and transfers shall cease to be valid against purchasers in good faith or judgment or attaching creditors without notice at the expiration of five years, unless such vendor or lessor shall, within thirty days, prior to the expiration of the five years from the date of such sale or transfer, file a copy thereof, verified as aforesaid, in the office of said clerk, and the said vendor or lessor may preserve the validity of his said sale or transfer of personal property by an annual refiling in the manner as aforesaid of such copy.

§ 2637. *Same — Fee for filing.*— The county clerk, on presentation, shall file such copy in his office, and index the same in the same manner as chattel mortgages are required to be indexed, and he shall receive therefor a fee of twenty-five cents. This article shall not be held to apply to chattel mortgages.

§ 545. *Right of vendee to redeem from a default.*— Where any personal property sold and delivered upon a contract of conditional sale, to be paid for in installments, with the ownership thereof remaining in the vendor as security for the payment of the purchase price, shall be taken possession of by the vendor upon the rescinding of the contract of sale by him because of the default in payment by the vendee; and where the vendee has paid thereon a sum equal to one-third of the entire purchase price, such vendor shall at any time within twenty days after the taking of such property by him, redeliver the same to the vendee upon the payment by the vendee of the balance of the purchase price; together with the reasonable cost of taking and keeping the same: PROVIDED, if the vendee shall in the first instance surrender said personal property to the vendor without legal process no costs shall be chargeable to the vendee upon the redemption of said personal property.

§ 546. *Right of action by vendee against vendor after tender of performance.*— Upon the refusal of any such vendor to redeliver any such property after payment or tender of the balance of the purchase price thereof and costs according to the provisions of the preceding section, the vendee may thereupon recover from any such vendor the whole of the purchase money paid on the contract of sale.

RAILROAD EQUIPMENT.

Revised Statutes 1913.

§ 2638. *Conditional sale or lease of railroad or street railway.* — In any contract for the sale of railroad or street railway equipment or rolling stock, it shall be lawful to agree that the title to the property sold or contracted to be sold, although possession thereof may be delivered immediately, or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money, and in any contract for the leasing or hiring of such property, it shall be lawful to stipulate for a conditional sale thereof at the termination of such contracts, and that the rentals or amounts to be received under such contract may, as paid, be applied and treated as purchase money, and that the title to property shall not vest in lessee or bailee until the purchase price shall have been paid in full, and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee: PROVIDED, no such contract shall be valid as against any subsequent judgment creditor, or any subsequent *bona fide* purchaser for value and without notice, unless:

First — The same shall be evidenced by an instrument executed by the parties and duly acknowledged by the vendee, or lessee or bailee, as the case may be, or duly proved, before some person authorized by law to take acknowledgment of deeds, and in the same manner as deeds are acknowledged or proved.

Second — Such instrument shall be filed for record in the office of the secretary of state of this commonwealth.

Third — Each locomotive engine, or car so sold, leased or hired, or contracted to be sold, leased or hired, as aforesaid, shall have the name of the vendor, lessor or bailor plainly marked on each side thereof, followed by the word "owner," or "lessor," or "bailor," as the case may be.

§ 2639. *Record of contract — Declaration of performance — Fees.* — The contracts authorized by the next preceding section shall be recorded by the secretary of state in a book of records to be kept for that purpose. And on payment in full of the purchase-money, and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect may be made by the vendor, lessor or bailor, or his or its assignee, which declaration may be made on the margin of the

record of the contract, duly attested, or it may be made by a separate instrument, to be acknowledged by the vendor, lessor or bailor, or his or its assignee, and recorded as aforesaid. And for such services the secretary of state shall be entitled to a fee of fifteen dollars, for recording each of said contracts and each of said declarations, and a fee of two dollars for noting such declaration on the margin of the record.

CRIMINAL PROVISIONS.

Revised Statutes 1913.

§ 534. *Penalty for disposing of mortgaged property.*—Any person who, after having conveyed any article of personal property to another by mortgage, shall, during the existence of the lien or title created by such mortgage, sell, transfer, or in any manner dispose of the said personal property, or any part thereof so mortgaged, to any person or body corporate, without first procuring the consent, in writing, of the owner and holder of the debt secured by said mortgage, to any such sale, transfer, or disposal, shall be deemed guilty of a felony, and, upon conviction thereof, shall be fined in any sum not less than one hundred dollars, or imprisoned in the penitentiary for a term not less than one year nor more than ten years, or both.

§ 535. *Penalty for removing mortgaged property.*—Any person who after having conveyed any article of personal property to another by mortgage, shall, during the existence of the lien or title created by such mortgage, remove, permit, or cause to be removed, said mortgaged property or any part thereof, out of the county within which such property was situated at the time such mortgage was given thereon, with intent to deprive the owner or owners of said mortgage of his security, shall be deemed guilty of a felony, and on conviction thereof shall be imprisoned in the penitentiary for a term not exceeding ten years, and be fined in a sum not exceeding one thousand dollars.

NEVADA.

CHATTEL MORTGAGES.

Revised Laws 1912.

§ 1080. *Possession of mortgaged property — Authorized to sell — Lien — Chattel mortgages recorded.*—No mortgage of personal property shall be valid for any purpose against any other per-

son than the parties thereto, unless possession of the mortgaged property be delivered to, and retained by, the mortgagee, or, unless the mortgage shall be recorded in the office of the county recorder of the county where the property is situated, and also in the county where the mortgagor resides. A mortgage upon personal property, including growing crops, executed, acknowledged and recorded, shall be valid against all third parties without such delivery of possession; provided, that no such mortgage shall be valid for any purpose as against other than the parties thereto, unless there be appended or annexed thereto the affidavits of the mortgagor and mortgagee, or some person in their behalf, setting forth that the mortgage is made in good faith, and given for a debt actually owing from the mortgagor, stating the amount and character of such debt, and that the same is not made to hinder, delay or defraud any creditor of the mortgagor. Any personal property, mortgaged as aforesaid, may be seized under attachment or execution, and the surplus, over and above the mortgage debt, secured to any other creditor of the mortgagor by serving upon the mortgagor and mortgagee, or, in his absence from the county, upon his or their agent or other person in charge or possession of such personal property, a copy of the attachment or execution, or, in case no such person can be found in the county in charge or possession thereof, then by filing a copy of the writ of attachment or execution in the office of [the] county recorder of the county where such property is situate, with a notice indorsed thereon by the officer executing the same, to the effect that such property is so attached. But the possession of mortgaged personal property shall not be taken from the mortgagor or mortgagee unless full payment of the mortgagee's demand be first made, which, if done by the attaching or executing creditor of the mortgagor, shall entitle him to hold such personal property and the possession thereof, under his levy for repayment to him of the amount so paid, in addition to his own individual demand; and any officer executing any execution is hereby authorized to sell such property for the amount of such mortgage demand, in addition to the amount of the execution, and out of the proceeds of sale to first satisfy such mortgage demand. In case of such levy of attachment or execution upon such mortgaged personal property, when the amount of the mortgage demand is not paid to the mortgagee, the officer may expose such property for sale, and may sell the same subject to the rights of the mortgagee under the mortgage, and the purchaser shall take the property subject

to such rights and subject to the possession of the parties to the mortgage. The lien of a mortgagee upon a growing crop shall continue until after the crop shall be harvested and threshed or baled, or otherwise prepared for market, and delivered to the mortgagee or his order; provided, that a chattel mortgage upon a growing crop may be executed as well before as after the crop is planted, and when executed before the crop is planted, it shall be expressed in the mortgage that it is the intention of the parties that the same shall take effect upon the crops when planted. The several county recorders of this state are hereby authorized and directed to procure for their respective offices, at the expense of the county, suitable books, properly indexed, for the recording of all chattel mortgages, which books shall be plainly labeled and marked "Records of Chattel Mortgages." All chattel mortgages shall be recorded therein, and such books shall, at all times, be open to the public for inspection, and the mortgages therein recorded shall be canceled and discharged in the same manner as mortgages on real property are canceled and discharged. The recorder of the several counties shall receive for recording chattel mortgages, indexing and releasing the same, the same fees as are allowed them for mortgages on real estate; provided, that no chattel mortgage shall be given or be valid for a less sum than one hundred dollars.

§ 1081. *Bottomry, respondentia.*— Nothing contained in the last three sections shall be construed to apply to contracts of bottomry, respondentia, or assignments or hypothecations of vessels, or goods at sea, or in foreign states, or without this territory; provided, the assignee, or mortgagee, shall take possession of such goods as soon as may be, after the arrival thereof within this territory.

§ 5501. *Judgment for amount due — Sale ordered — Land in two counties — Execution issued — Judgment for deficiency — Lien.*— There shall be but one action for the recovery of any debt, or for the enforcement of any right secured by mortgage or lien upon real estate, or personal property, which action shall be in accordance with the provisions of this chapter. In such action, the judgment shall be rendered for the amount found due the plaintiff, and the court shall have power, by its decree or judgment, to direct a sale of the encumbered property, or such part thereof as shall be necessary, and apply the proceeds of the sale to the payment of the costs and expenses of the sale, the costs of

the suit, and the amount due to the plaintiff. If the land mortgaged consists of a single parcel, or two or more contiguous parcels, situated in two or more counties, the court may, in its judgment, direct the whole thereof to be sold in one of such counties by the sheriff, and upon such proceedings, and with like effect, as if the whole of the property were situated in that county. If it shall appear from the sheriff's return that there is a deficiency of such proceeds and balance still due to the plaintiff, the judgment shall then be docketed for such balance against the defendant or defendants personally liable for the debts, and shall, from the time of such docketing, be a lien upon the real estate of the judgment debtor, and an execution may thereupon be issued by the clerk of the court, in like manner and form as upon other judgments, to collect such balance or deficiency from the property of the judgment debtor.

§ 5502. *Surplus money, how paid and deposited.* If there be surplus money remaining after payment of the amount due on the mortgage, lien, or incumbrance, with costs, the court may cause the same to be paid to the person entitled to it, and in the meantime may direct it to be deposited in court.

§ 5503. *Proceedings, when debt secured falls due at different times.*— If the debt for which the mortgage, lien or incumbrance is held be not all due, so soon as sufficient of the property has been sold to pay the amount due, with costs, the sale shall cease; and afterwards, as often as more becomes due for principal or interest, the court may, on motion, order more to be sold. But if the property cannot be sold in portions without injury to the parties, the whole may be ordered to be sold in the first instance, and the entire debt and costs paid, there being a rebate of interest where such rebate is proper.

Railroad Equipment.

Laws 1913, Chapter 278.

§ 1. In any contract for the sale of railroad or street railway equipment or rolling stock, it shall be lawful to agree that title to the property sold or contracted to be sold, although possession thereof may be delivered immediately or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money. And in any contract for the leasing or hiring of such property, it shall be lawful

to stipulate for a conditional sale thereof at the termination of such contract, and that the rentals or amounts to be received under such contract may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price shall have been paid in full, and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee; provided, that no such contract shall be valid as against any subsequent judgment creditor or any subsequent bona fide purchaser for value and without notice, unless (1) the same shall be evidenced by an instrument executed by the parties and duly acknowledged by the vendee, lessee, or bailee, as the case may be, or duly proved before some person authorized by law to take acknowledgments of deeds, and in the same manner as deeds are acknowledged or proved; (2) such instrument shall be filed for record in the office of the secretary of state of this state; (3) each car or locomotive engine so sold, leased, or hired, or contracted to be sold, leased, or hired as aforesaid, shall have the name of the vendor, lessor, or bailor plainly marked in letters not less than one inch in size on each side thereof, followed by the word " owner," or " lessor," or " bailor," as the case may be.

§ 2. The contracts herein authorized shall be filed with the secretary of state and recorded by him in a book of records to be kept for that purpose. And on payment in full of the purchase money and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect shall be made by the vendor, lessor, or bailor, or his or its assignee, which declaration shall be made by a separate instrument, to be acknowledged by the vendor, lessor, or bailor, or his or its assignee, and recorded as aforesaid. The secretary of state shall collect and pay into the state treasury five dollars for filing each of such contracts or declarations and twenty cents per folio for recording the same.

§ 3. This act shall not be held to invalidate or affect in any way any contract heretofore made of the kind referred to in section 1 hereof, and any such contract heretofore made may, upon compliance with the provisions of this act, be recorded as herein provided.

CRIMINAL PROVISIONS.

Revised Laws 1912.

§ 6700. *Destruction or removal of mortgaged property.*— Every person being in possession thereof, who shall remove, conceal,

or destroy or connive at or consent to the removal, concealment or destruction of any personal property or any part thereof, upon which a mortgage, lien, conditional sales contract or lease exists, in such a manner as to hinder, delay or defraud the holder of such mortgage, lien or conditional sales contract or such lessor, or who, with intent to hinder, delay or defraud the holder of such mortgage, lien or conditional sales contract, or such lessor, shall sell, remove, conceal or destroy or connive at or consent to the removal, concealment or destruction of such property, shall be guilty of a gross misdemeanor. In any prosecution under this section any allegation containing a description of the mortgage, lien, conditional sales contract or lease by reference to the date thereof and names of the parties thereto, shall be sufficiently definite and certain.

NEW HAMPSHIRE.

CONDITIONAL SALES GENERALLY.

Public Statutes 1901, Chapter 140.

§ 23. No lien reserved on personal property sold conditionally and passing into the hands of the conditional purchaser, except a lien upon household goods created by a lease thereof, containing an option in favor of the lessee to purchase the same at a time specified, shall be valid against attaching creditors, or subsequent purchasers, without notice, unless the vendor of such property takes a written memorandum, signed by the purchaser, witnessing the lien, the sum due thereon, and containing an affidavit as provided in the following section, and causes such memorandum to be recorded in the town clerk's office of the town,

I. Where the purchaser resides, if within this state; or

II. Where the vendor resides, if within this state, and the purchaser does not reside in the state; or

III. Where the property is situated if neither purchaser nor vendor resides in the state.

§ 24. Each vendor and purchaser shall make and subscribe an affidavit in substance as follows: "We severally swear that the foregoing memorandum is made for the purpose of witnessing the lien and the sum due thereon as specified in said memorandum, and for no other purpose whatever, and that said lien and the sum due thereon were not created for the purpose of enabling the purchaser to execute said memorandum, but said lien is a just lien, and the sum stated to be due thereon is honestly due thereon and owing from the purchaser to the vendor."

§ 25. When copartners or corporations are parties to such a memorandum, the affidavit may be made and subscribed as in case of mortgages of personal property.

§ 26. If the record required by section twenty-three is made within twenty days after the property is delivered, the lien reserved shall be valid against all attaching creditors and purchasers; but if it is not made until after the expiration of twenty days, it shall be valid against those attaching creditors and purchasers only who become such after the record.

Railroad Equipment.

Laws 1893, Chapter 25.

§ 1. That in any contract for the sale of railroad or street railway equipment or rolling stock, it shall be lawful to agree that the title to the property sold or contracted to be sold, although possession thereof may be delivered immediately, or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase-money. And in any contract for the leasing or hiring of such property, it shall be lawful to stipulate for a conditional sale thereof at the termination of such contract, and that the rentals or amounts to be received under such contract may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase-price shall have been paid in full, and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee; provided, that no such contract shall be valid as against any subsequent judgment creditor, or any subsequent bona fide purchaser for value and without notice, unless,—

I. The same shall be evidenced by an instrument executed by the parties, and duly acknowledged by the vendee, or lessee, or bailee, as the case may be, or duly proved, before some person authorized by law to take acknowledgment of deeds, and in the same manner as deeds are acknowledged or proved;

II. Such instrument shall be filed for record in the office of the secretary of state;

III. Each locomotive engine, or car so sold, leased, or hired, or contracted to be sold, leased, or hired, as aforesaid, shall have the name of the vendor, lessor, or bailor plainly marked on each side thereof, followed by the word owner, or lessor, or bailor, as the case may be.

§ 2. The contracts herein authorized shall be recorded by the secretary of state in a book of records to be kept for that purpose. And on payment in full of the purchase money, and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect may be made by the vendor, lessor, or bailor, or his or its assignee, which declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument, to be acknowledged by the vendor, lessor, or bailor, or his or its assignee, and recorded as aforesaid. And for such services the secretary of state shall collect for the use of the state a fee of twenty-five (25) cents per page of 224 words. (As amended by Laws 1913, ch. 5.)

§ 3. This act shall not be held to invalidate or affect in any way any contract heretofore made of the kind referred to in the first section hereof, and any such contract heretofore made may, upon compliance with the provisions of this act, be recorded as herein provided.

CRIMINAL PROVISIONS.

Public Statutes 1901, Chapter 140.

§ 16. Any person who removes or conceals any mortgaged personal property with the intent of placing it beyond the control of the mortgagee, or who aids in so doing, and any mortgagor of such property who assents to such removal, or concealment, shall be fined not exceeding one thousand dollars, or be imprisoned not exceeding one year.

NEW MEXICO.

CHATTEL MORTGAGES AND CONDITIONAL SALES.

Laws 1915, Chapter 71.

§ 1. That personal property of every description, including growing crops, is hereby declared to be subject to mortgage in accordance with the provisions of this Act.

§ 2. That hereafter all chattel mortgages, conditional sales, leases, purchase-leases, sale-leases, or other instruments of writing having the effect of a mortgage or lien upon personal property, or that are intended to hold the title in the former owner, possessor or grantor until the value or purchase price is fully paid, shall be acknowledged by the owner or mortgagor in the same manner as conveyances affecting real estate, and the same shall be filed or recorded as hereinafter required. The failure to so file or record any such instrument in writing shall render the same

void as to subsequent mortgages [mortgagees] in good faith, purchases for value without notice, and subsequent judgment or attaching creditors without notice; and as against subsequent general creditors without notice, such unrecorded instrument shall not be valid until the same shall be duly filed or recorded as hereinafter provided. (As amended by Laws 1917, ch. 74.)

§ 3. Every such chattel mortgage or other instrument of writing, or a copy thereof, shall be filed in the office of the County Clerk of the county or counties wherein the property thereby affected is situate, at the time of the execution of any such chattel mortgage, or other instrument of writing: Provided, that such chattel mortgage or other instrument of writing may also be recorded in the same manner as an instrument affecting real estate.

§ 4. Upon receipt of such chattel mortgage or other instrument of writing, or copy thereof as aforesaid, the county clerk shall endorse thereon the time of receiving it, and shall retain the same in the files of his office; Provided, that in case of recording as hereinbefore provided, the party in whose favor such instrument is executed, shall have the right to withdraw the original if filed whenever a true copy thereof is filed with such County Clerk. When any such mortgage or other instrument of writing is acknowledged and filed, or recorded in the manner herein prescribed, and it shall be shown to the Court by the oath or affidavit of the party wishing to use the same, or of anyone knowing the fact, that same is lost or not in the possession of the party wishing to use the same, a copy thereof or of the record thereof, certified by the County Clerk under the seal of his office, may be received in evidence without further proof. A copy of any such original instrument, or of any copy thereof, filed as aforesaid, certified by the County Clerk in whose office the same shall be filed, shall be received in evidence, but only of the fact that such instrument or copy was received and filed according to the endorsements of the County Clerk, thereon, and of no other fact.

§ 5. The County Clerk shall keep a book in which shall be entered a minute of all such instruments, which shall be ruled off into separate columns with headings as follows: Time of Reception, Name of Mortgagor (alphabetically arranged), Name of Party in Whose Favor the Instrument is Drawn, Date of Instrument, Amount Secured, When Due, Property Mortgaged, and Remarks; and the proper entry shall be made under each of said headings. Under the heading of Property Mortgages [Mortgaged],

it shall be sufficient to enter a general description of the property mortgaged, and the particular place where located, if set forth in such instrument.

§ 6. Every such chattel mortgage or other instrument of writing, filed in accordance with the provisions of this Act, shall have the full force and effect given to the recording of an instrument affecting real estate. Nothing herein contained shall be so construed as to affect the rights of any person under any such chattel mortgage or other instrument of writing having the effect of a mortgage or lien upon personal property, heretofore recorded as required by law.

§ 7. Whenever any such chattel mortgage or other instrument of writing shall have been paid or satisfied, it shall be the duty of the party in whose favor such instrument is executed, his assignee or personal representative, to file or cause to be filed in the office of the county clerk wherein such chattel mortgage or other instrument of writing is filed, satisfaction thereof acknowledged in the manner prescribed by law. The county clerk shall enter in the record book in which such instrument is entered under the heading of Remarks, the word " satisfied " and the date of satisfaction. In case any such chattel mortgage or other instrument of writing is also recorded, it shall be the duty of the county clerk to make the same entry on the margin of the page where such instrument is recorded. Any mortgagee or assignee of any such mortgage or other instrument of writing, who shall refuse, upon demand of the mortgagor or his successor in interest, to file such satisfaction as provided in this section, shall be liable in damages to the mortgagor or his successor in interest, in the sum of One Hundred Dollars, to be recovered in a civil action before the District Court; and said sum shall be regarded and fixed as liquidated damages in such case.

When such satisfaction is filed, the county clerk may deliver to the mortgagor the chattel mortgage or other instrument of writing covered thereby, but in case no demand is made therefor, the same shall remain on file.

§ 8. Any such chattel mortgage or other instrument of writing, filed as herein provided, shall be void as against the creditor of the person making the same or against subsequent purchasers or mortgagees in good faith after expiration of six years from and after the date of the maturity thereof. (As amended by Laws 1919, ch. 24.)

§ 9. The County Clerk shall charge and collect in advance for the filing and entry of every such chattel mortgage or other instrument of writing, and for the filing and entry of satisfaction as aforesaid, the sum of twenty-five cents, and no more. In case any such chattel mortgage or other instrument of writing is recorded, as aforesaid, the County Clerk shall in like manner charge and collect the fee provided by law for the recording of instruments affecting real estate. The County Clerk may also charge and collect for certifying a copy of any such original chattel mortgage or other instrument of writing so filed or recorded, the sum of twenty-five cents and no more, where such copy is presented with such original chattel mortgage or other instrument of writing at the time same is filed or recorded, and not more than seventy-five cents where such copy is prepared by the County Clerk. In cases where a copy of such chattel mortgage or other instrument in writing is filed in the first instance, instead of the original, the County Clerk shall be entitled to charge the sum of twenty-five cents for certifying upon such original the fact that a true copy thereof has been duly filed with the date of such filing, and such certificate so endorsed upon such original chattel mortgage or other instrument of writing shall be received in evidence as sufficient proof of the filing of a true copy of such chattel mortgage or other instrument in writing in the office of the County Clerk so certifying. (As amended by Laws 1917, ch. 36.)

§ 10. That Sections 2360, 2361, 2362, 2363, 2364 and 2366, of the Compiled Laws of New Mexico for 1897 [§§ 566 to 570, 572] and Chapter 14 of the Session Laws of 1907, are hereby repealed, except insofar as the same are applicable to chattel mortgages or other instruments of writing having the effect of a mortgage or lien upon personal property executed prior to the date when this Act becomes effective.

Annotated Statutes 1915.

§ 571. *Right of possession.*— In the absence of stipulation to the contrary, the mortgagor of real or personal property shall have the right of possession thereof.

§ 573. *Notice of sale.*— That hereafter when personal property is to be sold under process of any of the courts of the State of New Mexico and under chattel mortgages it shall be sufficient to give notice of such sale by posting at least six handbills, or notices in writing, at six separate public places in the precinct where said sale is to be made describing the property to be sold

and stating the character of the instrument under which the sale is to be made, the names of the parties thereto, the time and place of such sale and the amount of the debt and costs to be satisfied: Provided, however, that no sale shall be made under the provisions of this section where the debt to be realized exclusive of costs exceeds the sum of three hundred dollars.

§ 574. *Foreclosure sale — Notice.*—After condition broken, the mortgagee or his assignee may proceed to sell the mortgaged property, or so much thereof as shall be necessary to satisfy the mortgage and costs of sale; having first given notice of the time and place of sale, by written or printed handbills, posted up in at least four public places in the precinct in which the property is to be sold, at least ten days previous to the day of sale.

§ 575. *Sale by mortgagee in possession.*— If the mortgagee or his assignee shall have obtained possession of the mortgaged property, either before or after condition broken, the mortgagor, or any subsequent mortgagee, may demand in writing a sale of such property. In such case the mortgagee shall proceed to sell the property, having first given the notice as provided in the preceding section.

§ 576. *Sale — Disposition of proceeds.*— If after satisfying the mortgage and costs of sale there shall be any surplus remaining, the same shall be paid to any subsequent mortgagee entitled thereto, or to the mortgagor or his assignee.

Railroad Equipment.

Annotated Statutes 1915.

§ 4753. *Leased equipment — Writing — Record — Name of owner to appear.*— Whenever any railroad equipment and railroad stock shall hereafter be sold, leased or loaned, on the condition that the title to the same by the vendee, lessee or bailee, shall remain in the vendor, lessor or bailor, until the terms of the contract as to the payment of the installments, amounts or rentals payable, or the performance of other obligations thereunder shall have been fully complied with, such contract shall be invalid as to any subsequent judgment creditor or any subsequent purchaser for a valuable consideration without notice, unless:

First. The same shall be evidenced by a writing duly acknowledged before some person authorized by law to take acknowledgments of deeds.

Second. Such writing shall be recorded in the same book as

mortgages are recorded in the office of the county clerk of the county in which is located the principal office or place of business of such vendee, lessee or bailee within the state.

Third. Each locomotive or car so sold, leased or loaned, shall have the name of the vendor, lessor, or bailor, plainly marked upon both sides thereof, followed by the words, Owner, Lessor, Bailor, or Assignee, as the case may be.

§ 4754. *Id.—Application to existing contracts.*— The preceding section shall not be held to apply to or invalidate any contract of the character described and that was made prior to April 2, 1884.

CRIMINAL PROVISIONS.

Annotated Statutes 1915.

§ 577. *Unauthorized sale by mortgagor.*—Any person having conveyed to another any personal property by chattel mortgage or other instrument of writing having the effect of a mortgage or lien upon such property, who during the existence of such mortgage or lien, shall sell, transfer, conceal, take, drive or carry away, or in any manner dispose of such property or any part thereof, or cause or suffer the same to be done, without the written consent of the holder of such mortgage or lien, shall be guilty of a misdemeanor, and on conviction may be fined in a sum not exceeding twice the value of the property so sold or disposed of, or confined in the county jail not exceeding six months, or both, at the discretion of the court.

NEW YORK.

CONDITIONAL SALES GENERALLY.

Personal Property Law, Article 4.

§ 60. *Definitions.*— The term "conditional vendor," when used in this article, means the person contracting to sell goods and chattels upon condition that the ownership thereof is to remain in such person, until such goods and chattels are fully paid for or until the occurrence of any future event or contingency; the term "conditional vendee," when so used, means the person to whom such goods and chattels are so sold.

§ 62. *Conditions and reservations in contracts for the sale of goods and chattels.*— Except as otherwise provided in this article, all conditions and reservations in a contract for the conditional sale of goods and chattels, accompanied by delivery of the thing

contracted to be sold, to the effect that the ownership of such goods and chattels is to remain in the conditional vendor or in a person other than the conditional vendee, until they are paid for, or until the occurrence of a future event or contingency, shall be void as against subsequent purchasers, pledgees or mortgagees, in good faith, and as to them the sale shall be deemed absolute, unless such contract of sale, containing such conditions and reservations, or a true copy thereof, be filed as directed in this article, and unless the other provisions of the lien law applicable to such contracts are duly complied with; provided that every such contract permitting the resale of such goods by the vendee shall be valid whether filed or not, but shall be void as against subsequent purchasers, pledgees or mortgagees in good faith for value, and without actual knowledge of the conditions of such contracts, and as to them the sale shall be deemed absolute. Every such contract for the conditional sale of any goods and chattels attached, or to be attached, to a building, shall be void as against subsequent bona fide purchasers or incumbrancers of the premises on which said building stands, and as to them the sale shall be deemed absolute, unless, on or before the date of the delivery of such goods or chattels at such building, such contract shall have been duly and properly filed and indexed as directed in this article and unless said contract shall contain a brief description, sufficient for identification, of the premises which said building occupies, or upon which said building stands, and if in a city or village its location by street number, if known, and if in a city or county where the block system of recording and indexing conveyances is in use, the section and block within which it is located. (As amended by Laws 1920, ch. 635.)

§ 63. *Where contract to be filed.*— Such contracts except contracts for the conditional sale of goods and chattels supplied for a building and attached or to be attached thereto, shall be filed in the city or town where the conditional vendee resides, if he resides within the state at the time of the execution thereof, and if not, in the city or town where such property is at such time. Such contract shall be filed in the city of New York, as follows, namely: in the borough of Brooklyn in said city, such instrument shall be filed in the office of the register of the county of Kings; in the borough of Queens in said city, in the office of the clerk of Queens county; in the borough of Richmond in said city, in the office of the clerk of the county of Richmond; in the borough

of Manhattan in said city, in the office of the register of the county of New York, and in the borough of the Bronx in said city, in the office of the register of the county of Bronx; in every other city or town of the state, in the office of the city or town clerk, unless there is a county clerk's office in such city or town, in which case it shall be filed in such office. But all such contracts for the conditional sale of goods and chattels, attached or to be attached to a building, shall be filed with the register of the city or county or with the county clerk of the county, in case there is no register of such county, in which the premises whereon the said building stands are located.

§ 64. *Indorsement, entry, refiling and discharge of conditional contracts.*— The provisions of article ten of the lien law relating to chattel mortgages apply to the indorsement, entry, refiling and discharge of contracts for the conditional sale of goods and chattels, except contracts for the conditional sale of goods and chattels, attached or to be attached to a building. The officers with whom such first-mentioned contracts are filed shall enter the future contingency or event required to occur before the ownership of said goods and chattels shall pass from the vendor to the vendee, the amount due upon such contract and the time when due. The name of the conditional vendor shall be entered in the column of "mortgagees," and the name of the conditional vendee in the column of "mortgagors." Where such contracts are for goods and chattels, attached or to be attached to a building, the following provisions apply to the indorsement, entry, refiling and discharge thereof. The above-named officers, with whom such contracts are directed to be filed, shall enter the future contingency or event required to occur before the ownership of said goods and chattels shall pass from the vendor to the vendee, the amount due upon such contract, and the time when due, and shall file every such contract presented to them for that purpose, and indorse thereon its number and time of receipt; they shall enter in a book provided for that purpose, in separate columns, the names of all the parties to each contract so filed, arranged in alphabetical order, under the head of "vendees" and "vendors," the number of such contract and the date of the filing thereof, and under a column headed "property," they shall enter a brief description sufficient for identification of the land upon which said building stands, and if in a city or village, its location by street and number, if known, and if in a city or county where the block system of record-

ing and indexing conveyances is in use, the section and block in which the said land is situated. The said officers shall also keep an index, so as to afford correct and easy reference to the books containing the entries in regard to such last-named contracts. In all cities and counties where the block system of recording and indexing conveyances is in use, the index shall be arranged according to the block numbers. A contract for the conditional sale of goods and chattels, attached or to be attached to a building, shall be invalid as against creditors of the conditional vendee and against subsequent purchasers or mortgagees in good faith of such goods and chattels or of the premises upon which the said building stands, after the expiration of the first or any succeeding term of one year, reckoning from the time of the first filing, unless (1) within thirty days preceding the expiration of such term a statement containing a description of such contract, the names of the parties, the time when and place where filed, the interest of the conditional vendor or of any person who has succeeded to his interest in the property, claimed by virtue thereof; or (2) a copy of such contract and its indorsements, together with a statement attached thereto or indorsed thereon, showing the interest of the conditional vendor or of any person who has succeeded to his interests in the contract, is filed in the office where the contract was originally required to be filed; provided, however, if at the time such contract was executed the premises whereon the said building stands was then in the county of New York but is now located in the new county of Bronx, then such statement or a copy of such contract must be filed in the office of the register of the county of Bronx; and the officer with whom such statement or copy of such contract must be filed, as in this section provided, shall enter, in a separate column, in the book above provided for, in a column headed " date of re-filing," the date of the refiling of the said contract. The officers performing services under this article are entitled to receive the same fees as for like services relating to chattel mortgages. Upon the title to the goods and chattels affected by any such last-mentioned contract becoming absolute in the conditional vendee or his successor in interest by the payment of the full consideration for which any such contract was made, the conditional vendor, his assignee or legal representative, upon the request of the conditional vendee or of any person interested in the property covered by such contract, must sign and acknowledge a certificate setting forth such payment. The officer with whom

such contract is filed must, on receipt of such certificate, file the same in his office and write the word " discharged " in the book where the contract is entered, opposite the entry thereof, and the contract is thereby discharged.

§ 64-a. *Discharge of lien of contract for conditional sale of chattels attached to real property.*— The lien upon real property of a contract for the conditional sale of goods and chattels, attached or to be attached to a building, filed as provided in this article in the office of a register of deeds or county clerk, may also be discharged in the following manner: Either before or after the beginning of any action or proceeding to enforce the lien upon such property of any such contract, the owner of such real property or of the building thereon may execute an undertaking with two or more sufficient sureties, who shall be freeholders, to the clerk or register of deeds of the county where the premises are situated, in such sum as the justice of the supreme court or the county judge may direct, not less than the amount due and to become due upon such contract, conditioned for the payment of any judgment which may be rendered against such real property or building on account of such contract. The sureties shall together justify in double the sum named in the undertaking. A copy of the undertaking with notice that the sureties will justify before a justice of the supreme court or the county judge at the time and place therein mentioned, must be served upon the conditional vendor or his attorney not less than five days before such time. Upon the approval of the undertaking by the judge or justice an order shall be made discharging such lien. The execution of any such bond or undertaking by any fidelity or surety company authorized by the laws of this state to transact business, shall be equivalent to the execution of such bond or undertaking by two sureties; and such company, if excepted to, shall justify through its officers or attorney in the manner required by law of fidelity and surety companies. Any such company may execute any such bond or undertaking as surety by the hand of its officers, or attorney, duly authorized thereto by resolution of its board of directors, a certified copy of which resolution, under the seal of such company, shall be filed with each bond or undertaking. If the conditional vendor cannot be found, or does not appear by attorney, such service may be made by leaving a copy of such undertaking and notice at the conditional vendor's place of residence or if a corporation at its principal place of business within the state as stated

in the contract, with a person of suitable age and discretion therein, or if the house of his abode or its place of business is not stated in said contract and is not known, then in such manner as the court may direct. The premises, if any, described in the contract as the vendor's residence or place of business shall be deemed his said residence or its place of business for the purposes of said service at the time thereof, unless it is shown affirmatively that the person serving the papers or directing the service had knowledge to the contrary. (Added by Laws 1917, ch. 697.)

§ 65. *Sale of property retaken by vendor.*—Whenever articles are sold upon the condition that the title thereto shall remain in the vendor, or in some other person than the vendee, until the payment of the purchase price, or until the occurrence of a future event or contingency, and the same are retaken by the vendor, or his successor in interest, they shall be retained for a period of thirty days from the time of such retaking, and during such period the vendee or his successor in interest, may comply with the terms of such contract, and thereupon receive such property. After the expiration of such period, if such terms are not complied with, the vendor, or his successor in interest, may cause such articles to be sold at public auction. Unless such articles are so sold within thirty days after the expiration of such period, the vendee or his successor in interest may recover of the vendor the amount paid on such articles by such vendee or his successor in interest under the contract for the conditional sale thereof.

§ 66. *Notice of sale.*—Not less than fifteen days before such sale, a printed or written notice shall be served personally upon the vendee, or his successor in interest, if he is within the county where the sale is to be held; and if not within such county, or he can not be found therein, such notice must be mailed to him at his last known place of residence. Such notice shall state:

1. The terms of the contract.
2. The amount unpaid thereon.
3. The amount of expenses of storage.
4. The time and place of the sale, unless such amounts are sooner paid.

§ 67. *Disposition of proceeds.*—Of the proceeds of such sale, the vendor or his successor in interest may retain the amount due upon his contract, and the expenses of storage and of sale; the balance thereof shall be held by the vendor or his successor in interest, subject to the demand of the vendee or his successor in

interest, and a notice that such balance is so held shall be served personally or by mail upon the vendee or his successor in interest. If such balance is not called for within thirty days from the time of sale, it shall be deposited with the treasurer or chamberlain of the city or village, or the supervisor of the town where such sale was held, and there shall be filed therewith a copy of the notice served upon the vendee or his successor in interest and a verified statement of the amount unpaid upon the contract, expenses of storage and of sale and the amount of such balance. The officer with whom such balance was deposited shall credit the vendee or his successor in interest with the amount thereof and pay the same to him on demand after sufficient proof of identity. If such balance remains in possession of such officer for a period of five years, unclaimed by the person legally entitled thereto, it shall be transferred to the funds of the town, village or city, and be applied and used as other moneys belonging to such town, village or city.

RAILROAD EQUIPMENT.

Personal Property Law, Article 4.

§ 61. *Conditional sale of railroad equipment and rolling stock.* — Whenever any railroad equipment and rolling stock is sold, leased or loaned under a contract which provides that the title to such property, notwithstanding the use and possession thereof by the vendee, lessee or bailee, shall remain in the vendor, lessor or bailor, until the terms of the contract as to the payment of instalments, amounts or rentals payable, or the performance of other obligations thereunder, are fully complied with, and that title to such property shall pass to the vendee, lessee or other bailee on full payment therefor, such contract shall be invalid as to any subsequent judgment creditor of or purchaser from such vendee, lessee or bailee for a valuable consideration, without notice, unless

1. Such contract is in writing, duly acknowledged and recorded in the book in which real estate mortgages are recorded in the office of the county clerk or register of the county in which is located the principal office or place of business of such vendee, lessee or bailee; and unless

2. Each locomotive or car so sold, leased or loaned, has the name of the vendor, lessor or bailor, or of the assignee of such vendor, lessor or bailor, plainly marked upon both sides thereof, followed by the word owner, lessor, bailor or assignee, as the case may be.

CRIMINAL PROVISIONS.

Penal Law, Article 86.

§ 940. *Fraudulently secreting personal property.*—A person who, having theretofore executed a mortgage of personal property, or any instrument intended to operate as such, sells, assigns, exchanges, secretes or otherwise disposes of any part of the property, upon which the mortgage or other instrument is at the time a lien, with intent thereby to defraud the mortgagee or a purchaser thereof, is guilty of a misdemeanor.

NORTH CAROLINA.

CONDITIONAL SALES GENERALLY.

Consolidated Statutes 1919.

§ 3312. *Conditional sales of personal property.*—All conditional sales of personal property in which the title is retained by the bargainor shall be reduced to writing and registered in the same manner, for the same fees and with the same legal effect as is provided for chattel mortgages, in the county where the purchaser resides, or, in case the purchaser shall reside out of the state, then in the county where the said personal estate or some part thereof is situated; or in case of choses in action, where the donee, bargainee or mortgagee resides.

§ 2587. In all sales of personal property wherein the title is retained by the seller to secure the purchase money, or any part thereof, and no power of sale is conferred, and default is made in the payment of said obligation by the purchaser, then in all such cases it shall be lawful for the owner of such debt thereby secured, without an order of court, to sell such property, or so much thereof as may be necessary to pay off said indebtedness, at public auction for cash, after first giving twenty days' notice at three or more public places in the county wherein the sale is to be made, and apply the proceeds of such sale to the discharge of said debt, interest on the same, and costs of foreclosure, and pay any surplus to the person legally entitled thereto. Before making any such sale, in addition to the advertisement above required, the owner of said debt shall, at least ten days before the day of sale, mail a copy of the notice of sale to the last known post office address of the original purchaser or his assigns.

RAILROAD EQUIPMENT.

Consolidated Statutes 1919.

§ 3313. *Conditional sales or leases of railroad property.*—When any railroad equipment and rolling stock is sold, leased or loaned on the condition that the title to the same, notwithstanding the possession and use of the same by the vendee, lessee, or bailee, shall remain in the vendor, lessor or bailor until the terms of the contract, as to the payment of the installments, amounts or rentals payable, or the performance of other obligations thereunder, shall have been fully complied with; such contract shall be invalid as to any subsequent judgment creditor, or any subsequent purchaser for a valuable consideration without notice unless —

1. The same shall be evidenced by writing duly acknowledged before some person authorized to take acknowledgments of deeds.

2. Such writing shall be registered as mortgages are registered in the office of the register of deeds in at least one county in which such vendee, lessee or bailee does business.

3. Each locomotive or car so sold, leased or loaned shall have the name of the vendor, lessor, or bailor, or the assignee of such vendor, lessor or bailor plainly marked upon both sides thereof, followed by the word owner, lessor, bailor or assignee, as the case may be.

This section shall not apply to or invalidate any contract made before the twelfth day of March, one thousand eight hundred and eighty-three.

CRIMINAL PROVISIONS.

Consolidated Statutes 1919.

§ 4287. *Fraudulent disposal of mortgaged property.*— If any person, after executing a chattel mortgage, deed of trust or other lien for a lawful purpose, shall make any disposition of any personal property embraced in such mortgage, deed of trust or lien, with intent to hinder, delay or defeat the rights of any person to whom or for whose benefit such deed was made, every person so offending and every person with a knowledge of the lien buying the property embraced in any such deed or lien, and every person assisting, aiding or abetting the unlawful disposition of such property, with intent to hinder, delay or defeat the rights of any person to whom or for whose benefit any such deed or lien was made, shall be guilty of a misdemeanor, and shall be punished by fine or imprisonment, or both, in the discretion of the court.

In all indictments for violations of the provisions of this section, it shall not be necessary to allege or prove the person to whom any sale or disposition of the property was made, but proof of the possession of the property embraced in such chattel mortgage, deed of trust or lien, by the grantor thereof, after the execution of said chattel mortgage, deed of trust, or lien, and while it is in force, and further proof of the fact that the sheriff or other officer charged with the execution of process cannot after due diligence find such property under process directed to him for its seizure, for the satisfaction of such chattel mortgage, deed of trust or lien, or that the mortgagee demanded the possession thereof of the mortgagor for the purpose of sale to foreclose said mortgage, deed of trust or lien, after the right to such foreclosure had accrued, and that the mortgagor failed to produce, deliver or surrender the same to the mortgagee for that purpose, shall be prima facie proof of the fact of a disposition or sale of such property, by the grantor, with the intent to hinder, delay or defeat the rights of the person to whom said chattel mortgage, deed of trust or lien was made.

§ 4288. *Secreting property to hinder enforcement of lien.*—Any person removing, exchanging or secreting any personal property on which a lien exists, with intent to prevent or hinder the enforcement of the lien, shall be guilty of a misdemeanor.

NORTH DAKOTA.

CONDITIONAL SALES GENERALLY.

Compiled Laws 1913.

§ 6757. *Conditional sales must be in writing and filed.*—All reservations of the title to personal property, as security for the purchase money thereof, shall, when the possession of such property is delivered to the vendee, be void as to subsequent creditors without notice and purchasers and incumbrancers in good faith and for value, unless such reservation is in writing and filed and indexed the same as a mortgage of personal property. In indexing such instruments the register of deeds shall treat the purchaser as mortgagor and the vendor as mortgagee.

§ 6758. *Void as to whom, unless filed.*—A mortgage of personal property is void as against creditors of the mortgagor and subsequent purchasers and incumbrancers of the property in good faith for value unless the original or an authenticated copy thereof is filed by depositing the same in the office of the register of deeds of the county where the property mortgaged, or any part thereof, is at such time situated.

Railroad Equipment.

Compiled Laws 1913.

§ 4625. *Conditional sale valid.*— In all cases where railroad equipment and rolling stock may have been or shall be sold to any person, firm or corporation to be paid for in whole or in part in installments, or shall be leased, rented, hired or delivered on condition that the same may be used by the person, firm or corporation purchasing, leasing, renting, hiring or receiving the same, and that the title to the same shall remain in the vendor, lessor, renter, hirer or deliverer of the same until the price agreed upon or rent for such property shall have been fully paid, such condition in regard to the title so remaining in the vendor, lessor, renter, hirer or deliverer until such payments are fully made shall be valid for all intents and purposes as to subsequent purchasers in good faith, and creditors; provided, that the term during which the installments or rents are to be paid shall not exceed ten years and such contract shall be in writing and acknowledged.

§ 4626. *Where recorded — Cars, etc., how marked.*— Such contract shall be recorded in the office of the secretary of state and on each locomotive or car that may have been or may be sold or leased the name of the vendor or lessor or assignee of the vendor or lessor shall be marked in a conspicuous place followed by the word " owner " or " lessor," as the case may be.

Criminal Provisions.

Compiled Laws 1913.

§ 10248. *Removing, concealing, selling or disposing of chattels subject to lien.*— Every person having in his possession, or under his control, any personal property upon which there is known to him to be a subsisting lien, either by operation of law or by contract, who willfully destroys, removes from the county, conceals, sells or in any manner disposes of, otherwise than as prescribed by law, or materially injures such property or any part thereof, without the written consent of the then holder of such lien, is guilty of:

1. A misdemeanor, if the value of the property does not exceed one hundred dollars; or,

2. A felony, if the value of the property exceeds such sum.

OHIO.

CONDITIONAL SALES GENERALLY.

General Code.

§ 8568. When personal property is sold to a person to be paid for in whole or part in installments, or is leased, rented, hired or delivered to another on condition that it will belong to the person purchasing, leasing, renting, hiring, or receiving it, when the amount paid is a certain sum, or the value of the property, the title to it to remain in the vendor, lessor, renter, hirer or deliverer thereof, until such sum or the value of the property or any part thereof has been paid, such condition, in regard to the title so remaining until payment, shall be void as to all subsequent purchasers and mortgages [mortgagees] in good faith, and creditors unless the conditions are evidenced by writing, signed by the purchaser, lessee, renter, hirer or receiver thereof, and also a statement thereon, under oath, made by the person so selling, leasing or delivering the property, his agent or attorney, of the amount of the claim, or a true copy thereof, with an affidavit that it is a copy, be deposited with the county recorder of the county where the person signing the instrument resides at the time of its execution, if a resident of the state, and if not such resident, then with the county recorder of the county in which the property is situated at the time of the execution of the instrument.

§ 8569. The officer receiving such an instrument shall proceed with it as is provided in section eighty-five hundred and sixty-two and shall receive the same fees allowed by law for similar services in other cases. [Section 8562. The officer receiving such an instrument shall indorse thereon the time of receiving it and its consecutive number, and enter in a book to be provided by the county the names of all parties thereto, alphabetically arranged, with the number of the instrument, its date, the day of filing it, and the amount secured thereby, which entry must be repeated, alphabetically, under the name of every party thereto. He also shall deposit the instrument in his office to be there kept for the inspection of all persons interested. When such mortgage is refiled or cancelled the date of such refiling or cancellation must be entered upon the margin of such record opposite the original entry.]

§ 8570. When such property except machinery equipment and supplies for railroads and contractors, for manufacturing brick, cement and tiling, and for quarrying and mining purposes, is so sold or leased, rented, hired, delivered, the person who sold, leased,

rented, hired, delivered or his assigns or the agent or servant of either or their agent or servant shall not take possession of such property, without tendering or refunding to the purchaser, lessee, renter, or hirer thereof or any party receiving it from the vendor, the money so paid after deducting therefrom a reasonable compensation for the use of such property, which in no case shall exceed fifty per cent of the amount so paid, anything in the contract to the contrary notwithstanding, and whether such condition be expressed in the contract or not, unless such property has been broken, or actually damaged, when a reasonable compensation for such breakage or damage shall be allowed. But the vendor shall not be required to tender or refund any part of the amount so paid unless it exceeds twenty-five per cent of the contract price of the property.

RAILROAD EQUIPMENT.

General Code.

§ 9060. No contract of, or for the sale of railroad equipment, rolling stock, or other personal property to be used in or about the operation of a railroad, by the terms of which the purchase money, in whole or part, is to be paid in the future, and wherein it is stipulated or conditioned that the title to the property sold shall not vest in the vendee, but shall remain in the vendor until the purchase money has been fully paid, shall be valid against creditors or innocent purchasers for value, unless recorded, or a copy thereof filed, in the office of the secretary of state. When the contract is so recorded, or a copy thereof so filed, the title to the property sold, or contracted to be sold, shall not vest in the vendee, but remain in the vendor until the purchase money has been fully paid; and such stipulation or condition shall be and remain valid, notwithstanding the delivery of the property to, and its possession by the vendee.

§ 9061. In any written contract for the renting, leasing, or hiring of such property to be so used, it shall be lawful to stipulate or provide for a conditional sale of the property at the termination of such renting, leasing, or hiring, and to stipulate or provide that the rental reserved as paid, or when paid in full, shall be applied and treated as purchase money. In such contract it shall be lawful to stipulate or provide that the title to such property shall remain in the lessor or vendor until the purchase money has been fully paid, notwithstanding delivery to and possession by the other party; subject, however, to the requirement as to recording or filing contained in the next preceding section.

§ 9062. The secretary of state, when so requested, and upon being paid the proper fees, shall record any such contract, and shall file in his office a copy of any such contract, when it is delivered to him for that purpose. For every such copy so filed he shall be entitled to receive one dollar.

§ 9063. The provisions of sections ninety hundred sixty, ninety hundred sixty-one and ninety hundred sixty-two of the General Code shall extend and apply, not only to contracts made with a railroad company, as vendee or lessee, but also to all contracts which may be made with any interurban or street railroad company or corporation, or other company, corporation, or person as vendee or lessee, by which any such interurban or street railroad company, or corporation, or other corporation, company or person shall undertake to purchase, rent, lease or hire any railroad, interurban or street railroad equipment, cars, rolling stock, or other personal property, designed for use on, or in connection with, a railroad or railroads, interurban or street railroad or railroads, in this or other states.

Criminal Provisions.

General Code.

§ 12464. Whoever, being the vendor of personal property, except machinery equipment and supplies for railroads and contractors, and for manufacturing brick, cement and tiling or for quarrying and mining purposes, to be paid for in whole or in part in installments, or being the lessor, renter, hirer or deliverer of such property to another on condition that it shall belong to the person purchasing, leasing, renting, hiring or receiving it whenever the amounts paid shall aggregate either a certain sum or the value of such property, the title thereof to remain in the vendor, lessor, renter, hirer, or deliverer until such sum or the value of such property or part thereof has been paid, violates any provision of law in taking possession, or repossession of said property, shall be fined not more than one hundred dollars.

§ 12475. Whoever, with intent to defraud, sells, secretes, destroys, converts to his own use, or otherwise disposes of chattels, goods, merchandise, or personal property, the possession of which has been given to him in trust, pledge, bailment or on deposit, or under an agreement to purchase it on installment payments or otherwise; and any person so holding such property, who, with intent to defraud, removes it beyond the county wherein it was

stipulated such property should be kept, shall be fined not more than five hundred dollars or imprisoned not more than three months, or both.

OKLAHOMA.

CONDITIONAL SALES GENERALLY.

Revised Laws 1910.

§ 6745. *Conditional sale must be recorded.*—Any instrument in writing, or promissory note, evidencing the conditional sale of personal property, which retains the title to the same in the vendor until the purchase price is paid in full, shall be void as against innocent purchasers, or the creditors of the vendee, unless the original instrument, or a true copy thereof, shall have been deposited in the office of the register of deeds in and for the county wherein the property shall be kept; and when so deposited, it shall be subject to the law applicable to the filing of chattel mortgages; and any conditional verbal sale of personal property, reserving to the vendor any title in the property sold, shall be void as to creditors and innocent purchasers for value.

§ 4031. *Filing chattel mortgage.*—A mortgage of personal property is void as against creditors of the mortgagor, subsequent purchasers, and incumbrancers of the property, for value, unless the original, or an authenticated copy thereof, be filed by depositing the same in the office of the register of deeds of the county where the property mortgaged, or any part thereof, is at such time situated; and a mortgage of personal property situated in portions of this State attached to an organized county thereof for judicial purposes, shall be void against creditors of the mortgagor, subsequent purchaser, or incumbrancers of the property in good faith for value, unless the original or an authenticated copy thereof, be deposited and filed in the office of the register of deeds of the county to which the territory in which such property is situated is attached for judicial purposes.

§ 4032. *Effect of filing — Removal from county.*— The filing of a mortgage of personal property, in conformity to the provisions of this article, operates as notice thereof to all subsequent purchasers and incumbrancers of so much of said property as is at the time mentioned in the preceding section located in the county or counties wherein such mortgage or authenticated copy thereof is filed: Provided, that when a mortgaged chattel is moved into this State, or from one county to another, any previous filing of the mortgage shall not operate as notice as against subsequent cred-

itors, purchasers, mortgagees or incumbrancers for a longer period than one hundred and twenty days after such removal, but such mortgage must be refiled in the county to which the chattel is removed and in which it is permanently located.

§ 4033. *Locus or property in transit.*— For the purposes of this article property in transit from the possession of the mortgagee to the county of the residence of the mortgagor, or to a location for use, is, during a reasonable time for transportation, to be taken as situated in the county in which the mortgagor resides, or where it is intended to be used. For a like purpose personal property used in conducting the business of a common carrier is to be taken as situated in the county in which the principal office or place of business of the carrier is located.

§ 4034. *Property in different counties.*— A single mortgage of personal property, embracing several things of such character or so situated, that by the provisions of this article, separate mortgages upon them would be required to be filed in different counties, is only valid in respect to the things as to which it is duly filed; but a copy of the original mortgage may be authenticated by the register of deeds in whose office it is filed, and such copy may be filed in any other county with the same effect as to the property therein that the original could have been.

§ 4035. *Filing valid for three years — Renewal.*— A mortgage of personal property ceases to be valid as against creditors of the mortgagor, and subsequent purchasers or incumbrancers in good faith after the expiration of three years from the filing thereof, unless within thirty days next preceding the expiration of such term, a copy of the mortgage and a statement of the amount of existing debt for which the mortgagee or his assignee claims a lien, sworn to and subscribed by him, his agent or attorney, are filed anew in the office of the register of deeds, in the county in which the mortgagor then resides, and in like manner the mortgage and statement of debt must be again filed every three years, or it ceases to be valid as against the parties above mentioned.

§ 4036. *Execution and attestation.*— A mortgage of personal property must be signed by the mortgagor. Such signature may either be attested by acknowledgment before any person authorized to take acknowledgments of deeds, or it may be signed and validated by the signature of two persons not interested therein. Mortgages signed in the presence of two witnesses or acknowledged before an officer, as herein provided, shall be duly admitted of record.

§ 4037. *Mortgage records — Release — Fees — Duty of mortgagee — Penalty.*— The register of deeds of each of the several counties must receive and file such instruments as are offered to him, and must keep the same in his office in regular and orderly file, for the public information, and must not permit them, or any of them, to be removed from his office until after cancellation. Every such mortgage shall be discharged and cancelled by an entry by the mortgagee, his agent, or assignee, on the margin of the chattel mortgage index, which shall be attested by the register of deeds. Provided, also the register of deeds shall discharge and cancel a mortgage upon the presentation to him of a receipt for the sum, money or property secured, or an acknowledgment of satisfaction thereof in writing by the mortgagee. The register of deeds shall cancel such mortgage without any charge therefor. Any mortgagee, assignee, or his legal personal representative, after full performance of the condition of the mortgage, who for the space of ten (10) days after being requested, in writing and legally served, shall refuse or neglect to cancel and discharge the same as provided in this section, shall be liable to the mortgagor, his heirs or assigns, in the sum of fifty dollars ($50.00) damages, and also for all actual damages sustained by the mortgagor occasioned by such neglect or refusal. Said damage shall be recovered in the proper action.

§ 4038. *Registry index.*— Every register of deeds with whom any such mortgage or authenticated copy thereof is filed, must indorse a number upon the same in regular order, together with the time of receiving the same, and must enter the name of every party thereto in a book kept for that purpose, alphabetically, placing mortgagors and mortgagees under a separate head, and stating in separate columns, opposite each name, the number indorsed upon the mortgage, the date thereof, and of the filing, the amount secured thereby, a brief of the substance thereof not otherwise entered, and the time at which it is due. A mortgage is not to be deemed defectively filed by reason of any errors in the copy filed, which do not tend to mislead a party interested; and the negligence of the officer with whom a mortgage is filed does not prejudice the rights of the mortgagee.

§ 4039. *Mortgagee may take property, when.*— If the mortgagor voluntarily removes or permits the removal of the mortgaged property from the county in which it was situated at the time it was mortgaged, the mortgagee may take possession and dispose

of the property as a pledge for the payment of the debt, though the debt is not due.

§ 4040. *Mortgaged chattel may be attached.*—Personal property mortgaged may be taken under attachment or execution issued at the suit of a creditor of a mortgagor.

§ 4041. *Same—Rights of mortgagee.*—Before the property is so taken the officer, on execution, or attachment creditor, must pay or tender to the mortgagee the amount of the mortgage debt and interest, or must deposit the amount thereof with the county treasurer, payable to the order of the mortgagee. In the event that the attachment or execution levied on such property is defeated or for any reason fails, and the attachment or execution lien is held not good, and such deposit has been made with the county treasurer, the party procuring the issuance and levy of said attachment or execution shall be subrogated to all rights of the mortgagee in and to said property.

§ 4042. *Same—Application of proceeds.*—When the property thus taken is sold under process, the officer must apply the proceeds of the sale as follows:

First. To the repayment of the sum paid to the mortgagee, with interest from the date of such payment; and,

Second. The balance, if any, in like manner as the proceeds of sales under execution are applied in other cases.

§ 4043. *Release of chattel mortgage.*—When a chattel mortgage has been satisfied, the mortgagee or his assignee must immediately on demand of the mortgagor, execute and deliver to him a certificate of the discharge thereof, or he must enter or cause to be entered the satisfaction of such mortgage in the office of the register of deeds where it is on file; and whenever any chattel mortgage which may have been filed in the office of the register of deeds of any county shall have been satisfied or paid, it shall be the duty of the register of deeds, after making a proper entry of such satisfaction or payment in the record where the instrument is recorded, to return the instrument to the person who executed the same. Any mortgagee, os assignee of such mortgagee, who refuses to execute and deliver to the mortgagor the certificate of discharge, or to enter or cause to be entered the satisfaction of such mortgage, as provided herein, shall be liable to the mortgagor or his grantee or heirs for all damages which may result by reason of such refusal, and shall also forfeit to him the sum of one hundred dollars.

RAILROAD EQUIPMENT.

Revised Laws 1910.

§ 1391. *Vendor's lien on equipment.*—In any contract for the sale of railroad or street railway equipment or rolling stock, it shall be lawful to agree that the title to the property sold or contracted to be sold, although possession thereof may be delivered immediately or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the purchase money. And in any contract for the leasing or hiring of such property, it shall be lawful to stipulate for a conditional sale thereof at the termination of such contract, and that the rentals or amounts to be received under such contract may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase money shall have been paid in full and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee: Provided, that such contract shall not be valid as against any subsequent bona fide purchaser for value and without notice, unless the contract shall be evidenced by an instrument executed by the parties and duly acknowledged by the vendee or lessee or bailee, as the case may be, or duly proved before some person authorized by law to take acknowledgments of deeds and in the same manner as deeds are acknowledged or proved, and filed for record in the office of the secretary of state, or unless each locomotive engine or car so sold, leased or hired or contracted to be sold, leased or hired as aforesaid shall have the name of the vendor, lessor or bailor plainly marked on each side thereof, followed by the word "owner" or "lessor" or "bailor" as the case may be.

§ 1392. *Manner of record contract—Fees.*—The contracts herein authorized shall be recorded by the secretary of state in a book of records to be kept for that purpose. And on payment of the full purchase money and the performance of the terms and conditions stipulated in any such contract a declaration in writing to that effect may be made by the vendor, or lessor or bailor or his or its assignee, which declaration may be made on the margin of the record of the contract duly attested, or it may be made by a separate instrument to be acknowledged by the vendor, lessor or bailor or his or its assignee, and recorded as aforesaid. And for such services the secretary of the state shall be entitled to a fee

of two dollars for recording each of said contracts and each of said declarations and a fee of one dollar for noting such declaration on the margin of the record.

CRIMINAL PROVISIONS.

Revised Laws 1910.

§ 2755. *Removing or destroying mortgaged chattels.*— Any mortgagor of personal property, or his legal representative, who, while such mortgage remains in force and unsatisfied, conceals, sells, or in any manner disposes of such property, or any part thereof, or removes such property, or any part thereof, beyond the limits of the county, or materially injures or wilfully destroys such property, or any part thereof, without the written consent of the holder of such mortgage, shall be deemed guilty of a felony, and shall, upon conviction, be punished by imprisonment in the penitentiary for a period not exceeding three years or in the county jail not exceeding one year, or by a fine of not to exceed five hundred dollars: Provided, that the writing containing the consent of the holder of the mortgage, as before specified, shall be the only competent evidence of such consent, unless it appear that such writing has been lost or destroyed.

OREGON.

CONDITIONAL SALES GENERALLY.

Oregon Laws 1920.

§ 10189. *Conditional sales of fixtures to be void unless filed.*— All conditional sales of personal property or leases thereof containing a conditional right to purchase, where the property is thereafter so attached to any real estate as to become a fixture thereto, shall be void as to any purchaser or mortgagee of such real property unless within ten days after said personal property is placed in and becomes attached to said real property a memorandum of such sale, stating its terms and conditions, together with a brief description of said personal property so as to identify it and signed by the vendor and vendee, with a notice indorsed thereon or attached thereto signed by the vendor or his agent describing such real property, shall be filed in the county clerk's or county recorder's office of the county wherein such property and real estate is situated. And in case such memorandum is so filed as herein provided, the terms and conditions thereof shall be

valid and binding on all parties and shall be notice to any purchaser, incumbrancer, or mortgagee of such real property of the right, title, and interest of the vendor therein, and such property may be removed from said real estate by the vendor upon condition broken in said memorandum.

§ 10190. *Filing and indexing of instruments of such sales.*—It shall be the duty of the county clerk or county recorder wherein any such memorandum is presented to him for that purpose to file all such instruments, upon payment of proper fees therefor, indorse thereon the time of reception, the number thereof, and he shall enter in a suitable book to be provided by him at the expense of the county, with an alphabetical index thereto, and exclusively for that purpose, ruled into separate columns with appropriate heads, "the time of filing," "name of vendor," "name of vendee," "date of instrument," "amount of purchase price," and "date of release." An index of said book shall be kept in the manner required for indexing deeds to real estate, and the county clerk or county recorder shall receive for the services required by this act the sum of twenty-five cents for each instrument, and the money so collected shall be accounted for as other fees of his office. Such instrument shall remain on file for the inspection of the public until full payment has been made thereon, and shall be satisfied or cancelled in the same manner and upon payment of same fees as chattel mortgages are satisfied or canceled.

Railroad Equipment.

Oregon Laws 1920.

§ 5979. *Title to rolling stock, when does not vest in purchaser.*—In any contract of or for the sale of railroad equipment or rolling stock, it shall be lawful to agree that the title to the property sold or contracted to be sold, although deliverable immediately, or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall and retain a lien thereon for the unpaid purchase money; and in any contract of or for the leasing of such property, it shall be lawful to stipulate for a conditional sale thereof at the termination of such lease, and that the rentals received may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or vendee until the purchase price shall be paid in full, notwithstanding delivery to and possession by such lessee or vendee; pro-

vided, that no such contract shall be valid as against any subsequent judgment creditor, or any subsequent bona fide purchaser for value and without notice, unless,—

1. The same shall be evidenced by an instrument duly acknowledged before some person authorized by law to take acknowledgments of deeds;

2. Such instrument shall be filed for record in the office of the county clerk of the county in which at the time of the execution thereof is situated the principal office of the vendee or lessee within this state;

3. Each locomotive, engine, or car so sold, or constructed to be sold, or leased as aforesaid, shall have the name of the vendor or lessor plainly marked on each side thereof, followed by the word "owner" or "lessor," as the case may be.

§ 5980. *Contracts authorized by last section to be recorded.*— The contracts herein authorized shall be recorded by the said county clerk in the book of records of mortgages of real estate in said county; and on payment in full of the purchase money, and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect shall be made by the vendor or his assignee, which declaration may be made on the margin of the record of the contract, attested by the county clerk, or it may be made by a separate instrument, to be acknowledged and recorded as aforesaid; and for such services the said clerk shall be entitled to the fees provided by law for the recording of deeds and mortgages of real estate.

CRIMINAL PROVISIONS.

Oregon Laws 1920.

§ 1956. *Larceny by bailee.*— If any bailee, with or without hire, including every mortgagor of personal property having possession of property mortgaged, or any purchaser or lessee of personal property, obtaining the possession thereof under a written or printed contract of conditional sale, providing that title thereto shall not vest in the purchaser until the unpaid balance of the purchase price is wholly paid for, and before same is wholly paid for, shall embezzle or wrongfully convert to his own use, or shall secrete or conceal, with intent to convert to his own use, or shall injure, destroy, sell, give away, remove from the county where situated when obtained, without the written consent of such bailor or vendor, or shall fail, neglect, or refuse to deliver, keep, or

account for, according to the nature of his trust, any money or property of another delivered or intrusted to his care, control, or use, and which may be subject to larceny, such bailee, upon conviction thereof, shall be deemed guilty of larceny and punished accordingly; and if any such bailee shall receive grain of any kind from different bailors, and mix the same and store it together in bulk, in such case, in an indictment charging such bailee so mixing and storing grain with committing, with reference to said grain, the crime defined and made penal in this section, it shall not be necessary to charge in said indictment or prove on the trial that the ownership of said grain is in more than one of said bailors.

PENNSYLVANIA.

CONDITIONAL SALES GENERALLY.

Pa. St. 1920 (Act of June 7, 1915).

§ 19727. *Definitions.*— The term "conditional sale," when used in this act, means any contract whereby goods or chattels, attached or to be attached to real property or chattels real, are sold or delivered upon condition that the said goods or chattels shall belong to the person to whom they are sold or delivered when the amount paid is a certain sum, or the value of the property, or any part thereof, or on the occurrence of a future event or contingency. The term "conditional vendor," when so used, means the person who so sells or delivers such goods or chattels to another. The term "conditional vendee," when so used, means the person to whom such goods or chattels are so sold or delivered.

§ 19728. *Contract for conditional sale.*— When personal property, attached or to be attached to real property or chattels real, is sold or delivered to any person on condition that it shall belong to the person purchasing or receiving it when the amount paid is a certain sum, or the value of the property, or any part thereof, or upon the occurrence of a future event or contingency the title to it to remain in the conditional vendor until such sum or value has been paid or until the occurrence of such future event or contingency, such condition in regard to the title so remaining until payment or until the occurrence of such future event or contingency shall be void as to all subsequent purchasers of such real property or chattels real for a valuable consideration, mortgagees, and judgment creditors, without notice, unless the contract with its conditions is evidenced by writing, signed by the parties

thereto or their respective agents, and recorded as hereinafter provided.

This act is not to apply to any contract concerning railroad equipment and rolling-stock, or to any persons, firms, or corporations engaged in the business of selling house furnishings.

§ 19729. *Not to become fixtures.*— Every such contract for the conditional sale of any goods or chattels, attached or to be attached to any real property or chattels real, shall be void as against subsequent bona fide purchasers, or encumbrances of such real property or chattel real, without notice, and as to them the sale shall be deemed absolute unless such contract shall have been recorded and indexed, as herein provided, before such goods or chattels are so attached, or before the date of such purchase or encumbrance of such real estate or chattel real.

Except as above provided, said goods or chattels shall not, by reason of their being attached to any real property or chattels real, become an accession thereto; but shall be treated as severable, and subject to removal as against the conditional vendee, his heirs, executors, administrators, successors, and assigns, and also as against all other persons having any interest in or liens against such real property or chattels real, upon the tender of a sufficient bond to all such persons holding prior interest in or liens against the same, conditioned for repairing all damages caused by such severance and removal.

§ 19730. *Contents of contract.*— Every such contract shall set forth clearly:

A. The date of the contract.

B. The names of the conditional vendor and the conditional vendee.

C. A description of the chattels, by name or otherwise, sufficient to identify them.

D. A statement of the conditions upon which the conditional sale is based.

E. The amount of the purchase price; that is, the certain sum or value to be paid before title is to pass, and when payable or due.

F. A description sufficient for identification and location of such real property or chattels real.

The contract shall be signed by the conditional vendor and conditional vendee, or their respective agents, and shall be verified by the oath or affirmation of the conditional vendor, his agent or attorney, to the effect that it is an existing bona fide contract, and showing the amount of the purchase price remaining unpaid and

when payable or due, as well as all other of the said conditions which remain unperformed.

§ 19731. *Recording: Place and time.*— Such contracts, or all of the terms required by section four hereof, shall be recorded, and shall be notice from the date of such recording in the miscellaneous docket and indexed in the judgment index, the name of the conditional vendee in the column of defendants, and the name of the conditional vendor in the column of plaintiffs, in the prothonotary's office of the county wherein such real property or chattels real is situate.

§ 19732. *Effect of recording.*— Every such contract hereafter recorded pursuant to the provisions of this act shall be valid against the creditors of the conditional vendee, and against his subsequent purchasers, mortgagees or judgment creditors, from the time of the recording thereof until the same be cancelled of record in the manner now provided by law for cancelling judgments.

§ 10733. *Penalty for not discharging.*— If a conditional vendor, assignee, or the executor or administrator of either, after the title to such goods or chattels shall have passed to the conditional vendee, either before or after breach of the conditions, does not, within ten days after being thereto requested and after tender of reasonable charges, discharge such lien as provided herein, he shall forfeit, to the person entitled to redeem, the sum of ten dollars and damages occasioned thereby, to be recovered as debts of like amount are by law recoverable.

Pa. St. 1920 (Act of May 3, 1909).

§ 13686. *Soda-water apparatus leased or conditionally sold; notice to landlord.*— Hereafter all soda-water apparatus and appurtenances thereto, leased or hired by any person or persons residing within this Commonwealth, or conditionally sold to any such person or persons, under a contract of sale reserving title in the vendor until paid for, shall be exempt from levy and sale on execution or distress for rent, so long as the title thereto remains in the owner, lessor, or conditional vendor: Provided, That either the name and address of owner, lessor, or conditional vendor, of such soda-water apparatus, be marked on or be attached to said soda-water apparatus, on a conspicuous part thereof, or that, before levy or distress, the owner, lessor or conditional vendor of such soda-water apparatus and appurtenances, or his or their agent, or the person or persons so leasing, hiring or purchasing the same, shall have given notice to the landlord or his agent that the same are leased, hired, or sold under reservation of title.

RAILROAD EQUIPMENT.

Pa. St. 1920 (Act of July 5, 1883).

§ 18580. *Requirements of conditional sale, lease, or loan of rolling stock.*—Whenever any railroad equipment and rolling stock shall hereafter be sold, leased or loaned, on the condition that the title to the same, notwithstanding the possession and use of the same by the vendee, lessee or bailee, shall remain in the vendor, lessor or bailor until the terms of the contract, as to the payment of the instalments, amounts or rentals payable, or the performance of other obligations thereunder, shall have been fully complied with, such contract shall be invalid as to any subsequent judgment creditor, or any subsequent purchaser for a valuable consideration without notice, unless:

I. The same shall be evidenced by writing duly acknowledged before some person authorized by law to take acknowledgments of deeds.

II. Such writing shall be recorded in the same book as mortgages are recorded, in the office of the recorder of deeds of the county in which is located the principal office or place of business of such vendee, lessee or bailee, within the state.

III. Each locomotive or car so sold, leased or loaned, shall have the name of the vendor, lessor or bailor, or the assignee of such vendor, lessor or bailor, plainly marked upon both sides thereof, followed by the word owner, lessor, bailor or assignee, as the case may be.

§ 18581. *Not to apply to certain prior contracts.*— This act shall not be held to apply to, or invalidate any contract heretofore made, of the character described in the first section.

PHILIPPINE ISLANDS.

CHATTEL MORTGAGES.

Act 1508 (July 2, 1906).

§ 1. The short title of this Act shall be " The Chattel Mortgage Law ".

§ 2. All personal property shall be subject to mortgage, agreeably to the provisions of this act, and a mortgage executed in pursuance thereof shall be termed a chattel mortgage.

§ 3. A chattel mortgage is a conditional sale of personal property as security for the payment of a debt, or the performance of some other obligation specified therein, the condition being that

the sale shall be void upon the seller paying to the purchaser a sum of money or doing some other act named. If the condition is performed according to its terms the mortgage and sale immediately become void, and the mortgagee is thereby divested of his title.

§ 4. A chattel mortgage shall not be valid against any person except the mortgagor, his executors or administrators, unless the possession of the property is delivered to and retained by the mortgagee or unless the mortgage is recorded in the office of the register of deeds of the province in which the mortgagor resides at the time of making the same, or, if he resides without the Philippine Islands, in the province in which the property is situated: *Provided, however,* That if the property is situated in a different province from that in which the mortgagor resides, the mortgage shall be recorded in the office of the register of deeds of both the province in which the mortgagor resides and that in which the property is situated, and for the purposes of this Act the city of Manila shall be deemed to be a province.

§ 5. A chattel mortgage shall be deemed to be sufficient when made substantially in accordance with the following form, and shall be signed by the person or persons executing the same, in the presence of two witnesses, who shall sign the mortgage as witnesses to the execution thereof, and each mortgagor and mortgagee, or, in the absence of the mortgagee, his agent or attorney, shall make and subscribe an affidavit in substance as hereinafter set forth, which affidavit, signed by the parties to the mortgage as above stated, and the certificate of the oath, signed by the authority administering the same shall be appended to such mortgage and recorded therewith.

FORM OF CHATTEL MORTGAGE AND AFFIDAVIT.

"This mortgage made this ..... day of ..... 19.... by ....., a resident of the municipality of ..... Province of ..... Philippine Islands, mortgagor, to ..... a resident of the municipality of ..... Province of ..... Philippine Islands, mortgagee, witnesseth:

"That the said mortgagor hereby conveys and mortgages to the said mortgagee all of the following-described personal property situated in the municipality of ..... Province of ....., and now in the possession of said mortgagor, to wit:

(Here insert specific description of the property mortgaged.)

"This mortgage is given as security for the payment to the said ..... mortgagee, or promissory notes for the sum of ..... pesos, with (or without, as the case may be) interest thereon at the rate of ..... per centum per annum, according to the terms of ..... certain promissory notes, dated ..... and in the words and figures following (here insert copy of the note or notes secured).

"(If the mortgage is given for the performance of some other obligation aside from the payment of promissory notes, describe correctly but concisely the obligation to be performed.)

"The conditions of this obligation are such that if the mortgagor, his heirs, executors, or administrators shall well and truly perform the full obligation (or obligations) above stated according to the terms thereof, then this obligation shall be null and void.

"Executed at the municipality of ..... in the Province of ..... this ..... day of ..... 19....

"

.....

(Signature of mortgagor.)

"In the presence of

.....

.....

(Two witnesses here sign.)

FORM OF OATH.

"We severally swear that the foregoing mortgage is made for the purpose of securing the obligation specified in the conditions thereof, and for no other purpose, and that the same is a just and valid obligation, and one not entered into for the purposes of fraud."

FORM OF CERTIFICATE OF OATH.

"At ....., in the Province of ....., personally appeared ....., the parties who signed the foregoing affidavit and made oath to the truth thereof before me.

"....."

(Notary public, justice of the peace, or other officer, as the case may be.)

§ 6. When a corporation is a party to such mortgage the affidavit required may be made and subscribed by a director, trustee, cashier, treasurer or manager thereof, or by a person

authorized on the part of such corporation to make or to receive such mortgage. When a partnership is a party to the mortgage the affidavit may be made and subscribed by one member thereof.

§ 7. The description of the mortgaged property shall be such as to enable the parties to the mortgage, or any other person, after reasonable inquiry and investigation, to identify the same.

If the property mortgaged be "large cattle," as defined by section one of Act Numbered Eleven hundred and forty-seven, and the amendments thereof, the description of said property in the mortgage shall contain the brands, class, sex, age, knots of radiated hair commonly known as remolinos, or cowlicks, and other marks of ownership as described and set forth in the certificate of ownership of said animal or animals, together with the number and place of issue of such certificates of ownership.

If growing crops be mortgaged the mortgage may contain an agreement stipulating that the mortgagor binds himself properly to tend, care for and protect the crop while growing, and faithfully and without delay to harvest the same, and that in default of the performance of such duties the mortgagee may enter upon the premises, take all the necessary measures for the protection of said crop, and retain possession thereof and sell the same, and from the proceeds of such sale pay all expenses incurred in caring for, harvesting and selling the crop and the amount of the indebtedness or obligation secured by the mortgage, and the surplus thereof, if any, shall be paid to the mortgagor or those entitled to the same.

A chattel mortgage shall be deemed to cover only the property described therein and not like or substituted property, thereafter acquired by the mortgagor and placed in the same depository as the property originally mortgaged, anything in the mortgage to the contrary notwithstanding.

§ 8. If the mortgagee, assign, administrator, executor, or either of them, after performance of the condition before or after the breach thereof, or after tender of the performance of the condition, at or after the time fixed for the performance, does not within ten days after being requested thereto by any person entitled to redeem, discharge the mortgage in the manner provided by law, the person entitled to redeem may recover of the person whose duty it is to discharge the same twenty pesos for his neglect and all damages occasioned thereby in an action in any court having jurisdiction of the subject matter thereof.

§ 9. No personal property upon which a chattel mortgage is in force shall be removed from the province in which the same is

located at the time of the execution of the mortgage without the written consent of the mortgagor and mortgagee, or their executors, administrators, or assigns.

§ 10. A mortgagor of personal property shall not sell or pledge such property, or any part thereof, mortgaged by him without the consent of the mortgagee in writing on the back of the mortgage and on the margin of the record thereof in the office where such mortgage is recorded.

§ 11. A mortgagor shall not execute a second or subsequent mortgage of personal property while the same is subject to the previously existing mortgage given by such mortgagor unless the existence of such previous mortgage is set forth in the subsequent mortgage.

§ 12. If a mortgagor violates either of the three last preceding sections he shall be fined a sum double the value of the property so wrongfully removed from the province, sold, pledged or mortgaged, one half to the use of the party injured and the other half to the use of the Treasury of the Philippine Islands, or he may be imprisoned for a period not exceeding six months or punished by both such fine and imprisonment in the discretion of the Court.

§ 13. When the condition of a chattel mortgage is broken a mortgagor or person holding a subsequent mortgage, or a subsequent attaching creditor may redeem the same by paying or delivering to the mortgagee the amount due on such mortgage and the reasonable costs and expenses incurred by such breach of condition before the sale thereof. An attaching creditor who so redeems shall be subrogated to the rights of the mortgagee and entitled to foreclose the mortgage in the same manner that the mortgagee could foreclose it by the terms of this Act.

§ 14. The mortgagee, his executor, administrator, or assign, may, after thirty days from the time of condition broken, cause the mortgaged property, or any part thereof, to be sold at public auction by a public officer at a public place in the municipality where the mortgagor resides, or where the property is situated, provided at least ten days' notice of the time, place, and purpose of such sale has been posted at two or more public places in such municipality, and the mortgagee, his executor, administrator, or assign, shall notify the mortgagor or person holding under him and the persons holding subsequent mortgages of the time and place of sale, either by notice in writing directed to him or left at

his abode, if within the municipality, or sent by mail if he does not reside in such municipality, at least ten days previous to the sale.

The officer making the sale shall, within thirty days thereafter, make in writing a return of his doings and file the same in the office of the register of deeds where the mortgage is recorded, and the register of deeds shall record the same. The fees of the officer for selling the property shall be the same as in the case of sale on execution as provided in Act Numbered One hundred and ninety, and the amendments thereto, and the fees of the register of deeds for registering the officer's return shall be taxed as part of the costs of sale, which the officer shall pay to the register of deeds. The return shall particularly describe the articles sold, and state the amount received for each article, and shall operate as a discharge of the lien thereon created by the mortgage. The proceeds of such sale shall be applied to the payment, first, of the costs and expenses of keeping and sale, and then to the payment of the demand or obligation secured by such mortgage, and the residue shall be paid to persons holding subsequent mortgages in their order, and the balance, after paying the mortgages, shall be paid to the mortgagor or person holding under him on demand.

If the sale includes any "large cattle," a certificate of transfer as required by section sixteen of Act Numbered Eleven hundred and forty-seven shall be issued by the treasurer of the municipality where the sale was held to the purchaser thereof.

§ 15. Every register of deeds shall keep a book of records of chattel mortgages; shall certify on each mortgage left for record the date, hour, and minute when the same was by him received; record in such book any chattel mortgage, transfer, or discharge, and the officer's return of sale upon any mortgage, making reference upon the margin of the record of such officer's return to the volume and page of the record of the mortgage, and a reference of such return on the record of the mortgage itself, and give a certified copy thereof, when requested, upon payment of the lawful fees for such copy; and certify upon each officer's return of sale or discharge of mortgage, the date, hour, and minute when the same is received for record and record such certificate with the return itself and keep an alphabetical index of mortgagors and mortgagees, which record and index shall be open to public inspection. Duly certified copies of such records shall be receivable as evidence in any court, as provided in Act Numbered One hundred and ninety. The register of deeds for each province or the city

of Manila, as the case may be, shall be entitled to receive the following fees for services under the provisions of this Act:

For filing and recording each chattel mortgage, including the necessary certificates and affidavits, three pesos;

Recording each release of a chattel mortgage, including the necessary index and references, forty centavos;

For recording each sheriff's return of sale, including the necessary index and references, twenty centavos for each folio of one hundred words; For certified copies of records, such fees as are allowed by law for copies of records kept by the register of deeds.

Fees so received shall accrue to the treasuries of the respective provinces, or of the city of Manila, as the case may be.

§ 16. This Act shall take effect on August first, nineteen hundred and six.

PORTO RICO.

Conditional Sales Generally.

Laws 1916, No. 81.

§ 1. The term " conditional vendor," when used in this Act, means the person contracting to sell movable goods and chattels upon condition that the ownership thereof is to remain in such person until such goods and chattels are fully paid for or until the occurrence of any future event or contingency. The term " conditional vendee " when so used means the person to whom such goods and chattels are sold.

§ 2. It shall be lawful for persons to contract to sell movable goods and chattels upon condition that the ownership thereof is to remain in the vendor until such goods and chattels are fully paid for, or until the occurrence of any future event or contingency subject to the provisions of this Act.

§ 3. Except as otherwise provided in this Act, all conditions and reservations in a contract for the conditional sale of movable goods and chattels, accompanied by delivery of the thing contracted to be sold to the effect that the ownership of such movable goods and chattels is to remain in the conditional vendor or in a person other than the conditional vendee until they are paid for, or until the occurrence of a future event or contingency, shall be void as against subsequent purchasers, pledgees or mortgagees in good faith, or other third parties, and as to them the sale shall be deemed absolute, unless such contract of sale containing such

conditions and reservations, or a true copy thereof be filed as directed in this Act.

§ 4. Such contracts shall be filed in the municipality where the conditional vendee * resides, if he resides in Porto Rico at the time of the execution thereof, and if not, in the municipality where such property is located at such time. The secretary of each municipality shall keep a register called "Registry of Conditional Sales," in which he shall record such contracts of conditional sales as are presented to him for that purpose. When a contract of conditional sale is presented to the secretary of a municipality, he shall immediately make an entry in said registry, stating the name of the conditional vendor, the name of the conditional vendee, and any other parties to said contract, a brief statement of the movable goods and chattels transferred by said contract of conditional sale, the future event or contingency required to occur before the ownership of such goods and chattels shall pass from the vendor to the vendee, the amount due upon such contract and the time when due, the day, hour and minute of presentation, and a reference to the files where such contract, or a copy thereof as above provided, may be readily found. A separate index book shall be kept in which the names of the conditional vendors shall be entered at once in alphabetical order in a column marked "Conditional vendor," and the names of the conditional vendees in a column marked "Conditional vendee," and a reference therein shall be made to the place in the registry of conditional sales where the record may be found.

§ 5. Upon the title to the goods and chattels recorded in accordance with this Act becoming absolute in the conditional vendee or his successor in interest by the payment of the full consideration for which any such contract was made, or by the performance of any other condition, the conditional vendor, his assignee or legal representative, upon the request of the conditional vendee, or of any person interested in the property covered by such contract, must sign and acknowledge a certificate setting forth such payment or performance. The officer with whom such contract is filed must, on receipt of such certificate, file the same in his office and write the word "discharged" in the book where the contract is entered, opposite the entry thereof, and the contract is thereby discharged.

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* Spanish text reads "vendedor," i. e., "vendor."

§ 6. Whenever articles are sold upon the condition that the title thereto shall remain in the vendor, or in some other person than the vendee, until the payment of the purchase price, or until the occurrence of a future event or contingency, the same may be retaken by the vendor, or his successor in interest, on the breach of the condition, and in such case they shall be retained for a period of thirty days from the time of such retaking, and during such period the vendee, or his successor in interest, may comply with the terms of such contract, and thereupon receive such property. After the expiration of such period, if such terms are not complied with, the vendor, or his successor in interest, may cause such articles to be sold at public auction. Unless such articles are so sold within thirty days after the expiration of such period, the vendee, or his successor in interest, may recover of the vendor the amount paid on such articles by such vendee or his successor in interest under the contract for the conditional sale thereof, less a reasonable charge for the use of the said articles for the time they were in the possession of the conditional vendee, or his successor in interest.

§ 7. Of the proceeds of such sale the vendor, or his successor in interest, may retain the amount due upon his contract, and the expenses of storage and sale; the balance thereof shall be held by the vendor, or his successor in interest, subject to the demand of the vendee, or his successor in interest, and a notice that such balance is so held shall be served personally or by mail upon the vendee, or his successor in interest. If such balance is not called for within thirty days from the day of sale, it shall be deposited with the treasurer, or the mayor of the municipality where such sale was held, and there shall be filed therewith a copy of the notice served upon the vendee, or his successor in interest, and a verified statement of the amount unpaid upon the contract, expenses of storage and of sale and the amount of such balance. The officer with whom such balance was deposited shall credit the vendee, or his successor in interest, with the amount thereof and pay the same to him on demand after sufficient proof of identity. If such balance remains in possession of such officer for a period of five years, unclaimed by the person legally entitled thereto, it shall be transferred to the funds of the municipality and be applied and used as other moneys belonging to such municipality.

§ 8. If the proceeds of such sale are less than the amount due to the conditional vendor, and the expenses of storage and sale, the conditional vendor, his successor or assign shall have a right

of action against the conditional vendee for the amount of such deficiency.

§ 9. An internal revenue stamp of $0.50 shall be paid for each entry of record made by the Municipal Secretary in accordance with the provisions of this Act, unless the value of the movable goods and chattels is less than twenty (20) dollars, in which case a stamp of twenty-five (25) cents shall be attached. It shall be the duty of the clerk of the Civil Registry to properly cancel such stamps, writing thereon his initials and the date of cancellation. At the beginning of each fiscal year the Treasurer of Porto Rico shall pay to the respective municipalities one-half of the amount represented by canceled internal revenue stamps in the Civil Registry of the said municipalities during the previous fiscal year, upon warrant issued by the Auditor and countersigned by the Governor, and there is hereby appropriated as a continuing appropriation a sufficient sum to make such payments.

§ 10. The Attorney General shall prepare the record books and blanks for use by the municipal secretaries and shall prepare such rules and regulations as are necessary to carry out the provisions of this Act, and such records shall be kept under his supervision.

§ 11. Nothing in this Act shall be construed to apply to immovable property or to property regarded by law as immovable.

§ 12. That all laws or parts of laws in conflict with this Act are hereby repealed.

§ 13. That this Act shall take effect on and after July 1, 1916.

RHODE ISLAND.

Chattel Mortgages.

General Laws 1909, Chapter 258.

§ 10. No mortgage of personal property hereafter made shall be valid as to the assignee in insolvency of the mortgagor, or any other person except the parties thereto and their executors and administrators, until possession of the mortgaged property be delivered to and retained by the mortgagee, or the said mortgage be recorded in the records of mortgages of personal property in the town or city where the mortgagor shall reside, if in this state; and if not in this state, then in the town where the property is at the time of making said mortgage; which said recording or taking and retention of possession as aforesaid shall be made or taken within five days from the date of the signing thereof;

Provided, that nothing herein contained shall be so construed as to affect any transfer of property under bottomry or respondentia bonds, or of any ship or goods at sea or abroad, if the mortgagee shall take possession thereof as soon as may be after the arrival of the same in this state.

§ 11. Every town clerk, and every recorder of deeds, as the case may be, shall record mortgages of personal property, and of chattels-real, in a book to be kept by him for that purpose, with the time when the same are received and recorded: Provided, that a mortgage of both real estate and personal property, or of both real estate and chattels-real, may be recorded with the record of mortgages of real estate only; but in such cases the recording-officer shall enter upon the index to the records of personal property and chattels-real a reference to the book and page upon which such mortgage is recorded.

§ 5. Every mortgagee of real or personal estate, his heirs, executors, administrators or assigns, having received full satisfaction for the money due on such mortgage, shall, at the request of the mortgagor, his heirs, executors, administrators or assigns, and at his or their cost, discharge the same upon the face or back of the mortgage, or upon the face or margin of the record thereof, as provided in the following section, or by separate instrument of release to be recorded upon the face or margin of the record of the mortgage, or in the proper record-book with suitable references to the original record, which shall for ever afterwards discharge, defeat and release such mortgage and perpetually bar all actions to be brought thereon in any court.

§ 6. A mortgage may be discharged in whole or in part by an entry acknowledging the satisfaction thereof or the payment thereon, as the case may be, made on the face or back of the mortgage, or upon the face or margin of the record of the mortgage, in the records of land-evidence, and signed by the mortgagee or by his executor or administrator, or, if the mortgage be assigned, by the assignee or his executor or administrator; and such entry shall have the same effect as a deed of release duly acknowledged and recorded.

§ 7. Where a mortgagor is entitled to redeem, he shall by virtue of this section have power to require the mortgagee, instead of discharging or reconveying, and on the terms on which he would be bound to discharge or reconvey, to assign the mortgage-debt and convey the mortgaged property to such third person as the

mortgagor directs: Provided, that such mortgagor assumes the expense of making such assignment and conveyance, and obligates himself to have the same recorded forthwith, and the fact of such transfer being made shall be prima facie evidence that such assumption of expense and such obligation have been made; and the mortgagee shall by virtue of this section be bound, on being relieved of all expense and having such obligation made to him, to assign and convey accordingly; and such right shall belong to and be capable of being enforced by each incumbrancer, or by the mortgagor, notwithstanding any intermediate incumbrance, but a requisition of an incumbrancer shall prevail over a requisition of the mortgagor and, as between incumbrancers, a requisition of a prior incumbrancer shall prevail over a requisition of a subsequent incumbrancer. This section does not apply in the case of a mortgagee being or having been in possession.

§ 8. If any mortgagee, his heirs, executors, administrators or assigns, shall not, within ten days after a request made in that behalf and a tender of all reasonable charges therefor, discharge such mortgage in one of the modes aforesaid, or otherwise make and execute a release and quitclaim of the estate so mortgaged, and acknowledge the same before some proper officer, or transfer such mortgage if required under the provisions of the preceding section, he or they so refusing shall be liable to make good all damages that shall accrue for want of such discharge, release or transfer, to be recovered in an action on the case; and in case judgment shall pass against the party sued, he shall pay the plaintiff triple costs upon such suit.

§ 9. Nothing herein contained shall be so construed as to defeat, invalidate, annul or render ineffectual any other legal or equitable discharge, payment, satisfaction or release of any mortgage.

§ 12. Whenever the condition of any mortgage of personal property only (but not including chattels-real) has been broken, the mortgagor, or any person lawfully claiming or holding under him, may redeem the same at any time within sixty days thereafter, unless the property shall in the meantime have been sold in pursuance of the contract between the parties.

§ 13. The person entitled to redeem such personal property shall pay or tender to the mortgagee, or to the person holding under him, the sum due on the mortgage, with all reasonable and lawful charges and expenses incurred in the care and custody of the property or otherwise arising from the mortgage thereof; and if the property is not forthwith restored, the person entitled to

redeem the same may recover in a proper action, or may recover in any proper action such damages as he may have sustained by the withholding thereof.

§ 14. Any person entitled in equity to redeem any mortgaged property, whether real or personal, may prefer a bill to redeem the same, which bill may be heard, tried and determined according to the usages in chancery and the principles of equity.

§ 15. Any person entitled to foreclose the equity of redemption in any mortgaged estate, whether real or personal, may prefer a bill to foreclose the same, which bill may be heard, tried and determined according to the usages in chancery and the principles of equity.

§ 16. At any sale by public auction made under and according to the provisions of any mortgage of real or personal estate, or of any other conveyance by way of mortgage, or of any pledge of stock or other personal property, or of any power of sale contained therein or annexed thereto, the mortgagee in such deed of mortgage or other conveyance, or pledgee, his or their assigns, or his or their heirs, executors or administrators, or any person for him or them, may fairly and in good faith bid for and purchase such estate or property so put up for sale, or any part thereof, in the same manner as the same may be bid for and purchased by any other person.

§ 17. The receipt in writing of a mortgagee shall be a sufficient discharge for any money accruing from sales made under the powers of sale conferred by his mortgage; and a person paying the same to the mortgagee shall not be obliged to inquire whether any money remains due under the mortgage, or to see as to the application of such proceeds in case of sale.

Railroad Equipment.

General Laws 1909, Chapter 215.

§ 63. In any contract for the sale of railroad or street railway equipment or rolling stock, it shall be lawful to agree that the title to the property sold, or contracted to be sold, although possession thereof may be delivered immediately or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money. And in any contract for the leasing or hiring of such property, it shall be lawful to stipulate for a conditional sale thereof at the termina-

tion of such contract, and that the rentals or amounts to be received under such contract may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price shall have been paid in full and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee; Provided, that no such contract shall be valid as against any subsequent judgment creditor, or any subsequent bona fide purchaser for value and without notice, unless:

First. The same shall be evidenced by an instrument executed by the parties and duly acknowledged by the vendee or lessee or bailee, as the case may be, or duly proved, before some person authorized by law to take acknowledgment of deeds, and in the same manner as deeds are acknowledged or proved:

Second. Such instrument shall be filed for record in the office of the secretary of state.

Third. Each locomotive-engine or car so sold, leased or hired, or contracted to be sold, leased or hired, as aforesaid, shall have the name of the vendor, lessor, or bailor plainly marked on each side thereof, followed by the word "Owner," or "Lessor," or "Bailor," as the case may be.

§ 64. The contracts herein authorized shall be recorded by the secretary of state in a book of records to be kept for that purpose. And on payment in full of the purchase money, and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect may be made by the vendor, lessor or bailor, or his or its assignee, which declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument, to be acknowledged by the vendor, lessor or bailor, or his or its assignee, and recorded as aforesaid. And for such services the secretary of state shall be entitled to demand and retain for the use of the state the sum of fifteen cents for each one hundred words recorded, for recording each of said contracts and each of said declarations, and a fee of fifty cents for noting such declaration on the margin of the record.

§ 65. Sections sixty-three and sixty-four of this chapter shall not be held to invalidate or affect in any way any contract heretofore made of the kind referred to in said section sixty-three, and any such contract heretofore made may, upon compliance with the provisions of said sections sixty-three and sixty-four, be recorded as herein provided.

SOUTH CAROLINA.

CONDITIONAL SALES GENERALLY.

Civil Code 1912.

§ 3740. *Parol and unrecorded reservations in personal property by vendors and bailors — Exceptions.*— Every agreement between the vendor and vendee, bailor or bailee of personal property, whereby the vendor or bailor shall reserve to himself any interest in the same, shall be null and void as to subsequent creditors (whether lien creditors or simple contract creditors) or purchasers for valuable consideration without notice, unless the same be reduced to writing and recorded in the manner now provided by law for the recording of mortgages; but nothing herein contained shall apply to livery stable keepers, inn keepers, or any other persons letting or hiring property for temporary use or for agricultural purposes, or depositing such property for the purpose of repairs or work or labor done thereon, or as a pledge or collateral to a loan.

§ 3542. *Registration of legal instruments.*— All deeds of conveyance of lands, tenements or hereditaments, either in fee simple or for life, all deeds of trusts or instruments in writing, conveying either real or personal estate, and creating a trust or trusts in regard to such property, or charging or encumbering the same; all mortgages or instruments in writing in the nature of a mortgage of any property, real or personal; all marriage settlements or instruments in the nature of a settlement of marriage; all leases or contracts in writing made between landlord and tenant for a longer period than twelve months; all statutory liens on buildings and lands for materials or labor furnished on them; all statutory liens on ships and vessels; all certificates of renunciation of dower; and, generally, all instruments in writing now required by law to be recorded in the office of Register of Mesne Conveyances or Clerk of Court in those counties where the office of Register of Mesne Conveyances has been abolished, or in the office of the Secretary of State, delivered or executed on and after the first day of May, in the year of our Lord one thousand nine hundred and nine, shall be valid, so as to affect from the time of such delivery or execution the rights of subsequent creditors (whether lien creditors or simple contract creditors) or purchasers for valuable consideration without notice, only when recorded within ten days from the time of such delivery or execution in the office of Mesne Conveyance or Clerk of Court of the county where the

property affected thereby is situated, in the case of real estate; and in the case of personal property of the county where the owner of said property resides, if he resides within the State, or if he resides without the State, of the county where such personal property is situated at the time of the delivery or execution of said deeds or instruments: Provided, nevertheless, That the recording and record of the above mentioned deeds and instruments of writing subsequent to the expiration of said ten days shall, from the date of such record, have the same effect as to the rights of all creditors and purchasers without notice as if the said deeds or instruments of writing had been executed and delivered on the date of the record thereof. (As amended by Laws 1914, No. 264.)

Railroad Equipment.

Civil Code 1912.

§ 705. *Deeds, etc., of railroads to be recorded— Good from date of record.*—All deeds of conveyance of railroad beds, tracks and rights of way, cars, locomotive engines, rolling stock and other railway equipment, all leases and mortgages or other conditional sale of, and all other instruments in writing relating to, such property in this state delivered or executed on or after the first day of January, 1894, shall be valid, so as to effect from the time of such delivery or execution the rights of subsequent creditors or purchasers for valuable consideration without notice, only when filed in duplicate, within forty days from the execution and delivery thereof in the office of the Secretary of State: Provided, nevertheless, That the above mentioned deeds, leases, mortgages and other conditional sales and instruments in writing, if filed subsequent to the expiration of said period of forty days, shall be valid to affect the rights of subsequent creditors and purchasers for valuable consideration without notice only from the date of said record. Each and every locomotive engine, car and other railway equipment, shall have the name of the vendor, lessor, bailor or mortgagor plainly marked on each side thereof, followed by the word ' owner,' ' lessor,' ' bailor,' or ' mortgagor,' as the case may be; and each deed of conveyance, lease, conditional sale and mortgage of such railroad property shall contain such a description thereof as will correspond to the name so marked thereon. (As amended by Laws 1920, No. 555.)

§ 706. *Probate.*— Before such deeds, leases, mortgages and other instruments in writing can be filed by the Secretary of State,

the execution thereof shall first be proved by the affidavit in writing of a subscribing witness to such instrument, in the same manner prescribed for the probate of deeds by Section 1338 of this Code in relation to the recording of deeds in the office of the Register of Mesne Conveyances of the several counties of this State: Provided, also, That before such deeds, leases, mortgages and other instruments in writing can be filed by the Secretary of State, copies thereof shall be furnished in duplicate, one of which shall be given its proper file number, indexed and retained in his office, and the other shall be properly endorsed, giving the file number under which it is to be found and returned. (As amended by Laws 1920, No. 555.)

§ 707. *Books of record — Fees for recording — Certified copy receivable in evidence.*— Said conveyances, leases and mortgages and other instruments in writing shall be filed by the Secretary of State in his office, and for such filing he shall receive from the party offering such papers for file the sum of five dollars. A certificate or certified copy of the aforesaid papers when once filed, as hereinabove provided, by the Secretary of State, shall be competent evidence of such filing and of the facts contained in each deed, lease and mortgage or other instrument in writing so filed and certified in all the Courts of this State. When any such mortgage so filed shall be fully satisfied, the mortgagee shall note the same on the margin of the copy on file or declare the same to be satisfied in a separate instrument in writing to be filed as above provided under a penalty of five hundred dollars to be recovered in any Court of competent jurisdiction at the suit of the mortgagor or his assignees, or any other party aggrieved thereby. (As amended by Laws 1920, No. 555.)

Laws 1921, No. 40.

§ 1. *Recordation of certain instruments affecting railways, validated.*— Be it enacted by the General Assembly of the State of South Carolina: That the Act entitled "An Act to amend Sections 705, 706 and 707 of the Code of 1912, Volume I, by substituting the words ' filed in duplicate ' wherever the word ' recorded ' occurs," approved March 10, 1920, shall not affect or apply to deeds of conveyance of railroad beds, tracks and rights of way, cars, locomotive engines, rolling stock and other railway equipment, leases and mortgages or other conditional sale of, or other instruments in, writing relating to such property, which were duly

recorded pursuant to the law as it existed prior to the approval of said amendatory Act on March 10, 1920, and the records thereof are hereby declared to be legal and valid according to the terms of the law existing when such recordations were made.

Criminal Provisions.

Criminal Code 1912.

§ 446. *Selling property on which lien exists.*—Any person or persons who shall wilfully and knowingly sell and convey any real or personal property on which any lien exists without first giving notice of such lien to the purchaser or purchasers of such real or personal property, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be imprisoned for a term not less than ten days nor more than three years, and be fined not less than ten dollars nor more than five thousand dollars, or either or both, in the discretion of the Court: Provided, That the penalties enumerated in this Section shall not apply to public officers in the discharge of their official duties: Provided, further, When the value of such property does not exceed twenty dollars, the punishment shall not exceed a fine of one hundred dollars, or imprisonment not exceeding thirty days.

§ 447. *Selling personal property under mortgage.*—Any person or persons who shall sell or dispose of any personal property on which any mortgage or other lien exists, without the written consent of the mortgagee or lienee, or the owner or holder of such mortgage or lien, and shall fail to pay the debt secured by the same within ten days after such sale or disposal, or shall fail in such time to deposit the amount of the said debt with the Clerk of the Court of Common Pleas for the County in which the mortgage or lien debtor resides, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be imprisoned for a term not more than two years, or be fined not more than five hundred dollars, or both, in the discretion of the Court: Provided, That the provisions of this Section shall not apply in cases of sales made without knowledge or notice of such mortgage or lien by the person so selling such property: Provided, further, That when the value of such property does not exceed twenty dollars, the punishment shall not exceed a fine of one hundred dollars, or imprisonment not exceeding thirty days.

TENNESSEE.

CONDITIONAL SALES GENERALLY.

Shannon's Annotated Code 1917.

§ 3670a1. *Retention of title in sales to be evidenced by a writing.*—In all conditional sales of personal property, wherein the title to the property is retained by the vendor, as a security for the payment of purchase money, such retention of title shall be illegal and invalid, unless evidenced by a written contract or memorandum, executed at the time of the sale. (Laws 1899, ch. 15.)

§ 3666. *Failure to pay purchase money; advertisement and sale of chattel; waiver of sale.*—When any personal property is sold upon condition that the title remain in the seller until that part of the consideration remaining unpaid is paid, it shall be the duty of said seller, having regained possession of said property because of the consideration remaining unpaid at maturity, to, within ten days after regaining said possession, advertise said property for sale, for cash, to the highest bidder, by written or printed posters posted at as many as three public places in the county where the property is to be sold, one of said places to be in the district in which said property is to be sold and one at the courthouse door in the county in which the property is to be sold, and the other or third at any public place in the county, said notice to be posted at least ten days before the day of sale, and to contain a description of the property to be sold, and time and place of said sale. Unless the debt is satisfied before the day of sale, then it shall be the duty of said original seller, or his agent, at the time and place as stated in said notices, to offer for sale, and sell, said property, as provided above, and, with the proceeds of said sale, satisfy the amount of his claim arising from said conditional sale above mentioned, and the expenses of advertisement, if any, and the remainder of said proceeds, if any, he shall pay over to the original purchaser; but the said original seller and purchaser may at any time, by agreement, waive the sale provided in this article. (Laws 1889, ch. 81, sec. 1; Laws 1911, ch. 8.)

§ 3667. *Seller may bid.*—The seller mentioned in section 3666 may become a bidder and purchaser at the sale provided in said section. (Laws 1889, ch. 81, sec. 2.)

§ 3668. *Unsatisfied claim a legal debt.*—Should said property, at the sale provided by this article, fail to realize a sufficient sum to satisfy the claim of the seller, the balance still remaining due

on said claim shall be and continue a valid and legal indebtedness as against said original purchaser. (Laws 1889, ch. 81, sec. 3.)

§ 3669. *Purchaser may recover payments on failure to sell.*— Should the seller, having regained possession of said property, fail to advertise and sell the same as provided by this article (unless said sale is waived as provided), the original purchaser may recover from said seller that part of the consideration paid, in an action for the same before any justice of the peace or court having jurisdiction of the amount. (Laws 1889, ch. 81, sec. 4.)

§ 3670. *Claim more than satisfied, purchaser may recover balance.*— Should said property, sold under this article, realize an amount more than sufficient to satisfy the claim of the seller and expense of advertisement, and the balance be not paid to the original purchaser, as provided in section 3666, then the said original purchaser may recover said balance from said seller, by motion before any justice of the peace or court having jurisdiction of the amount, after having given five days' written notice to said seller of the time and before what justice or court said motion is to be made, said notice to be served by a constable, sheriff, or his deputy. (Laws 1889, ch. 81, sec. 5.)

§ 3670a6. *Fencing wire, posts, or material sold in a conditional sale does not become a fixture by its use, until paid for; writing is necessary.*— When any fencing wire, fencing posts, or other fencing material is sold upon condition that the title thereto is to remain in the seller until that part of the consideration remaining unpaid is paid, the use thereafter of such fencing wire, fencing posts or other fencing material in the erection or repairing of fences on real estate shall not, by such use, thereby become a fixture, but shall continue its character as personal property until the unpaid consideration therefor is fully paid, or sale is made under section 3670a7; but no such retention of title shall be legal or valid unless evidenced by note or other written contract or memorandum, executed at the time of the sale. (Laws 1915, ch. 81, sec. 1.)

§ 3670a7. *Sale of property to satisfy debt; advertisement; waiver of sale; replevin.*— If default be made by the purchaser, in case of sale provided for in the preceding section, the seller, his agent, or assignee may, at any time after such default, regain possession of the property sold by action of replevin before any court of competent jurisdiction, or any justice of the peace having jurisdiction of the amount, and shall, within 10 days after

regaining possession, advertise the property for sale, for cash to the highest bidder, by written or printed notices posted at as many as three public places in the county where the property is to be sold — one of which places to be in the district in which the property is to be sold, one at the courthouse door in the county in which the property is to be sold, and the other at any public place in said county — (said notices to contain a description of the property to be sold, and the time, terms, and place of sale) and unless the debt or claim of the seller, or his assignee, is satisfied before the day of sale, then it shall be the place as stated in the notices, offer for sale and sell said property, as above provided, and with the proceeds of sale satisfy the debt or claim arising from the conditional sale, and the expenses of advertisement and sale, and the remainder, if any, of the proceeds of sale shall be paid to the purchaser, or to his assignee; provided the seller, his agent, or assignee and the purchaser may, at any time prior to sale, by agreement, waive the sale provided for in this section. (Laws 1915, ch. 81, sec. 2.)

§ 3670a8. *Seller may be bidder and purchaser.*— The seller, his agent, or assignee, mentioned in the preceding section, may become bidder or bidders and purchaser or purchasers at the sale provided for therein. (Laws 1915, ch. 81, sec. 3.)

§ 3670a9. *Unsatisfied balance remains a debt against the conditional vendee.*— Should the property, at the sale provided for in said section 3670a7, fail to realize a sum sufficient to satisfy the debt or claim and expenses, the balance still remaining due shall be and continue a valid indebtedness against the original purchaser. (Laws 1915, ch. 81, sec. 4.)

§ 3670a10. *For failure to sell, original purchaser may recover from original seller the consideration paid.*— Should the seller, or his assignee, having regained possession of said property, fail to advertise and sell the same as provided for by section 3670a7 unless said sale is waived as provided in said section, the original purchaser may recover from the original seller that part of the consideration paid in an action before any justice of the peace or court having jurisdiction of the amount. (Laws 1915, ch. 81, sec. 5.)

§ 3670a11. *Original purchaser may recover balance of proceeds of sale, when.*— Should the property, sold under section 3670a7, realize an amount more than sufficient to satisfy the claim of the original seller and the expenses of advertisement and sale, and

the balance be not paid to the original purchaser or his assignee, as provided in section 3670a7, then the original purchaser may have and recover said balance from said original seller by action before any justice of the peace or court having jurisdiction of the amount. (Laws 1915, ch. 81, sec. 6.)

Railroad Equipment.

Shannon's Annotated Code 1917.

§ 3587. *Lien retained by vendor.*— In any written contract of or for the sale of the railroad equipments or rolling stock, deliverable immediately or subsequently at stipulated periods, by the terms of which the purchase money, in whole or in part, is to be paid in the future, it may be agreed that the title to the property so sold or contracted to be sold shall not pass to or vest in the vendee until the purchase money shall have been fully paid, or that the vendor shall have and retain a lien thereon for the unpaid purchase money, notwithstanding delivery thereof to and possession by the vendee; provided, the terms of credit for the payment of the purchase money shall not exceed fifteen years from the execution of the contract. (Laws 1885, ch. 96, sec. 1; Laws 1903, ch. 199, sec. 1.)

§ 3588. *Lease may provide for conditional sales.*— In any written contract for the leasing or renting of railroad equipments or rolling stock, it shall be lawful to stipulate for a conditional sale thereof at the termination of such lease, and to stipulate that the rentals received may, as paid or when paid in full, be applied and treated as purchase money, and that the title of such property shall not vest in such lessee or vendee until the purchase money shall have been paid in full, notwithstanding delivery to and possession by such lessee or vendee, subject, however, to the proviso contained in section 3587. (Laws 1885, ch. 96, sec. 2.)

§ 3589. *Contracts to be probated and registered.*— Every such contract specified in sections 3587 and 3588 shall be good, valid, and effectual, both in law and equity, against all purchasers and creditors; provided, first, the same shall be acknowledged by the vendee or lessee before some officer authorized by law to take acknowledgments of deeds in the form required as to conveyance of real estate; second, such instrument shall be registered in the office of the register of the county in which, at the time of the execution thereof, is situated the principal office of the vendee or lessee in this state, and in the office of the secretary of state;

third, each locomotive engine or car so sold or contracted to be sold or leased as aforesaid, shall have the name of the vendor or lessor, or the assignee of such vendor or lessor, plainly placed or marked on each side thereof, or be otherwise marked so as to indicate the ownership thereof. (Laws 1885, ch. 96, secs. 3, 5.)

CRIMINAL PROVISIONS.

Shannon's Annotated Code 1917.

§ 3670a2. *Misdemeanor for vendee to dispose of property; imprisonment and fine.*— If the purchaser of personal property, under a written or printed contract of conditional sale, when the title remains in the seller until that part of the consideration remaining unpaid is paid, shall, without having paid for the same, and without the consent of the seller, sell, give away, or otherwise dispose of or conceal such personal property, with the intention of depriving the seller of such property, or of its proceeds so that said seller cannot, by due process of law, recover possession of said property, when so entitled under the terms of his said contract of conditional sale, said purchaser shall be guilty of a misdemeanor, and, upon conviction, shall be confined in the county jail for a period of not more than six months, or shall be fined not more than fifty dollars, or both. (Laws 1899, ch. 12, sec. 1.)

§ 3670a3. *Payment of debt or delivery of property relieves from offense, upon payment of costs.*— If any person selling, giving away, or otherwise disposing of, or concealing personal property bought under a contract of conditional sale, as set forth in the preceding section, shall pay the amount due upon the property under said contract of conditional sale, or shall surrender the property to the person lawfully entitled to the possession thereof, before he is arraigned for trial, and shall pay the costs, he shall not be within the provisions of the preceding section. (Laws 1899, ch. 12, sec. 2.)

§ 3670a4. *Felony to remove property beyond state, without written consent of seller.*— It shall be unlawful for any person to remove beyond the limits of the State of Tennessee any personal property, the title to which has been retained at the time of the sale thereof, unless the consent of the seller of such article be obtained in writing prior to the time that such removal of such article is made beyond the limits of the State of Tennessee. Any person violating this section shall be deemed guilty of a felony, and, upon conviction thereof, shall be imprisoned for not less than

one year nor more than five years, and fined not less than two hundred and fifty dollars nor more than five hundred dollars. (Laws 1909, ch. 557, sec. 1.)

§ 3670a5. *Preceding section to be given in special charge.*— It shall be the duty of the various judges holding the criminal courts of the State of Tennessee to give the next preceding section in charge to the grand jury at each session of such courts. (Laws 1909, ch. 557, sec. 2.)

TEXAS.

CONDITIONAL SALES GENERALLY — RAILROAD EQUIPMENT.

Complete Texas Statutes 1920 — Civil Statutes.

Article 5654. *Reservations of title, mortgages, and to be recorded.* —All reservation of the title to or property in chattels, as security for the purchase money thereof, shall be held to be chattel mortgages, and shall, when possession is delivered to the vendee, be void as to creditors and bona fide purchasers, unless such reservations be in writing and registered as required of chattel mortgages; provided, that nothing in this law shall be construed to contravene the landlord and tenant act.

Article 5655. *All instruments intended to operate as liens to be recorded.*— Every chattel mortgage, deed of trust, or other instrument of writing, intended to operate as a mortgage of or lien upon personal property, which shall not be accompanied by an immediate delivery and be followed by an actual and continued change of possession of the property mortgaged or pledged by such instrument, shall be absolutely void as against the creditors of the mortgagor or person making same, and as against subsequent purchasers and mortgagees or lien holders in good faith, unless such instrument, or a true copy thereof, shall be forthwith deposited with and filed in the office of the county clerk of the county where the property shall then be situated, or if the mortgagor or person making the same be a resident of this state, then, of the county of which he shall at that time be a resident; provided, that written contracts for the conditional sale, lease or hire of railroad equipments and rolling stock, by which the purchase money is therein agreed to be paid at any time or times after the date of such contract, with a reservation of title or lien in the vendor, lessor or bailor until the same has been fully paid, shall be recorded in the office of the secretary of state, in a book of records to be kept by him for that purpose; and, on payment in full of the purchase

money and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect may be made by the vendor, lessor or bailor, or his or its assignee, which declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument to be acknowledged by the lessor, vendor or bailor, or his or its assignee, and recorded as aforesaid; and for such services the secretary of state shall be entitled to a fee of five dollars for recording each of said contracts and each of said declarations, and a fee of one dollar for entering such declaration on the margin of the record.

Article 5656. *Duty of clerk receiving.*— Upon the receipt of such instrument, the clerk shall endorse thereon the day and hour when the same was deposited in his office for record, and shall keep the same on file in his office for the inspection of all parties interested until satisfaction thereof shall be entered, as provided in article 5659; provided, that if a copy be presented to the clerk for filing, instead of the original instrument, he shall carefully compare such copy with the original, and the same shall not be filed unless it is a true copy thereof, and a copy can be filed only when the original has been witnessed by two subscribing witnesses or acknowledged or proven for record and certified as required in case of other instruments for the purpose of being recorded.

Article 5657. *Copy of instrument evidence of what.*—A certified copy of any such instrument so filed as aforesaid, certified to under the hand and seal of the clerk of the county court in whose office the same shall have been filed, shall be admitted in evidence in like manner as the original might be unless the execution of the original has been denied under oath by the party sought to be charged thereby; provided, that the party desiring to use such instrument shall file the same in the papers of the cause before announcing ready for trial, and not afterwards; and such certified copy shall in all cases be received as evidence of filing and entry thereof in chattel mortgage record according to the endorsement of the clerk thereon.

Article 5658. *County clerk to keep book.*— The county clerk shall keep a book in which shall be entered a minute of all such instruments, which shall be ruled off into separate columns, with heads as follows: Time of reception, name of mortgagor, name of mortgagee or trustee and cestui que trust, date of instrument, amount secured, when due, property mortgaged, and remarks;

and the proper entry shall be made under each of such heads. Under the head of property mortgaged, it will be sufficient to enter a general description of the property pledged and the particular place where located, and index shall be kept in the manner as required for other goods.

Article 5659. *Satisfaction to be entered.*— When the debt secured by any such instrument shall have been paid or satisfied, it shall be the duty of the mortgagee, his assignee, attorney or legal representative to enter, or cause to be entered, and attested by the clerk, as aforesaid, satisfaction thereof, in the record book in which the instrument is entered, which may be done under the head of " remarks;" and any instrument acknowledging payment or satisfaction need not be recorded at length, but the entry as above provided showing the same has been paid shall be sufficient, and the original instrument or copy thereof on file shall then be delivered to the mortgagor or maker upon demand, or the clerk may mail the same to him.

Article 5660. *Property not to be removed.*— The person making any such instrument shall not remove the property pledged from the county, nor otherwise sell or dispose of the same without the consent of the mortgagee; and, in case of any violation of the provisions of this article, the mortgagee shall be entitled to the possession of the property, and to have the same then sold for the payment of his debt, whether the same has become due or not.

Article 5661. *Not to be recorded at length; mortgages on articles attached to realty described in instrument; form of instrument; separate record book.*— Chattel mortgages and other instruments intended to operate as mortgages or liens upon personal property shall not hereafter be recorded at length as heretofore required; and when deposited and filed in accordance with the provisions of this law, shall have the force and effect heretofore given to a full registration thereof, and all persons shall be thereby charged with notice thereof, and of the rights of the mortgagee, his assignee or representatives thereunder, but nothing herein contained shall be so construed as to in any manner affect the rights of any person under any instrument heretofore recorded as required by law. Provided, that when any machinery or other manufactured article is susceptible of being attached to the realty in such a way as to become a fixture thereto and is located upon real estate in such manner as the same may be deemed a fixture thereto, and at the time of its location upon such real estate there is a lien or mortgage evidenced by written instrument or any instrument reserving title in such machinery or other manufactured article to secure

an indebtedness thereon, executed by the purchaser or owner of such machinery or other manufactured article at the time of its location on such real estate, and the instrument evidencing said lien, mortgage or reservation of title contains a description of said machinery or other manufactured article, as well as the real estate upon which it is to be located or situated, reasonably sufficient to identify said real estate, and such instrument is registered under the provisions of this Act, then the registration of such instrument evidencing said lien, mortgage, or reservation of title as provided for by this Act, shall be notice to all persons thereafter dealing with or acquiring any right or interest in said machinery or other manufactured article, or the realty upon which the same is located or other improvements or property situated on said real estate, of all of the rights of the owners or holders of the indebtedness secured by said instrument the same as if recorded at length in the deed records or records of mortgages upon realty of the county where the real estate is situated, and such lien, mortgage or reservation of title upon or to such machinery or other manufactured article shall be as to such machinery and other manufactured article superior to any lien or rights existing in any one to said real estate or other improvements or other property located and situated thereon existing at the time of the location of said machinery or other manufactured article thereon, but nothing herein contained shall be held to give the holder of such lien, mortgage or reservation of title any right to or claim upon the real estate save and except the right to establish and foreclose his lien, mortgage or reservation of title upon such machinery or other manufactured article, and to enforce his rights thereto under the instrument evidencing his lien, mortgage or reservation of title, as in other cases of liens upon personal property hereunder. Provided, further that all such instruments shall be endorsed on the back thereof, to wit, "Liens on machinery situated on realty," and shall be registered in the county where the real estate is located in the same manner as other chattel mortgages except that there shall be kept, indexed and recorded, as now herein provided for chattel mortgages, a separate book to be endorsed "chattel mortgage records on realty." The record thereof shall in addition to the other requirements of this Act contain a brief description of said real estate to which said fixtures are to be attached.

Article 5662. *Destruction of chattel mortgages.*— All chattel mortgages filed with the county clerks of this state in accordance with law shall be prima facie presumed to have been paid after

the expiration of six years from the date of the maturity of the debts such mortgages were intended to secure, unless the owner or holder of such mortgage, his agent or attorney, shall, within three months next before the expiration of said time, file an affidavit in writing with the county clerk stating that such debt has not been paid, and the amount still due thereon. If such affidavit is not filed, the clerk shall, at the expiration of said time, make disposition of such mortgage, either by delivering the same to the maker or by burning the same.

Article 6841. *Titles to chattels, where recorded.*— Every deed, mortgage, or other writing, respecting the title of personal property hereafter executed, which by law ought to be recorded, shall be recorded in the clerk's office of the county court of that county in which the property shall remain; and if afterwards the person claiming title under such deed, mortgage, or other writing, shall permit any other person in whose possession such property may be to remove the same, or any part thereof, out of the county in which the same shall be recorded, and shall not, within four months after such removal, cause the same to be recorded in the county to which such property shall be removed, such deed, mortgage, or other writing, for so long as it shall not be recorded in such last mentioned county, and for so much of the property aforesaid as shall have been removed, shall be void as to all creditors and purchasers thereof for valuable consideration without notice; provided, that written contracts for the conditional sale, lease or hire of railroad rolling stock and equipments by which the purchase money is therein agreed to be paid at any time or times after the date of such contract, with a reservation of title or lien in the vendor, lessor or bailor, until the same has been fully paid, shall be recorded in the office of the secretary of state in a book of records to be kept by him for that purpose; and on payment in full of the purchase money and the performance of the terms and conditions stipulated in any such contract a declaration in writing to that effect may be made by the vendor, lessor or bailor, or his or its assignee, which declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument to be acknowledged by the lessor, vendor, or bailor, or his or its assignee, and recorded as aforesaid; and for such services the secretary of state shall be entitled to a fee of five dollars for recording each of said contracts, and each of said declarations, and a fee of one dollar for entering such declaration on the margin of the record.

CRIMINAL PROVISIONS.

Complete Texas Statutes 1920 — Penal Code.

Article 1430. *Fraudulent disposition of mortgaged property.*— If any person has given, or shall hereafter give, any mortgage, deed of trust or other lien, in writing, upon any personal or movable property or growing crop of farm produce, and shall remove the same, or any part thereof, out of the state, or shall sell or otherwise dispose of the same, with intent to defraud the person having such lien, either originally or by transfer, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years.

UTAH.

CHATTEL MORTGAGES.

Compiled Laws 1917.

§ 470. *What necessary to validity.*— Unless the possession of personal property be delivered to and retained by the mortgagee, no mortgage thereof shall be valid as against the rights and interests of any person other than the parties thereto, unless:

1. The mortgage, duly witnessed by at least one person, provided that the property may remain in the possession of the mortgagor;

2. The mortgage be accompanied by the affidavit of the parties thereto, or, in case any party is absent, by the affidavit of the parties present and that of the agent or attorney of such absent party, that the same is made in good faith to secure the amount named therein and without any design to hinder or delay the creditors of the mortgagor;

3. The mortgage, or copy thereof, certified to as such by a notary public or other officer authorized to take acknowledgments, be filed in the office of the recorder of the county where the mortgagor resides, or, in case he is a non-resident of this state, in the office of the recorder of the county or counties where the property may be at the time of the execution of the mortgage.

§ 471. *Foreclosure.*— An action for the foreclosure of a mortgage of personal property or for the enforcement of any lien thereon, may be conducted in the manner provided by law for the foreclosure of a mortgage or lien upon real property, and without the right of redemption; or, a mortgage of personal property containing a power of sale upon default being made in the condition of such mortgage, authorizing the exercise of such power, may be

foreclosed by advertisement, in the manner and upon the notice hereinafter provided.

§ 472. *Enjoining foreclosure by advertisement.*— When the mortgagee or his assignee has commenced foreclosure by advertisement, and it shall be made to appear, by the affidavit of the mortgagor or his agent or attorney, to the satisfaction of the judge of the district court of the county where the mortgaged property is situated, that the mortgagor has a legal counterclaim or any other valid defense against the collection of the whole or any part of the amount claimed to be due on such mortgage, such judge may, by an order to that effect, enjoin the mortgagee or assignee from foreclosing such mortgage by advertisement, and direct that all further proceedings for the foreclosure be had in the district court properly having jurisdiction of the subject matter.

§ 473. *Discharge — Penalty.*— A chattel mortgage, when satisfied, shall be discharged by an entry by the mortgagee, his agent, assignee, or legal representative, on the margin of the index, which shall be attested by the recorder without fee; or the recorder may discharge the same on the presentation of an order in writing duly signed and acknowledged. After the full performance of the conditions of the mortgage, any mortgagee, agent, assignee, or legal representative who shall wilfully neglect, for the space of ten days after being requested, to discharge the same, shall be liable to the mortgagor or his assigns in the sum of $50 damages, and also for all actual damages sustained by such neglect or refusal.

§ 474. *Chattel mortgage expires in three years — Renewal.*— Every mortgage so filed shall be void as against the creditors of the person making the same, or against subsequent purchasers or mortgagees in good faith, after the expiration of three years after the filing thereof; unless within thirty days after the expiration of the term of three years from such filing, and within thirty days after the expiration of each year thereafter, the mortgagee, his agent or attorney, shall make an affidavit exhibiting the interest of the mortgagee in the property at the time last aforesaid claimed by virtue of such mortgage, and if such mortgage is to secure the payment of money the amount yet due and unpaid, and shall file the same with the county recorder, to be attached to the instrument or copy on file to which it relates; provided, that no mortgage of personal property shall be valid as against creditors of the mortgagor or subsequent purchasers or mortgagees in good faith after the expiration of the five years from the date of the original filing.

§ 475. *Id.*— If such affidavit be made and filed before any purchase of such mortgaged property shall be made, or other mortgage deposited, or lien obtained thereon, in good faith, it shall be as valid to continue in effect such mortgage as if the same had been made and filed within the period above provided.

§ 476. *Seizure by third party.*— Personal property mortgaged may be taken on attachment, if any legal cause for attachment exists, or on execution issued at the suit of a creditor of a mortgagor; but, before the property is so taken, the officer must pay or tender the mortgagee the amount of the mortgage debt and interest at the place where by its terms it is made payable, if such place is within this state. If it specifies no place of payment, or if it is payable without this state, then he must deposit the amount thereof with the county recorder of any county wherein the mortgage is filed, payable to the mortgagee or his order.

§ 477. *Copy of mortgage as evidence.*—A copy of any mortgage of personal property, made and filed as provided in this title, certified by the recorder in whose office the same shall be filed, may be read in evidence in any court in this state without further proof of the execution of the original, if such original be out of the control of the person wishing to use it.

§ 478. *Bills of sale, etc.*— The provisions of the foregoing sections shall extend to and include all such bills of sale, deeds of trust, and other conveyances of personal property as shall have the effect of a mortgage or lien upon such property.

§ 479. *Foreclosure by advertisement — Notice.*— Notice that such mortgage will be foreclosed by a sale of the mortgaged property or some part thereof, shall be given as follows: By advertisement published at least once a week for two successive weeks prior to the sale in some newspaper printed in the county in which such sale is to take place, or, in case no newspaper is printed therein, by posting up notices at least ten days prior to the sale in at least five public places in such county, two of which shall be in the precinct where the mortgaged property is to be offered for sale.

§ 480. *Id.*— *Contents of notice.*— Every such notice shall specify: First, the date of the mortgage and where filed; second, the names of the mortgagor and mortgagee and the assignee of the mortgagee, if any; third, the amount claimed to be due thereon at the time of the first publication or posting of such notices; fourth, a description of the mortgaged property conforming substantially with that contained in the mortgage; fifth, the time and place of sale.

§ 481. *Id.*— *Sale.*—All sales shall be made within thirty days

after the seizure of the property, unless the same shall be postponed as hereinafter provided. All sales shall be made by public auction, and shall be commenced between the hours of twelve m. and four o'clock p. m., and shall be held in the county where the mortgage was first filed, or in any county where the property may have been removed by consent of parties and in which the mortgage was duly filed, and in view of the property so being sold. The mortgagee, his assignees, and his or their legal representatives, may fairly and in good faith purchase any of the mortgaged property offered at such sale, and when the mortgage shall have been foreclosed as herein provided any and all right and equity of redemption which the mortgagor may or might have had shall be and become extinguished.

§ 482. *Postponement of sale.*—Any sale may be postponed to a definite time by public announcement made at the time and place of sale, with the consent of the mortgagor, if he is present; provided, that if a sale be postponed for more than one week, notice shall be given by publication, or by posting as in the first instance.

§ 483. *Return of sale—Penalty.*—Within ten days after the sale of any mortgaged property as hereinbefore provided, the mortgagee or his assignee shall make, or cause to be made, a statement under oath of the proceedings under such sale, specifying particularly the property sold, the amount received therefor and the costs and expenses, which shall be itemized, and the disposition made by him of the proceeds of the sale, and shall deliver the same to the mortgagor or send the same to him by registered letter; and on failure so to do shall forfeit to the mortgagor the sum of $25 damages.

§ 484. *Distribution of proceeds—Fees.*—Out of the proceeds arising from the sale, the person making the sale shall pay: First, the costs and expenses of foreclosure; second, the amount of the mortgage debt due to the person entitled thereto; and, third, the balance, if any, to the owner of the mortgaged property. The fees for the publication of notice shall in no case exceed the sum of $3. The fee of the person crying the sale shall be $2 per day.

§ 486. *Wife must concur.*—It shall be unlawful for the husband, where the relation of husband and wife exists, to create any lien, by chattel mortgage or otherwise, upon any personal property owned by him and exempt by law to resident heads of families from seizure and sale upon any attachment, execution, or other process issued from any court in this state, without the consent of his wife; and from and after the time when this title

shall take effect (January 1, 1898), no such mortgage of personal property shall be valid unless executed by both husband and wife.

§ 487. *Conditional sales to railways.*— The provisions of this title shall not apply to contracts made by any railway company owning or operating a railway in this state, for the possession, use, and conditional purchase of rolling stock and equipments to operate such railway, and containing the condition that the title shall not pass until full payment of the purchase price; and such contract shall be valid as to all persons without recording the same.

RAILROAD EQUIPMENT.

Compiled Laws 1917.

§ 1260. *Conditional sale railroad equipment — Recording contract.*— In any contract for the sale of railroad or street railway equipment or rolling stock it shall be lawful to agree that title to the property sold or contracted to be sold, although possession thereof may be delivered immediately or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money. And in any contract for the leasing or hiring of such property, it shall be lawful to stipulate for a conditional sale thereof at the termination of such contract, and that the rentals or amounts to be received under such contract may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price shall have been paid in full, and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee; provided, that no such contract shall be valid as against any subsequent judgment creditor or any subsequent bona fide purchaser for value and without notice, unless (1) the same shall be evidenced by an instrument executed by the parties and duly acknowledged by the vendee, lessee, or bailee, as the case may be, or duly proved before some person authorized by law to take acknowledgments of deeds, and in the same manner as deeds are acknowledged or proved; (2) such instrument shall be filed for record in the office of the secretary of state of this state; (3) each locomotive engine or car so sold, leased, or hired, or contracted to be sold, leased, or hired as aforesaid, shall have the name of the vendor, lessor, or bailor plainly marked in letters not less than one inch in size on each side thereof, followed by the word " owner," or " lessor," or " bailor," as the case may be.

§ 1261. *Recorded by secretary of state — Release fee.*— The contracts herein authorized shall be recorded by the secretary of state in a book of records to be kept for that purpose. And on payment in full of the purchase money and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect shall be made by the vendor, lessor, or bailor, or his or its assignee, which declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument, to be acknowledged by the vendor, lessor, or bailor, or his or its assignee, and recorded as aforesaid. And for such services the secretary of state shall be entitled to a fee such as is allowed by law for recording like instruments.

§ 1262. *Not retroactive.*— This chapter shall not be held to invalidate or affect in any way any contract heretofore made of the kind referred to in § 1260, and any such contract heretofore made may, upon compliance with the provisions of this chapter, be recorded as herein provided.

CRIMINAL PROVISIONS.

Compiled Laws 1917.

§ 485. *Fraudulent disposal of property.*—Any mortgagor, agent, servant, or employe of any mortgagor of personal property who shall, during the time such mortgage remains in force, destroy, sell, conceal, or otherwise dispose of the whole or any part of the mortgaged property, or who shall remove the same or any part thereof from the state without the written consent of the mortgagee, his legal representatives or assigns, shall be deemed guilty of obtaining money under false pretenses, and, on conviction thereof, shall be punished by a fine not exceeding three times the value of the property described in the mortgage, or by imprisonment in the county jail not more than six months, or by both such fine and imprisonment. The term mortgage in this section shall embrace deeds of trust and all instruments intended as security for debt.

VERMONT.

CONDITIONAL SALES GENERALLY.

General Laws 1917.

§ 2830. *How evidenced; record.*—A lien reserved on personal property sold conditionally and passing into the hands of the conditional purchaser shall not be valid against attaching creditors

or subsequent purchasers without notice, unless the vendor of such property takes a written memorandum, signed by the purchaser, witnessing such lien, and the sum due thereon, and causes it to be recorded in the office of the clerk of the town where the purchaser of such property resides, if he resides in the state, otherwise in the office of the clerk of the town where the vendor resides, within thirty days after such property is delivered.

§ 2831. *How discharged.*— Liens on personal property sold conditionally may be discharged by an entry on the margin of the record thereof, in the office of the clerk where recorded, signed by the vendor, his executor, administrator, assignee or attorney, acknowledging satisfaction of the lien, or by an entry on the writing creating the lien as aforesaid, acknowledging satisfaction, duly recorded on the margin of the record of the lien, or by a release of the lien signed as aforesaid and duly recorded in such office.

§ 2832. *Penalty for not discharging.*— If a vendor, assignee or the executor or administrator of either, after the performance of the condition before or after breach thereof, does not, within ten days after being thereto requested, and after tender of reasonable charges, discharge such lien in one of the ways provided in the preceding section, he shall forfeit to the person entitled to redeem, the sum of ten dollars and damages occasioned thereby, to be recovered in an action of tort, on this statute.

§ 2833. *At public auction; proceedings.*— The vendor of personal property sold conditionally, with a lien reserved thereon, or his assignee, may, after thirty days from the time of condition broken, cause the property on which the lien exists, or part thereof, to be sold at public auction by a public officer at a public place in the town where the person giving the lien resides or where such property is, provided at least ten days' notice of the time, place and purpose of such sale has been posted in two or more public places in such town; and at least ten days' notice of such sale be given to the vendee or the person holding under him, of the time and place of sale, either by notice in writing, delivered to him or left at his abode, if living within the town, or sent by mail if he does not reside in such town; and, if the property is not redeemed by payment of the amount due and costs and expenses incurred by such breach of condition, the property shall be sold as posted.

§ 2834. *Proceeds, how applied.*— The proceeds of such sale shall be applied to the payment of the lien and the costs and expenses of keeping the property and sale; and the balance shall be paid to the vendee or the person holding under him, on demand.

§ 2835. *Officer's return; fees.*— The officer selling the property shall make return of his doings in the same manner as required in the sale upon a mortgage of personal property, and his return shall have a like effect, and he shall receive the same fees.

§ 2836. *Property not removed from state without consent.*— Personal property sold conditionally, upon which there is reserved a lien duly recorded, shall not be removed from the state without the consent of the vendor or his assignee.

§ 2839. *Exception.*— The provisions of this chapter, in so far as inconsistent, shall not apply to contracts of the kind mentioned in section five thousand one hundred and thirty-one.

§ 2047. *Attachment, how made.*— Personal property not exempt from attachment, subject to a mortgage, pledge or lien, may be attached, taken in execution and sold as the property of the mortgagor, pledgor or general owner, in the same manner as other personal property, except as hereinafter otherwise provided.

§ 2048. *Statement of secured debt.*— The officer making such attachment or taking such property on execution may make a written demand of the mortgagee, pledgee or the holder of such lien, for an account in writing, under oath, of the amount due upon the debt secured by such mortgage, pledge or lien, and may retain such property in his custody until the same is given without tender or payment. Upon receiving such demand, the account shall be rendered within fifteen days by a resident of the state and within thirty days by a nonresident. If the account is not rendered within the time aforesaid, or if a false account is rendered, such property may be holden and sold discharged from such mortgage, pledge or lien.

§ 2049. *Payment of debt if due.*— If such debt is due at the time of rendering the account, the creditor so attaching or causing such property to be taken on execution, may, within ten days after such account is rendered, pay or tender the amount so rendered to the mortgagee, pledgee or holder of such lien, and retain and sell such property free and clear of such mortgage, pledge or lien.

§ 2050. *Same, if it becomes due before sale.*— If such debt is not due at the time of rendering the account, but becomes due before the time fixed by the officer making such attachment or levy of execution for the sale of the property, such creditor may, within ten days after the debt becomes due and before the sale, pay or tender the amount thereof to such mortgagee, pledgee or holder of such lien, and retain and sell such property as is provided in the preceding section.

§ 2051. *Creditor may pay debt if not due.*— If such debt is not due at the time fixed by the officer for sale of the property, the creditor may offer to pay the debt to the mortgagee, pledgee or holder of the lien, and, if such payment is accepted, the same proceedings may be had as is provided in the second preceding section.

§ 2052. *Subrogated by payment.*— If such creditor pays or tenders such debt to the mortgagee, pledgee or holder of such lien, as is provided in the three preceding sections, he shall be subrogated to all the rights of such mortgagee, pledgee or holder, and may cause the same to be sold in the same manner that unencumbered personal property may be sold on mesne or final process; and the proceeds of such sale shall be applied: first, in payment of the sum paid by such creditor to such mortgagee, pledgee or holder; second, to satisfy the execution.

§ 2053. *Property may be sold subject to lien, when.*— If the mortgagee, pledgee or holder of a lien, duly renders such account, the attaching creditor may, whether or not the debt is due, cause the property to be sold subject to the mortgage, pledge or lien, without first paying or tendering the amount due on the debt secured thereby.

§ 2054. *Subrogation of purchaser.*— If a mortgagor, pledgor or conditional vendee of property sold on execution under the provisions of this chapter fails or refuses to discharge such lien after it becomes due and payable, and within ten days after written notice so to do is served upon him by the purchaser of the whole or part thereof, the person so purchasing may tender and pay to the holder of such mortgage, pledge or lien, or such conditional vendor, the amount due such creditor upon the whole of such property, and upon such tender or payment shall be subrogated to all the rights of such original mortgagee, pledgee or conditional vendor, and may hold the same as security for the amount so paid in discharge of such original claim, together with the sum paid by him on the execution sale, with interest upon such sums, and shall have the same benefit of foreclosure, sale and disposition of such property that the original mortgagee, pledgee or conditional vendor would have had under his claim.

§ 2055. *Property sold conditionally, how taken.*— In sales of personal property, where by the contract payment of the purchase money is made a condition precedent to the transfer of title, if the property in pursuance of the contract has passed into the possession of the vendee and the purchase money or part thereof

remains unpaid, a creditor of the vendee may attach or levy his execution upon the property, and, upon payment or tender of such unpaid purchase money to the vendor, his agent or attorney, within ten days after notice of the amount thereof remaining unpaid, may hold the property discharged from the claim of such vendor.

§ 2056. *Proceeds of sale, how applied.*— The officer making such attachment or levy shall hold and dispose of such property like other personal property attached or levied upon, and from the proceeds of the sale thereof pay to the creditor the amount by him paid or tendered to the vendor and apply the residue upon the execution.

§ 2057. *Defense in action by vendor.*— If the vendor refuses to receive the amount so tendered him and brings an action on account of such attachment or levy, the defendant may, under a general denial, give evidence of the tender in bar of the action, and on proof thereof and payment of the money tendered into court, recover his costs, unless it appears that the amount so tendered was less than the sum due the vendor, as the residue of such purchase money.

RAILROAD EQUIPMENT.

General Laws 1917.

§ 5131. *Lien for purchase money; execution; filing for record; marking of engines and cars.*— In a contract for the sale of railroad or street railway equipment or rolling stock, it shall be lawful to agree that the title to the property sold or contracted to be sold, although possession thereof may be delivered immediately, or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money; and, in a contract for the leasing or hiring of such property, it shall be lawful to stipulate for a conditional sale thereof at the termination of such contract, and that the rentals or amounts to be received under such contract may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price has been paid in full, and until the terms of the contract have been fully performed, notwithstanding delivery to and possession by such lessee or bailee; provided that such a contract shall not be valid as against a subsequent judgment creditor, or a subsequent bona fide purchaser for value and without notice, unless:

I. The same shall be evidenced by an instrument executed by

the parties and duly acknowledged by the vendee, lessee or bailee, as the case may be, or duly proved, before some person authorized by law to take acknowledgment of deeds, and in the same manner as deeds are acknowledged or proved;

II. Such instrument shall be filed for record in the office of the secretary of state;

III. Each locomotive engine or car so sold, leased or hired, or contracted to be sold, leased or hired as aforesaid, shall have the name of the vendor, lessor or bailor plainly marked on each side thereof, followed by the word " owner " or " lessor " or " bailor," as the case may be.

§ 5132. *Record; discharge; fees.*— The contracts authorized by the preceding section shall be recorded by the secretary of state in a book of records to be kept for that purpose. On payment in full of the purchase money, and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect may be made by the vendor, lessor or bailor, or his or its assignee. Such declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument, to be acknowledged by the vendor, lessor or bailor, or his or its assignee, and recorded as aforesaid. The secretary of state shall be entitled to a fee of two dollars for recording each of such contracts and each of such declarations, and a fee of one dollar for noting such declaration on the margin of the record.

§ 5133. *Former contract; validity; record.*— The two preceding sections shall not be held to invalidate or affect in any way any contract of the kind referred to in the second preceding section, made prior to February first, eighteen hundred and ninety-five; and any such contract made before such date may, upon compliance with the provisions of the two preceding sections, be recorded as provided in the preceding section.

CRIMINAL PROVISIONS.

General Laws 1917.

§ 2837. *Fraud; penalty.*—A person having possession of personal property with a lien reserved thereon duly recorded, with intent to defraud, before the performance of the condition precedent to acquiring absolute title thereto, who sells the same without the consent of the vendor or his assignee, or, with intent to defraud, conceals or aids in concealing personal property upon which there

is such a lien, or removes the same from the state without the consent of the vendor or his assignee, shall be fined not more than double the value of the property so wrongfully sold, concealed or removed, and half of such fine shall be paid to the party injured.

§ 2838. *Justices' jurisdiction.*— Justices shall have concurrent jurisdiction with county, municipal and city courts of offenses under the preceding section.

§ 6896. *Transferring chattel without notice of lien.*—A person who sells or disposes of personal property, or causes the same to be sold or disposed of by another upon which there is a lien created by a previous attachment or conditional sale, or upon which he has previously given a bill of sale, without giving notice to the purchaser of such lien or bill of sale with intent to defraud, shall be imprisoned in the state prison not more than one year or fined not more than two hundred dollars.

VIRGINIA.

CONDITIONAL SALES — RAILROAD EQUIPMENT.

Code 1919.

§ 5189. *Reservation of title to, and liens on, goods and chattels sold, to be void as to creditors, and purchasers for value, unless in writing and docketed.*— Every sale, or contract for the sale of goods and chattels, wherein the title thereto, or a lien thereon, is reserved, until the same be paid for, in whole or in part, or the transfer of title is made to depend on any condition, where possession is delivered to the vendee, shall, in respect to such reservation and condition, be void as to creditors of the vendee who acquire a lien upon the goods and as to purchasers from the vendee, for value, without notice, from such vendee unless such sale or contract be evidenced by writing, signed by the vendor and the vendee, setting forth the date thereof, the amount due, when and how payable, a brief description of the goods and chattels, and the terms of the reservation or condition; and until and except from the time a memorandum of said writing, setting forth the name of the vendor and vendee, the date thereof, the amount due thereon, when and how payable, and a brief description of said goods and chattels is within five days after the delivery of the goods to the vendee, filed for docketing with the clerk of the county or corporation, where deeds are admitted to record, as provided by law, in which said goods and chattels may be, and it shall be the duty of such clerk to endorse on such contract the

words " memorandum filed and docketed " together with the day and hour of such filing with the signature of the clerk affixed thereto; or, if such goods and chattels consist of locomotives, cars, or other rolling stock, equipments, or personal property of any description to be used in or about the operation of any railroad, operating as a public service corporation, until and except from the time the said writing is duly docketed in the clerk's office of the county, or the corporation where deeds are admitted to record, as provided by law, wherein the principal office, in this State, of the company operating such railroad is located, and a copy of said writing be filed in the office of the State corporation commission, and each locomotive, car, or other piece of rolling stock, be plainly and permanently marked with the name of the vendor, on both sides thereof, followed by the word " owner ".

It shall be the duty of the clerk to docket the writings mentioned herein, in a well bound book, to be called the " conditional sales book," and to index the same, thereon, alphabetically, in the name of both the vendor and vendee, for which service he may charge a fee of twenty-five cents; except in case of public service corporations, he may charge a fee not exceeding fifty cents; but no tax shall be charged thereon.

By reason of the fact that the Code of nineteen hundred and nineteen was not everywhere available before it became effective, and that many such writings have been docketed as the law required before said Code of nineteen hundred and nineteen became effective, such writings as have been so docketed between the thirteenth day of January, nineteen hundred and twenty, and the date this act becomes effective, both inclusive, are hereby declared to be valid and of full force and effect.

2. All acts or parts of acts in conflict herewith, are hereby repealed.

3. An emergency existing therefor, this act shall be in force from its passage. (As amended by Laws 1920, ch. 280.)

§ 5190. *How a lien or reservation provided by the preceding section is to be enforced.*—All reservations, liens, conditions, and the collection of all money mentioned in any such written contract, whether recorded or not, may be enforced on a petition to a justice of the peace when the amount of value involved is within his jurisdiction, and no other pleadings before him shall be necessary, or by bill in equity in the circuit, corporation, or city court having equity jurisdiction, when the amount or value involved is

within its jurisdiction. Such petition or bill shall be filed by the person entitled to recover, and all other persons whose rights will be affected thereby shall be made defendants. It shall state the contract and the plaintiff's claim and describe the property with reasonable certainty. The testimony in the case shall be given orally before such court or justice. The court or justice shall determine all questions arising out of, or under, the contract, which are properly made by the pleadings, and render such judgment as shall seem right and proper. The property may be sold, or possession delivered, or such other disposition made of it as the court or justice may direct, and, in a proper case, a personal judgment may be rendered against any one or more of the defendants. Pending the litigation authorized by this section, the possession of the goods and chattels shall be determined by chapter two hundred and thirty-seven of this Code, the provisions whereof are hereby made applicable, as far as practicable, to any proceeding under this section, except that instead of the provision of section fifty-seven hundred and ninety-seven "that the affiant verily believes the plaintiff is entitled to recover the same" the affiant shall state that affiant verily believes the plaintiff is entitled to recover the same, or to subject it to a lien for the purchase price thereof, as the case may be. When the proceeding is before a justice the defendant shall have at least five days' notice before a hearing is had, and the judgment when rendered may be enforced like any other judgment before a justice.

§ 5191. *Release of contract or lien provided by section fifty-one hundred and eighty-nine.*— Every vendor in a contract for the sale of personal property docketed under section fifty-one hundred and eighty-nine shall, upon payment to him of the amount of the purchase price in full, as set forth in said contract, cause the same to be marked satisfied upon the margin of the page of the book where the same is recorded, which note of satisfaction, when signed by such vendor, his agent or attorney, and attested by the clerk in whose office such contract is docketed, shall operate as a release of all claims of such vendor therein, and the clerk for attesting such release shall have a fee of twenty-five cents, to be paid by the vendee. Any vendor who shall fail to release a contract, after the whole amount thereof has been paid to him, for a period of fifteen days after he shall have received notice from the vendee to mark the contract satisfied, shall forfeit five dollars to the vendee. If the vendee is indebted for rent of the house wherein the personal prop-

erty described in such contract is stored or kept, and the landlord has taken action to recover said rent, the vendor, at the request of the landlord, his agent or attorney, shall state on oath the balance due on said contract of sale, and upon the payment of the same by the vendee, or his landlord, shall mark the said contract satisfied in accordance with the terms and provisions of this section, and for failure so to do shall forfeit five dollars to the party making such payment.

CRIMINAL PROVISIONS.

Code 1919.

§ 4455. *In relation to the fraudulent conversion of property held under a trust deed.*— Whenever any person is in possession of any personal property, in any capacity, the title or ownership of which he has agreed in writing shall be or remain in another, and such person so in possession shall fraudulently sell, pledge, pawn, or remove from the premises where it has been agreed that the property shall remain, and refuse to disclose the location thereof, or otherwise dispose of the property without the written consent of the owner or the person in whom the title is, or if such writing be a deed of trust, without the written consent of the trustee or beneficiary in such deed of trust, he shall be deemed guilty of the larceny thereof; and in any prosecution hereunder, the fact that such person, after demand therefor by the person in whom the title or ownership of the property is, or his agent, shall fail or refuse to disclose to such claimant or his agent, the location of the property, or to surrender the same, shall be prima facie evidence of the violation of the provisions of this section.

This section shall not be construed to interfere with the rights of any innocent third party purchasing said property, unless such writing shall be docketed or recorded as provided by law.

WASHINGTON.

CONDITIONAL SALES GENERALLY.

Pierce's Code 1919.

§ 9767. *Contracts to be filed within ten days.*—All conditional sales of personal property, or leases thereof, containing a conditional right to purchase, where the property is placed in the possession of the vendee, shall be absolute as to all bona fide purchasers, pledgees, mortgagees, encumbrancers and subsequent creditors, whether or not such creditors have or claim a lien upon such

property, unless within ten days after the taking of possession by the vendee, a memorandum of such sale, stating its terms and conditions and signed by the vendor and vendee, shall be filed in the auditor's office of the county, wherein, at the date of the vendee's taking possession of the property, the vendee resides.

§ 9768. *Record.*— It shall be the duty of the county auditor of the county wherein any such memorandum is presented to him for that purpose, to file all such instruments, upon payment of proper fees therefor, indorse thereon the time of reception, the number thereof, and he shall enter in a suitable book to be provided by him at the expense of his county, with an alphabetical index thereto, and exclusively for that purpose, ruled into separate columns with appropriate heads, " The time of filing ", " Name of vendor ", " Name of vendee ", " Date of instrument ", "Amount of purchase price ", and " Date of release ". An index of said book shall be kept in the manner required for indexing deeds to real estate, and the county auditor shall receive for the services required by this act the sum of twenty-five cents for each instrument, and the money so collected shall be accounted for as other fees of his office. Such instrument shall remain on file for the inspection of the public until full payment has been made thereon, and shall be satisfied or canceled in the same manner and upon payment of same fees as chattel mortgages are satisfied or canceled.

Railroad Equipment.

Pierce's Code 1919.

§ 9769. *Conditional sale of railroad rolling stock.*— In any contract of, or for the sale of railroad equipment or rolling stocks it shall be lawful to agree that the title to the property sold or contracted to be sold, although deliverable immediately, or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money, and in any contract of or for the leasing of such property, it shall be lawful to stipulate for a conditional sale thereof at the termination of such lease, and that the rentals received may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or vendee until the purchase price shall be paid in full, notwithstanding delivery to and possession by such lessee or vendee; Provided, that no such contract shall be valid as against any subsequent judgment creditor, or any subsequent bona fide purchaser for value and without notice, unless

First — The same shall be evidenced by an instrument duly acknowledged before some person authorized by law to take acknowledgments of deeds.

Second — Such instruments shall be filed for record in the office of the county auditor of the county in which, at the time of the execution thereof, is situated the principal office of the vendee or lessee within this state.

Third — Each locomotive, engine or car so sold, or contracted to be sold, or leased as aforesaid, shall have the name of the vendor or lessor plainly marked on each side thereof, followed by the word " owner " or " lessor," as the case may be.

§ 9770. The contracts herein authorized shall be recorded by the said county recorder in the book of records of mortgages of real estate in said county, and on payment in full of purchase money, and the performance of the terms and conditions stipulated in any such contract a declaration in writing to that effect shall be made by the vendor or his assignee, which declaration may be made on the margin of the record of the contract attested by the said recorder, or it may be made by a separate instrument to be acknowledged and recorded as aforesaid, and for such services the county recorder shall be entitled to the fees provided by law for the recording of deeds and mortgages of real estate.

Criminal Provisions.

Pierce's Code 1919.

§ 8881. *Destruction or removal of mortgaged property.*— Every person being in possession thereof, who shall remove, conceal or destroy or connive at or consent to the removal, concealment or destruction of any personal property or any part thereof, upon which a mortgage, lien, conditional sales contract or lease exists, in such a manner as to hinder, delay or defraud the holder of such mortgage, lien or conditional sales contracts or such lessor, or who with intent to hinder, delay or defraud the holder of such mortgage, lien or conditional sales contract, or such lessor, shall sell, remove, conceal or destroy or connive at or consent to the removal, concealment or destruction of such property, shall be guilty of a gross misdemeanor.

In any prosecution under this section any allegation containing a description of the mortgage, lien, conditional sales contract or lease by reference to the date thereof and names of the parties thereto, shall be sufficiently definite and certain.

WEST VIRGINIA.*

CONDITIONAL SALES — RAILROAD EQUIPMENT.

Code 1913.

§ 3831. *Sale of chattels — Transfer of possession — Reservation of title or use — Transfer of railroad equipment.*— Where any loan of goods or chattels is pretended to have been made to any person with whom, or those claiming under him, possession shall have remained five years without demand made and pursued by due process of law on the part of the pretended lender, or where any reservation or limitation is pretended to have been made of a use or property, by way of condition, reversion, remainder, or otherwise, in goods or chattels, the possession whereof shall have so remained in another as aforesaid, the absolute property shall be taken to be with the possession, and such loan, reservation or limitation, be declared by will, deed or other writing, duly recorded. And if any sale be made of goods and chattels, reserving the title until the same is paid for, or otherwise, and possession be delivered to the buyer, such reservation shall be void as to creditors of, and purchasers without notice from, such buyer, unless a notice of such reservation be recorded in the office of the clerk of the county court of the county where the property is, or in case said goods and chattels consist of engines, cars or other rolling stock or equipment to be used in or about the operation of any railroad, unless such notice be recorded in the office of the secretary of state, who in such case shall record the same in a book to be kept for the purpose, and be entitled to a fee of five dollars for so doing.

CRIMINAL PROVISIONS.

Code 1913.

§ 5224. *Removal of mortgaged personal property out of county without consent of mortgagee.*—A mortgagor of personal property or grantor in a deed of trust conveying personal property, in possession of same, who, without the consent of the owner of the claim secured by such mortgage or deed of trust, and with intent to defraud, removes or causes to be removed, any of the property mortgaged or covered by such deed of trust out of the county where it was situated at the time it was mortgaged or conveyed by deed of trust, or with intent to defraud, secretes or sells the same, or converts the same to his own use, shall be guilty of misdemeanor, and on conviction thereof fined not more than five hundred dollars, or imprisoned not more than six months, or both.

* Since the compilation of these statutes West Virginia has adopted the Uniform Act.

WYOMING.

Conditional Sales Generally.

Compiled Statutes 1920.

§ 4713. *Conditional sale — When not valid.*— No sale, contract or lease wherein the transfer or title of ownership of personal property is made to depend upon any condition, shall be valid against any purchaser or judgment creditor of the vendee or lessee in possession, without notice, unless the same be in writing, signed by the vendee or lessee, and the original or a copy thereof filed in the office of the county clerk of the county wherein the property is; said instrument so filed shall have attached thereto an affidavit of such vendor or lessor, or his agent or attorney, which shall set forth the names of the vendor and vendee, or lessor and lessee with a description of the property transferred and the full and true interest of the vendor or lessor therein. All such sales or transfers shall cease to be valid against purchasers in good faith, or judgment or attaching creditors without notice at the expiration of one year from the date of such sale, unless the vendor or lessor shall within thirty days prior to the one year from the date of such sale or transfer, file a similar affidavit to the one above provided for in the office of said clerk, and the said vendor or lessor may preserve the validity of his said sale or transfer of such personal property by an annual refiling in the same manner as aforesaid of such copy.

§ 4714. *Duty of county clerks.*— The county clerk, on presentation, shall file such instrument in his office, and index the same in the same manner as chattel mortgages are required to be indexed, and he shall collect therefor a fee of twenty-five cents.

Railroad Equipment.

Compiled Statutes 1920.

§ 4715. *Contracts — How evidenced — Filing.*— In any contract for the sale of railroad or street railway equipment or rolling stock, it shall be lawful to agree that the title to the property sold or contracted to be sold, although possession thereof may be delivered immediately, or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money. And in any contract for the leasing or hiring of such property, it shall be lawful to stipulate for a

conditional sale thereof at the termination of such contract, and that the rentals or amounts to be received under such contract, may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price shall have been paid in full, and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee; provided, that no such contract shall be valid as against any subsequent judgment creditor, or any subsequent bona fide purchaser for value and without notice, unless:

1. The same shall be evidenced by an instrument executed by the parties and duly acknowledged by the vendee or lessee or bailee, as the case may be, or duly proved, before some person authorized by law to take acknowledgment of deeds, and in the same manner as deeds are acknowledged or proved:

2. Such instrument shall be filed for record in the office of the secretary of state.

3. Each locomotive engine, or car so sold, leased or hired, or contracted to be sold, leased or hired as aforesaid, shall have the name of the vendor, lessor, or bailor plainly marked on each side thereof, followed by the word " owner " or " lessor " or " bailor," as the case may be.

§ 4716. *Contracts to be recorded — Fee.*— The contracts herein authorized shall be recorded by the secretary of state in a book of records to be kept for that purpose. On payment in full of the purchase money, and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect may be made by the vendor, lessor, or bailor, or his or its assignee, which declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument, to be acknowledged by the vendor, lessor, or bailor or his or its assignee, and recorded as aforesaid. The secretary of state shall collect a fee of five dollars, for recording each of said contracts and a fee of two dollars, for recording each of said declarations, and a fee of one dollar for noting such declaration on the margin of the record.

§ 4717. *Prior contract not invalidated.*— This chapter shall not be held to invalidate or affect in any way any contract heretofore made of the kind referred to in the first section of this chapter, and any such contract heretofore made may, upon compliance with the provisions of this chapter, be recorded as herein provided.

§ 4718. *Chattel mortgage laws not to apply.*— Statutes relating to the filing, recording, interpretation, or validity of chattel mortgages shall not affect the recording, interpretation, or validity of contracts of the character hereinbefore named, but the same shall be controlled by the provisions of this chapter alone. And the contracts hereinbefore named shall not be affected by the provisions of the preceding chapter [§§ 4713, 4714].

CRIMINAL PROVISIONS.

Compiled Statutes 1920.

§ 7145. *Disposal of mortgaged property.*—Any person who, after having conveyed any goods, chattels, personal property, rights or privileges to another, by mortgage, bond, conveyance or instrument intended to operate as a mortgage, when of record or otherwise, shall, during the existence of the lien created thereby, sell or attempt to sell, or dispose of the said property, rights, or privileges, or any part thereof, to any person or persons, or corporation, without first procuring the written consent of the mortgagee thereof to such sale, or shall remove or attempt to remove such mortgaged property, or any part thereof, out of the jurisdiction of the district court of the county wherein such property was at the time such mortgage was given, with intent to deprive the mortgagee of his security, without first obtaining the consent in writing of the mortgagee thereof, to such removal, shall be deemed guilty of a felony and on conviction thereof be imprisoned in the penitentiary for not more than ten years, and be fined in a sum not more than five hundred dollars.

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UNIFORM LAWS ANNOTATED

2
Conditional Sales

1964
Cumulative Annual Pocket Part

Replacing prior pocket part in back of volume

For Use During 1965

BROOKLYN, N. Y.
EDWARD THOMPSON COMPANY

EXPLANATION

The cumulative Annual Pocket Parts for Uniform Laws Annotated include the additional State adoptions of Uniform and Model Acts which have been reported since the publication of the main volumes, as determined from an examination of the State Session Laws published prior to November 1, 1964.

The supplements for Volumes 9–9C also contain the text of additional Miscellaneous Acts which have been promulgated by the Conference of Commissioners on Uniform State Laws since the publication of the main volumes, and which have been adopted in one or more jurisdictions.

Variations between the text of the Uniform and Model Acts and the corresponding provisions of the State enactments are shown in Statutory Notes following the pertinent sections, which also indicate changes made by subsequent State amendments.

The 1964 Pocket Parts also contain additional annotations from cases construing the Uniform and Model Acts, which have been reported since the publication of the 1963 supplements, closing with the cases reported in:

Atlantic Reporter, Second Series	vol. 203
California Reporter	40
New York Supplement, Second Series	252
North Eastern Reporter, Second Series	201
North Western Reporter, Second Series	130
Pacific Reporter, Second Series	395
South Eastern Reporter, Second Series	137
South Western Reporter, Second Series	381
Southern Reporter, Second Series	167
Supreme Court Reporter	84
United States Reports	375
Lawyers' Edition, Second Series	11
Federal Reporter, Second Series	335
Federal Supplement	232
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For subsequent judicial constructions, pending the publication of the next supplementary service, see the Table of Statutes Construed in the later permanent volumes and weekly Advance Sheets of the Reporters listed above.

A list of all Uniform and Model Acts that have been approved by the Conference of Commissioners on Uniform State Laws and the American Bar Association, which have been adopted in one or more jurisdictions, is contained in the front of this supplement, followed by a list of other Acts that have also been approved by such bodies, but which have not yet been enacted in any jurisdiction.

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UNIFORM AND MODEL ACTS ADOPTED IN ONE OR MORE JURISDICTIONS

The Uniform and Model Acts that have been adopted in one or more jurisdictions are listed below. The jurisdictions wherein each Act has been adopted are listed in the Table of Adopting States which precedes the text of each Act.

Volume

Uniform Commercial Code §§ 1—101 to 3—805.
Uniform Commercial Code §§ 4—101 to End.

1 Sales Act, §§ 1–40.
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2 Conditional Sales Act.
3. Warehouse Receipts Act.
4. Bills of Lading Act.
5 Pt. 1 Negotiable Instruments Act, §§ 1–50.
5 Pt. 2 Negotiable Instruments Act, §§ 51–End.
6. Stock Transfer Act.
7 Partnership Act.
8 Limited Partnership Act.
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Acknowledgment Act.
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Aircraft Financial Responsibility Act.
Ancillary Administration of Estates Act.
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Appointment of Commissioners, Act to Provide for. (Model)
Arbitration Act.
Attendance of Witnesses from Without a State in Criminal Proceedings, Act to Secure.
Blood Tests to Determine Paternity, Act on.
Business Corporation Act. (Model)
Chemical Tests for Intoxication Act.
Civil Liability for Support Act.
Code of Military Justice Act
Common Trust Fund Act.
Contribution Among Tortfeasors Act. (1939)
Contribution Among Tortfeasors Act. (1955)
Court Administrator Act. (Model)
Crime Investigation Commission Act. (Model)
Criminal Extradition Act.
Criminal Statistics Act.

Volume

9A. Miscellaneous Acts.

Declaratory Judgments Act.
Disposition of Unclaimed Property Act.
Division of Income for Tax Purposes Act.
Divorce Recognition Act.
Enforcement of Foreign Judgments Act.
Estate Tax Apportionment Act.
Evidence Acts.
Business Records as Evidence Act.
Composite Reports as Evidence Act. (Model)
Judicial Notice of Foreign Law Act.
Official Reports as Evidence Act.
Photographic Copies of Business and Public Records as Evidence Act.
Rules of Evidence Act.
Execution of Wills Act. (Model)
Expert Testimony Act. (Model)

9B. Miscellaneous Acts.

Facsimile Signatures of Public Officials Act.
Federal Tax Lien Registration Act. (1926)
Federal Tax Lien Registration Act. (1962)
Fiduciaries Act.
Flag Act.
Foreign Bank Loan Act. (Model)
Foreign Depositions Act.
Foreign Money Judgments Recognition Act.
Fraudulent Conveyance Act.
Gifts to Minors Act.
Insurers Liquidation Act.
Interparty Agreement Act. (Model)
Interstate and International Procedure Act
Interstate Arbitration of Death Taxes Act.
Interstate Compromise of Death Taxes Act.
Joint Obligations Act. (Model)
Mandatory Disposition of Detainers Act
Motor Vehicle Certificate of Title and Anti-Theft Act.
Narcotic Drug Act.
Paternity Act.
Perjury, Act on. (Model)
Post-Conviction Procedure Act.
Preservation of Private Business Records Act.
Principal and Income Act. (1931)
Principal and Income Act. (1962)
Probate of Foreign Wills Act.
Proof of Statutes Act.
Property Act.

9C. Miscellaneous Acts.

Reciprocal Enforcement of Support Act (1952 Act).
Reciprocal Enforcement of Support Act (1958 Act).
Reciprocal Transfer Tax Act.
Remedies for the Unauthorized Practice of Law Act. (Model).
Rendition of Prisoners as Witnesses in Criminal Proceedings Act.

Volume	
9C.	**Miscellaneous Acts—Cont'd**
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	Secured Creditors' Dividends in Liquidation Proceedings, Act Governing.
	Securities Act.
	Securities Ownership by Minors Act
	Simplification of Fiduciary Security Transfers Act.
	Simultaneous Death Act.
	Single Publication Act.
	Small Estates Act (Model)
	State Administrative Procedure Act. (Model) 1946
	State Administrative Procedure Act. (Model) 1961
	State Witness Immunity Act. (Model)
	Statute of Limitations on Foreign Claims Act
	Supervision of Trustees for Charitable Purposes Act
	Testamentary Additions to Trusts Act
	Transfer of Dependents Act.
	Trust Receipts Act.
	Trustees' Accounting Act.
	Trusts Act.
	Unauthorized Insurers Act.
	Vendor and Purchaser Risk Act.
	Veterans' Guardianship Act.
	Vital Statistics Act.
	Voting By New Residents in Presidential Elections Act
	War Service Validation Act (Model)
	Written Obligations Act (Model)
10	Desertion and Nonsupport Act

UNIFORM AND MODEL ACTS APPROVED BUT NOT ADOPTED IN ANY JURISDICTION

The following Uniform and Model Acts, promulgated by the National Conference of Commissioners on Uniform State Laws had not been adopted in any of the jurisdictions for which Session Law volumes were published prior to November 1, 1964:

Acknowledgment Act Amendments, 1960
Court Administrator Act Amendments (Model), 1960
Death Tax Credit Act, 1961
Deceptive Trade Practices Act, 1964
Department of Justice Act (Model), 1952
Defender Act (Model), 1959
Enforcement of Foreign Judgments Act (Revised), 1964
Estate Tax Apportionment Act (Revised), 1964
Estates Act (Model), 1938
Federal Services Absentee Ballot Act, 1962
Marriage License Application Act, 1950
Nonresident Individual Income Tax Deductions Act, 1961
Nuclear Facilities Liability Act (Model), 1961
Perpetuation of Testimony Act, 1959
Police Council Act (Model), 1952

UNIFORM AND MODEL ACTS APPROVED BUT NOT ADOPTED IN ANY JURISDICTION—Cont'd

Post-Mortem Examinations Act (Model), 1954
Power of Sale Mortgage Foreclosure Act (Model), 1940
Powers of Foreign Representatives Act, 1944
Prenatal Blood Test Act, 1950
Resale Price Control Act (Model), 1940
Rules Governing Procedure in Traffic Cases (Model), 1957
Rules of Criminal Procedure Act, 1952
Special Power of Attorney for Small Property Interests Act (Model), 1964
State Tax Court Act (Model) 1957
Status of Convicted Persons Act, 1964
Statute of Limitations Act, 1939
Trustees' Powers Act, 1964
Water Use Act (Model), 1958

UNIFORM CONDITIONAL SALES ACT

Table Showing States Wherein Act Has Been Adopted

State	Laws	Effective date	Present form of act
Alaska [1]			
Arizona.....	Laws 1919, ch. 40	June 6, 1920	A.R.S. §§ 44-301 to 44-330.
Delaware.....	Laws 1919, ch. 192	June 1, 1919	6 Del.C. §§ 901-929.
Indiana [1]			
New Hampshire [1].			
New Jersey [1]. ...			
New York [1] ...			
Panama Canal Zone	Pub.Law 87-845, 76A Stat. 199	1-2-1963	4 C.Z.C. §§ 1571-1597.
Pennsylvania [1] ...			
South Dakota....	Laws 1919, ch. 127	Mar. 14, 1919*	SDC 54.0201 to 54.0229.
Virgin Islands....	1957, Act, No. 160	9-1-1957	11 V I.C. §§ 641-668
West Virginia [1]			
Wisconsin [1]	Laws 1919, ch. 672	July 25, 1919*	W.S.A. 122.01-122.31.

*Date of approval

[1] See Uniform Commercial Code enactments under General Statutory Notes, below.

Historical Note

Act Withdrawn. The Uniform Conditional Sales Act was withdrawn from the active list of Uniform Acts recommended for adoption by the states, pending the preparation of the Uniform Commercial Code, at the National Conference of Commissioners on Uniform State Laws in August 1943. See Handbook of the National Conference, 1943, p. 67.

General Statutory Notes

Hawaii. Laws 1961, Act 102, repealed the Uniform Conditional Sales Act effective Jan. 1, 1962.

New York. Added three more additional sections in 1941, relating to (1) the contents of conditional contracts for sales of goods in amount of fifteen hundred dollars or less, (2) requiring the seller, at the buyers request, to furnish a yearly statement of account free of charge and additional statements at twenty-five cents a piece, and (3) prescribing conditions of contracts for additional purchases from a seller to whom a balance is still owing on the prior contract.

In 1958 another section 81 was added by L.1958, c. 424, § 2, relating to conditional sales contracts recorded pursuant to Civil Aeronautics Act, 49 U.S.C. § 523 (1952 ed.) acknowledging such recording as sufficient under this Act. Provisions of prior section 81 which was added in 1941, were incorporated as part of section 410. McKinney's Personal Property Law, §§ 64-a, 75-a, 81 and 410.

Uniform Commercial Code.

The states listed below have enacted the Uniform Commercial Code, which supersedes the provisions of the Uniform Conditional Sales Act, in respect to transactions entered into on or after the date on which the Code becomes effective

The complete text, notes and annotations to the Uniform Commercial Code can be found in the two volumes which were included in Uniform Laws Annotated in 1962.

UNIFORM CONDITIONAL SALES ACT

State	Effective date	Code Citation	Laws Repealed
Alaska	Jan. 1, 1963	A S §§ 45.05.-002–45.05.794.	A.C.L.A.1949 §§ 29–2–1 to 29–2–30.
Arkansas	Jan. 1, 1962	Ark.Stats. §§ 85–1–101 to 85–9–507.	
California	Jan. 1, 1965	Cal.U.C.C. §§ 1101–10104.	
Connecticut	Oct. 1, 1961	C.G.S.A. § 42a–1–101 to 42a–10–104.	
Dist. of Col.	Jan. 1, 1965	D.C.Code 1961 § 28:1–101 et seq.	
Georgia	Jan. 1, 1964	Ga.Code Ann. Title 109A.	
Illinois	July 2, 1962	S.H.A. ch. 26, §§ 1–101 to 10–104.	
Indiana	July 1, 1964	Burns Ann.St. §§ 19–1–101 to 19–9–507.	Burns Ann.St. §§ 58-801 to 58-829.
Kentucky	July 1, 1960	KRS 355.1–101 to 355.10–102.	
Maine	Dec. 31, 1964	R.S.1954, c. 190, §§ 1–101 to 9–507.	
Maryland	Feb. 1, 1964	Code Supp. art. 95B, §§ 1–101 to 10–104.	
Massachusetts	Oct. 1, 1958	M.G.L.A. c. 106, §§ 1–101 to 9–507.	
Michigan	Jan. 1, 1964	Comp.Laws Supp. §§ 1101–9994.	
Missouri	July 1, 1965	V.A.M.S. §§ 400.1–101 to 400.10–102.	
Montana	Jan. 2, 1965	R.C.M.1947, §§ 87A–1–101 to 87A–10–103.	
Nebraska	Sept. 2, 1965	Rev.St. §§ 90–1–101 to 90–10–104.	
New Hampshire	July 1, 1961	RSA 382–A:1–101 to 382–A:9–507.	RSA 361:1–361:33.
New Jersey	Jan. 1, 1963	N.J.S.A. 12A:1–101 to 12A:10–106.	
New Mexico	Jan. 1, 1962	1953 Comp. §§ 50A–1–101 to 50A–9–507.	
New York	Sept. 27, 1964	McKinney's Uniform Commercial Code, §§ 1–101 to 10–105.	McKinney's Personal Property Law, §§ 60–81.
Ohio	July 1, 1962	R.C. §§ 1301.01–1309.50.	

UNIFORM CONDITIONAL SALES ACT

State	Effective date	Code Citation	Laws Repealed
Oklahoma	Jan. 1, 1963	12A Okl.St.Ann. §§ 1—101 to 10—104.	
Oregon	Sept. 1, 1963	ORS 71.1010-79.5070.	
Pennsylvania	July 1, 1954	12A P.S. §§ 1-101 to 10-104.	69 P.S. §§ 361, 381, 382, 401-408, 409, 421, 431-433, 451-461, 481, 501-504.
Rhode Island	Jan. 2, 1962	Gen.Laws 1956, § 6A-1-101 et seq.	
Tennessee	July 1, 1964	T.C.A. Title 47	
Virginia	Jan. 1, 1966	Code 1950, § - -	
West Virginia	July 1, 1964	Code Supp.1963, 46-1-101 to 46-10-204.	Code, 40-3-1 to 40-3-32
Wisconsin	July 1, 1965	W.S.A. 401.101-409.507	W.S.A. 122.01-122.31
Wyoming	Jan. 2, 1962	W.S. §§ 34.1-101 to 34-10-105.	

UNIFORM CONDITIONAL SALES ACT

Decisions Construing The Uniform Act Generally.

CASE NOTES

Constitutionality.

The Uniform Conditional Sales Act is a valid legislative declaration of a reasonable public policy and is not unconstitutional as impairing the right of contract. Underwood v. Raleigh Transp., etc., Co., (1926) 102 W. Va. 305, 135 S.E. 4; W. K. Wetherill & Co. v. Scheffel, 1941, 144 Pa.Super. 165, 18 A.2d 680.

Prior Law.

At common law, conditional sales contracts were effective to reserve title in seller against buyer and all other persons unless seller estopped himself, even though contract was not recorded and was not in writing. Savage v. Pratt, 1956, 272 Wis. 170, 74 N.W.2d 635. See, also, Northern Discount Co. v. Luebke, 1959, 6 Wis.2d 313, 94 N.W.2d 605.

In great part, St.1953, § 122.01 et seq. merely attempts to restate the common law. Id.

The Uniform Act "did not make any vital change in the relation between buyer and seller under a conditional sales contract, *as between themselves.*" Com. v. One Chrysler Coupe, (1930) 101 Pa. Super, Ct. 160.

Construction.

The general rules of statutory law relating to conditional sales contracts should be reasonably complied with, and the acts of individuals should be governed accordingly. Schenectady Discount Corporation v. Dziedzic, 1941, 31 N.Y.S.2d 636.

A conditional sales contract and note, containing voluminous matters which layman is unable to construe, must be construed favorably to the maker, and all ambiguities, to say nothing of ponderous stipulations and agreements contained therein should be resolved likewise in his favor. Id.

Although primary purpose of N.J.S.A 46:32-1 et seq., is to prevent buyer from imposition and loss, courts cannot read into statute provision omitted by Legislature. Pacific Discount Co. v. Powell, 1961, 70 N.J.Super. 156, 175 A.2d 212.

Purpose.

The primary purpose of N.J.S.A. 46:32-1 et seq., is protection of buyer. Pacific Discount Co. v. Jackson, 1961, 68 N.J.Super. 331, 172 A.2d 440.

In the drafting of N.J.S.A. 46:32-1 et seq., the welfare of the buyer was given special attention and every reasonable safeguard directed and embodied therein for his protection; its primary purpose was to protect the buyer from imposition and loss. Bancredit, Inc. v. Meyers, 1960, 33 N.J.Super. 73, 162 A.2d 109.

The Uniform Act was adopted in New York in accord with a general legislative purpose to protect innocent third persons from secret unrecorded liens and to require all instruments seeking to give such liens, claims or titles, to be recorded. Clark v. Flynn, (1923) 120 Misc. 474, 199 N.Y.S. 583.

The Uniform Act was, with other statutes, enacted to protect the rights of the respective parties to conditional sale contracts which at common law furnished almost unlimited opportunities for fraud on the part of the buyer and for overreaching on the part of the seller. Van Derveer v. Conzano, (1923) 206 App.Div. 130, 200 N.Y.S. 563.

"The purpose of the Uniform Conditional Sales Act was to provide for a system of filing such contracts that would make them valid even as against creditors of and purchasers from the buyer, and to furnish more adequate protection to the buyer in case of default." Com. v. One Chrysler Coupe, (1930) 101 Pa. Super. Ct. 160.

The primary purpose of the Uniform Conditional Sales Act is to protect buyer from imposition and loss, and the statute is to be construed with such object in mind, but the court cannot read into the statute something omitted therefrom by the Legislature. Plainfield Motor Co. v. Salamon, (1935) 13 N.J.Misc. 570, 180 A. 428.

The purpose of the Uniform Act is to protect those dealing with the possessor of personal property against secret trusts or claims of those having no connection with the possession and no apparent connection with the title. New Dells Lumber Co. v. Pfiffner, (1935) 216 Wis. 638, 258 N.W. 375.

"The general purpose of the framers of the Uniform Conditional Sales Act was to provide a statute which, in its provisions, would be just and fair to the buyer and to the seller, and to other persons whose rights might be affected by the sale, with the general intention to protect the title of the seller in the goods sold as security for the purchase price and to assure possession in the buyer as long as he was not in default in his promises, with the right on the part of the buyer to take title when he had fully performed his contractual obligations. Harlee v. Federal Finance Corp., (1930) 4 W.W.Harr. (Del.) 345, 152 A. 596.

The main objectives of the Conditional Sales Act were to repeal the Statute of Elizabeth and to change the otherwise law so as to permit a vendor to retain title until the purchase price was paid, and to provide exceptions to that rule. Otis Elevator Co. v. Arey-Hauser Co., D.C.Pa.1938, 22 F.Supp. 4, reversed on other grounds 104 F.2d 133.

Law governing

Where conditional sales contracts provided that they were intended to comply with this Act which was in effect in West Virginia, and property was delivered in West Virginia, West Virginia law applied to such contracts. Joy Mfg. Co. v. Brooks, D.C.W.Va.1963, 224 F.Supp. 537, affirmed 325 F.2d 721

Exclusiveness.

"In 1919 our Legislature revised the conditional sales act to make it uniform. This act stands by itself. It is not to be read with or to have grafted upon it the act relating to the purchase and sale of motor vehicles (chapter 168, Laws of 1919), to which reference has been made. The transaction in the present case is governed solely by chapter 210 of the Laws of 1919 (Conditional Sales Act)." General Motors Acceptance Corp. v. Smith, (1925) 101 N.J.Law, 154, 127 A. 179; Huber v. Cloud, (1925) 102 N.J.Law, 181, 130 A. 562; General Motors Acceptance Corp. v. Hayes Motor Co., (1934) 12 N.J. Misc. 384, 172 A. 343.

Jurisdiction.

Federal court appointing receivers for conditional buyer had jurisdiction of sellers' suit for property, as against contention that proceedings must be had under Conditional Sales Act. Continental Bank, etc., Co. v. Webster Hall Corp. of America, (1933) 4 F.Supp. 337, affirmed 66 F.(2d) 558 (construing Pennsylvania Act).

Uniform Warehouse Receipts Act, effect on.

The Uniform Conditional Sales Act and the Uniform Warehouse Receipts Act must be considered separately. Bankers' Capitol Furniture Co. v. Hall, (1932) 11 N. J. Misc. 13, 163 Atl. 556.

Retroactive Effect.

The uniform conditional sales law, N.J.S.A. 46:32–1 et seq., did not operate upon a contract made after its approval date but before its effective date. Wood v. Cox, 1921, 92 N.J.Eq. 307, 113 A. 501.

§ 1. Definition of Terms.

STATUTORY NOTES

The Indiana act omits the definition of "Filing district."—See Laws 1935, ch. 182.

This section of the New York act was amended in 1930 by an act defining the terms "custodian of court funds", "filing officer", "owner", "realty" and "recording officer".—See Laws 1930, ch. 874.

Panama Canal Zone. Omits definition of filing district. 4 C.Z.C § 1571.

The West Virginia act of 1921 substituted "recording district" for "filing district" in the third definition in this section and changed the language of the act throughout so as to provide for "recording" instead of "filing."—See Laws 1921, ch. 75. The amending and reenacting act of 1925 varies occasionally from the Uniform Act with respect to the use of the terms

"filing," "recording," "filing district," etc. These variations would seem to be quite immaterial.—See Laws 1925, ch 64.

Wisconsin. L.1959, c. 320, omits "legal" in definition of "buyer". W.S.A. 122.01.

CASE NOTES

Conditional Sales.

Under McKinney's Personal Property Law, § 60 et seq., parties to a conditional sale have divided property interests in the goods, buyer being the beneficial and substantial owner, with such attributes of ownership as possession, use and control, with equity of redemption, and seller reserves title solely as security for payment or performance by buyer. International Harvester Credit Corp. v. Goodrich, 1956, 76 S.Ct. 621, 350 U.S. 537, 100 L.Ed. 681.

Under McKinney's Personal Property Law, § 60 et seq., essentially a conditional sale is only a credit device, with same purpose as purchase-money chattel mortgage, despite technical or theoretical differences between the two forms of security. Id.

Agreement under which bankrupt and his family lived in trailer in trailer court did not constitute "conditional sale" within this Act, in absence of commitment by bankrupt to purchase trailer from trailer court owner or provision that lease would continue until the compensation paid substantially equalled value of trailer, and trailer court owners' reservation of property in trailer was not void as against trustee in bankruptcy, even though agreement between bankrupt and owners was not filed. Allen v. Cohen, C.A.N.Y. 1962, 310 F.2d 312.

This Act, to effect that conditional sale means contract for sale of goods under which property in goods is to vest in buyer at subsequent time, means a vesting which the contract requires both seller and buyer to accomplish, and not one which buyer has option to demand if he does something he is not obliged to do. Id.

A conditional sale has contractual and proprietary aspects but when sale is consummated it conveys to buyer right to possession and to complete ownership upon full payment, title is retained by seller until such time and interests in property, although created by contract, are properly characterized as proprietary. Cook & Sons Equipment, Inc. v. Killen, C.A.Alaska 1960, 277 F.2d 607.

A contract for sale of printing press for a stated sum, part cash and balance in periodical payments, with title reserved in seller and to pass by bill of sale to buyer after full payment of stipulated price plus two dollars, was a contract of "conditional sale" within definition of N.J.S.A. 46:32-2. In re Press Printers & Publishers, C.C.A.N.J.1927, 23 F.2d 34, certiorari denied 48 S.Ct. 339, 276 U.S. 633, 72 L.Ed. 742.

An agreement whereby possession of goods or equipment is transferred with transferor retaining title and the transferee becoming bound to make payments at culmination of which he becomes, or has option to become, the owner is generally considered a "conditional sale" in Minnesota, and court will not be diverted from inquiry into legal effect of document by lease-like or other language. In re South View Country Club of Mankato, Inc., D.C.Minn 1963, 229 F.Supp. 105.

A conditional sale is characterized by title remaining in seller until buyer has paid agreed price, and at that point buyer is either automatically the owner or has option of becoming owner, and on default seller can retake subject and retain payments already received. Id.

Where option price, that is amount to be paid by lessee in order to acquire full title to leased property at end of term, is disproportionately small in comparison with total rental already paid for property, contract for lease or bailment of goods constitutes a conditional sale. In re Herold Radio & Electronics Corp., D.C.N.Y.1963, 218 F.Supp. 284, affirmed 327 F.2d 564.

Contract providing for lease of lighting fixtures and other equipment, which were installed in and became integral part of building, with option in lessee to purchase at end of term by paying approximately 10% of total rental constituted conditional sale. Id.

A "conditional sale" transaction is a transaction in which a seller transfers the possession of goods to a buyer, on credit, with the understanding that title to the goods shall not pass from seller to buyer until buyer has paid the price. Brooks v. Superior Oil Co., D.C.Ark.1951, 96 F.Supp. 641, reversed on other grounds 198 F.2d 89.

A "conditional sale" is a completed transaction under which possession is delivered to the vendee at a subsequent time upon the payment of a part or all of the purchase price or upon the performance of some other condition or happening of some other contingency, the title in the meantime being retained by the vendor. In re Robinson, D.C.Pa.1942, 40 F.Supp. 320, affirmed, 1942, 122 F.2d 336, certiorari denied 62 S.Ct. 297, 314 U.S. 686, 86 L.Ed. 549.

Where contract between farm machinery manufacturer and its dealer described parties as if manufacturer was vendor and as if dealer was purchaser, and contract was denoted "Dealer's Sales Contract for Farm Machinery", and contract stated that its purpose was to govern sale of products by manufacturer to dealer and resale of such products by dealer to his customers, and contract provided that dealer was not manufacturer's agent and under contract title to the products would be retained by manufacturer as a security device to insure payment of unpaid products in future or dealer would become owner of products if dealer paid in cash, contract was not "consignment contract" or "contract of bailment with power to sell" but was "conditional sales contract" within definition of that term as set forth in 6 Del.C. § 901 et seq.; however, the contract was not in fact a conditional sales contract within the meaning of such act in view of failure of contract to identify or briefly describe the equipment sold to dealer. Minneapolis-Moline Co. v. Capitol Plumbing, Inc., 3 Storey 868, Del.Super 1960, 164 A.2d 868.

Motor vehicle retail installment sales agreement whereby buyer was to have possession of automobile but seller was to retain title until payment in full was "conditional sales agreement", and filing of the sales agreement was necessary to protect seller's assignee against claim of third parties. Yantzi v. Mauzer, 1961, 30 Misc.2d 770, 219 N.Y.S.2d 47.

Essentially, a "conditional sale" is a credit device, whereby buyer is the substantial owner, in joint possession, use, control, and equity of redemption, whereas seller reserves title to goods solely as security for payment by buyer. Snyder v. Guider, 1959, 17 Misc.2d 558, 185 N.Y.S.2d 110.

A conditional sales agreement is not usually considered a "loan" but merely represents the terms of sale of personalty on time, and is not negotiable. Johnstown Bank v. American Sur. Co. of N. Y., 1958, 6 A.D.2d 4, 174 N.Y.S.2d 385.

That agreement, under which chattels were sold, covered labor and materials incidental to installing equipment and making premises suitable for operation as a restaurant, did not prevent it from being a conditional sales contract as to chattels; but labor and materials not applied to and incorporated in chattels could not be retaken upon buyer's default. Shenkin v. Grant, 1957, 3 Misc.2d 333, 152 N.Y.S.2d 996.

"Broiler feeding agreement" under which "dealer" was to supply chicks and feed to feeder who was to supply labor and materials for their care but who was to be only custodian of chicks with title remaining in dealer, and under which chicks were to be sold on market at such time as dealer deemed proper with compensation going to feeder at time of such sale was neither contract for sale nor conditional sale of chicks between dealer and feeder. Lash v. Knapp, 1955, —— Misc. ——, 143 N.Y.S.2d 516.

Reservation of title is distinguishing feature of "conditional sales contract". Gray v. Brasee, 1939, 14 N.Y.S.2d 687.

If the conditional vendee has possession of the chattel, is obligated to pay for it, and, having paid, becomes, or has an option to become, the owner of it the vendor retaining the right to retake the goods if the conditional vendee defaults in his obligation to pay for them, there is a "conditional sale". New York World-Telegram Corp. v. McGoldrick, 1948, 298 N.Y. 11, 80 N.E.2d 61.

Where California agreements for sale of tractor was followed by an agreement purporting to be a lease with option to purchase, and in both agreements buyer-lessee wrote in a provision that bill of sale was to be delivered to him by plaintiffs after all payments had been made in full, agreements were conditional sale agreements. Guerin v. Higgins, 1950, 70 Ariz. 219, 218 P.2d 870.

Whether sale of automobile whereby small cash payment is made and balance is paid by check and possession of automobile is given to purchaser, is conditional sale so that title passes only after check is honored or whether parties intended sale as a completed one so that title passes right away is a question of fact to be determined by circumstances surrounding each case. Kelsoe v. Grouskay, 1950, 70 Ariz. 152, 217 P.2d 915.

The characteristic feature of the conditional sale is the retention of the title by the seller, notwithstanding possession, use, and appearance of ownership by the buyer. Universal Finance Corp. v. Hamner, (1933) 61 S.D. 540, 250 N.W. 33; Hafer v. Spaeth, 1945, 22 Wash.2d 378, 156 P.2d 408.

Conditional seller retains title and not mere lien or claim. In re Lake's Laundry, (1935) 11 F.Supp.(2d) 237, affirmed (1935) 79 F.(2d) 326, 102 A.L.R. 247, and certiorari denied 56 S.Ct. 144, 296 U.S. 622, 80 L.Ed. 442.

Transaction whereby diamond ring was delivered to consignee who signed instrument providing that merchandise was consigned with agreement that title should remain in consignor until actual payment of invoice or was returnable on demand constituted a "conditional sale". Brodsky v. T. Cohen, Inc., 1943, 46 N.Y.S.2d 126, 180 Misc. 536.

Where owner of personal property sells it to a purchaser not for consumption or resale at an agreed price payable at a future day upon condition that title should remain in vendor until purchase price is fully paid, a "conditional contract of sale" exists, but before there can be a valid conditional sales contract, the one assuming to be the owner and vendor must be such in fact, and the one assuming to be the vendee must acquire title through the owner and apparent momentary ownership for instantaneous resale will not suffice, and constructive sales and resales will be disregarded, if only the relation of debtor and creditor exists. Manlove v. Maggart, 1942, 111 Ind.App. 398, 41 N.E.2d 633.

Where buyer ordered washing machines from manufacturer under a plan whereby buyer advanced ten per cent. of purchase price and other charges to credit company and signed purported trust receipts and notes, and credit company then sent purported trust receipts to manufacturer to fill in a description of machines, and credit company then paid full purchase price to manufacturer and received a bill of sale, and machines were then shipped to buyer and placed on display for sale by it, transaction did not constitute a "conditional sale" and was not governed by this Act. Walton v. Commercial Credit Co., 1943, 69 S.D. 263, 9 N.W.2d 266, followed in 69 S.D. 269, 9 N.W.2d 269.

Where only defect in affidavit attached to conditional sales contract was that it failed to state true interest of conditional seller, but seller's interest fully appeared in the conditional sales contract, the conditional sales contract was valid. Landis Mach. Co. v. Omaha Merchants Transfer Co., 1943, 142 Neb. 389, 9 N.W.2d 198.

Where owner of truck insured against fire under policy containing an unconditional and sole ownership clause had agreed to transfer property in the truck and his trucking business to his employee after the employee had procured a license as a motor contract carrier, a "conditional sale" was effected, and owner had not parted with his interest in the truck, so as to preclude recovery from insurer when truck was destroyed by fire while being used by employee in owner's business. Fish v. Connecticut Fire Ins. Co., 1942, 241 Wis. 166, 5 N.W.2d 779.

"While a sale, by the terms of which the purchaser is to pay cash on delivery, is in a sense conditional (35 Cyc. 323), the distinguishing feature of a conditional sale, as that term is used and understood, means a sale by which the title to the goods is to remain in the seller until the payment of the price, but the possession and use of the goods are with the purchaser until there is a default in payment. Section 1684u-1." Boscobel v. Muscoda Mfg. Co., (1921) 175 Wis. 62, 183 N. W. 963.

A conditional sales contract does not exist without an obligation on the part of the buyer to pay. Oberan v. Western Machinery Co., C.C.A.1943, 65 Ariz. 103, 174 P.2d 745.

Whenever the owner of personal property contracts to sell it, the purchase price to be paid in the future, the vendee to have possession of the property but with the title and ownership remaining in the vendor, there is a conditional sale, and the transaction, the rights and obligations of the parties to the sale and the rights of third persons are governed by the Uniform Conditional Sales Act, and this whether the contract be written or oral, and if written whether it be called a conditional sales contract, a lease, or by some other title. White v. E. C. McKallor Drug Co., (1934) 239 App. Div. 210, 268 N. Y. S. 371.

The sale of a stock of goods under an agreement that title should remain in the seller until certain conditions were performed, and with a provision that the buyer might resell the stock at retail and account to the seller for

the proceeds, is a valid conditional sale. Thorne v. Webster, (1927) 193 Wis. 97, 213 N. W. 646.

If transaction was sale on memorandum, in which title did not pass, it would be a "conditional sale" within Personal Property Law, §§ 61 and 62. Sanette Corp. v. Sanette Corp., (1928) 132 Misc. 455, 230 N.Y.S. 102.

An agreement for the sale of goods the price to be paid in installments, and the property to belong to the seller and not to be sold or removed by the buyer until the last payment is made, is a conditional sale, though on the delivery slip the goods are said to be "on consignment." In re Master Knitting Corp., (1925) 7 F.(2d) 11 (construing New York Act). To the same effect see Best Made Clothing Co. v. O'Brien, (1932) 145 Misc. 787, 262 N Y. S. 56.

An instrument in the form of a note, providing for the payment of a specified sum and authorizing confession of judgment, also provided that title to cattle, for which the note was given, should remain in the seller until the note was paid in full. Such instrument was held to be a conditional sales contract and since it was not recorded, it was void as to execution creditors of the buyers. Leatherman v. Moyer, (1931) 104 Pa. Super. Ct. 363, 157 Atl. 622.

Conditional sale is sale on credit, and arises where owner parts with possession of property but retains title as security for purchase price under agreement to sell when price is paid. In re Kamens Quality Markets, (D.C.Pa. 1934) 10 F.Supp. 263, reversed on other grounds General Motors Acceptance Corporation v. Horton, (C.C.A.1936) 85 F.(2d) 452.

A conditional sale is a sale with reservation of title in the seller until such time as the conditions of the sale are performed by the buyer. Kennedy-Van Saun Mfg. & Engineering Corp. v. Kinsella, (1934) 72 F.(2d) 338 (construing Pennsylvania Act).

"Conditional sale" contemplates relation of seller and buyer with retention of title by seller notwithstanding possession and appearance of ownership by buyer. Western Material Co. v. Deltener, 1936, 64 S.D. 62, 264 N.W. 207.

Even though writing is couched in approved form of bailment lease, transaction will be deemed sale where other evidence discloses parties' intention to make present sale with so-called lessor retaining title merely as security for price. In re Guertler (D.C.Pa.1937) 17 F.Supp. 569.

Where parties to oral contract of sale understood that seller was to reserve title to automobile until payment in full by buyer, there was a "conditional sale" notwithstanding buyer's failure to execute note for balance of purchase price. Mott v. Moldenhauer, 1941, 261 App.Div. 724, 27 N.Y.S.2d 563, motion granted and appeal dismissed, 1942, 287 N.Y. 678, 39 N.E.2d 293.

Portion of conditional sales contract by which buyer admitted receipt of merchandise, agreed to pay stipulated price therefor, and was to obtain title on payment in full, conformed to Uniform Conditional Sales Law. Sturman v. Polito (1937) 161 Misc. 536, 291 N.Y.S. 621.

Conditional sales agreement which provided for forfeiture of all sums paid on buyer's default was nevertheless subject to provisions of Uniform Conditional Sales Law. Id.

Under conditional sales contract no title passes to buyer until contract price has been paid. General Motors Acceptance Corporation v. Baker (1937) 161 Misc. 238, 291 N.Y.S. 1015.

A contract by which a seller of tires and tubes agrees to equip the buses of a bus company with tires and tubes, and maintain and repair the tires, for mileage payments aggregating substantially less than the list prices, and requiring the bus company to purchase the tires and tubes in case of the sale of a bus, on expiration of the contract in the absence of renewal, and in certain other contingencies, under which contract it was the practice of the bus company to return tires which had outlived their usefulness, is not a contract of "conditional sale" within this section. In re Tompkins Bus Corporation, D.C.N.Y.1938, 22 F.Supp. 322.

A "conditional sale contract" is a contract whereby it is agreed that, until the price is paid, title is to remain in the seller. Maryland Credit Finance Corporation v. Campbell, 1938, 195 A. 277, 8 W.W.Harr. 575.

Motor company's conditional sale of new automobile to automobile salesman was "sham sale," where additional contract thereafter executed stated that automobile was a demonstrator which would be returned to motor company for its disposition within six months and that motor company reserved right of

ownership of demonstrator. Lewis v. Dils Motor Co., 1964, —— W.Va. ——, 135 S.E.2d 597.

Controlling factor in conditional sales contract is retention of title by seller with provision contained therein that legal title does not pass to buyer until all payments are made thereon. Cotton States Mut. Ins. Co. v. Babbee, 1963, —— W.Va. ——, 131 S.E.2d 745.

——Absolute Sale.

Where a machine sold conditionally does not work satisfactorily and by mutual agreement is taken back and another furnished at a higher price, nothing being said as to terms, the sale of the second machine is absolute and not conditional. Schreivogl v. J. & M. Electric Co., (1923) 206 App. Div. 537, 201 N. Y. S. 596 (no reference to Uniform Act).

An agreement for the sale of a car containing no provision for the reservation of title in the seller and called a conditional sales contract was misnamed. Edson & Co., Inc. v. Hudson Motor Car Co., (1928) 132 Misc. 223, 228 N. Y. S. 582 (no reference to Uniform Act).

Transaction whereby no title to the property was reserved in the seller held an absolute, rather than conditional sale. General Utilities Corp. v. Goldman, (1933) 108 Pa. Super. Ct. 212, 164 Atl. 72 (no reference to Uniform Act).

Contract between manufacturer and distributor for transfer of refrigerating equipment to distributor for sale held to pass title in equipment to distributing company, notwithstanding designation of distributor as "factor" and provision for manufacturer's retention of title, where distributor assumed responsibility of selling equipment "for its own accounts" and settlements with manufacturer were not made dependent on receipt of payments from distributor's customers. Frick Co. v. Walter Cox Co., 1936, 101 Ind.App. 402, 199 N.E. 462.

——Agency for Consignment.

A "consignment of goods for sale" is a bailment and does not imply a sale, but it imports an agency and with title in the consignor while a "conditional sale" obligates the vendee to buy, and in New Hampshire it must be recorded if the vendor is to be protected, and the vendor has title and a security interest which is determined by RSA 361:1 et seq., while a consignor has a greater security interest because he is not bound by RSA 361:1 et seq. In re Prager, D.C.N.H.1959, 173 F.Supp. 859.

Where consignor was to ship merchandise to bankrupt on a consignment basis, and the consignor reserved the right to recall the goods at any time and the word "consignment" was used and the documents indicated that the bankrupt was to pay only after the goods were sold, a consignment and not a conditional sale with limited security interest was intended, and the consignor was entitled to prevail against the trustee in bankruptcy and the fact that the goods were commingled in the store of the bankrupt was immaterial. Id.

A consignment of electric light fixtures for resale, the price to be paid as resales were made, has been held to be an agency and not a conditional sale. General Electric Co. v. Martin, 1925, 99 W.Va. 519, 130 S.E. 299.

——Bailment.

Transaction held to be a bailment lease and not a conditional sale. Stern v. Paul, (1928) 96 Pa.Super.Ct. 112; C. Q. T. Corporation v. Morse, (1931) 42 Ohio App. 94, 181 N.E. 265 (construing Pennsylvania Act); General Motors Acceptance Corp. v. Hartman, (1934) 114 Pa. 544, 174 A. 795; Kindig v. Wertz, (1935) 116 Pa.Super. 456, 176 A. 769; Advance-Rumley Thresher Co. v. Rohr, (1935) 116 Pa.Super. 498, 176 A. 825; General Motors Acceptance Corporation v. Horton, C.C.A.Pa.1936, 85 F.2d 452; Judson C. Burns, Inc., v. Weinberg, 1935, 119 Pa.Super. 571, 181 A. 460.

In Pennsylvania, where possession of chattel is delivered under contract which is in form a bailment lease, bailor's title will be upheld as against bailee's execution creditor, even though contract provides for passing of title to bailee upon payment of full amount of hire or rental stipulated therein. Commercial Inv. Trust Co. v. Minon, C.C.A.Pa.1939, 104 F.2d 765.

In Pennsylvania, although original intention of parties in transferring possession of chattel upon signing of a bailment lease was to make a deferred payment sale, and their present intention is that title shall pass to the vendee, contract will be sustained at its face value as a bailment, where parties have not previously completed a conditional sale of chattel which is the subject of the bailment. Id.

Transaction held conditional sale rather than bailment lease. Kennedy-Van Saun Mfg. & Engineering Corp. v. Kinsella, (1934) 72 F.(2d) 338 (construing

Pennsylvania Act); In re Kamens Quality Markets, 1934, 10 F.Supp. 263; In re Robinson, D.C.Pa.1942, 40 F.Supp. 320, affirmed, C.C.A.1942, 122 F.2d 336, certiorari denied Bright Brooks Lumber Co. v. Weiss, 62 S.Ct. 297, 314 U.S. 686, 86 L.Ed. 549.

Purported bailment transaction held to be a conditional sale. Tompkins v. Harrisburg Auction House, (1933) 63 F. (2d) 485 (construing Pennsylvania Act); S. F. Bowser & Co., Inc. v. Franklin Mortg., etc., Co., (1931) 305 Pa. 459, 158 A. 170; Leatherman v. Moyer, (1931) 104 Pa.Super. 363, 157 A. 622.

Question whether a contract is a bailment or a conditional sale is to be determined by the substance of the agreement and parties' intent. U. S. v. Maulding, D.C.1957, 16 Alaska 566, 147 F.Supp. 693, reversed on other grounds 17 Alaska 592, 257 F.2d 56.

In case of a bailment, bailee receives possession but not title of the goods for a particular purpose, but, in case of a conditional sale, possession is delivered upon an agreement to sell and buy and the property in the goods remains with the seller until payment of the price. Id.

That bailment lease containing an option to purchase made no provision for return of goods at conclusion of agreement did not render it a "conditional sale contract" instead of a "bailment" under Pennsylvania law. In re Doran, D.C.Pa.1943, 50 F.Supp. 518.

Whether a particular transaction constituted a sale or a bailment is a question of fact, and is not controlled by the use by the parties of the word "rent" or the word "sell" in their agreement. In re Robinson, D.C.Pa.1942, 40 F. Supp. 320, affirmed 122 F.2d 336, certiorari denied 62 S.Ct. 297, 314 U.S. 686, 86 L.Ed. 549.

Whether transaction is a bailment or conditional sale is a fact question, and depends on real substance of transaction, not on what parties may say it is. In re Kamens Quality Markets, (1934) 10 F.Supp. 263.

In determining whether instrument is bailment or conditional sale, courts should not be controlled by technical terms or name given contract, but should examine real situation and parties' own interpretation. Tompkins v. Harrisburg Auction House, (1933) 63 F.(2d) 485 (construing Pennsylvania Act).

In determining whether bailment lease is bailment or conditional sale, fact that so-called rent is excessively high, and is so adjusted that rental ceases and bailee retains property when total rental equals sale price plus interest for deferred payments, is strong evidence that transaction constitutes sale. Id.

Where the parties clearly intend a present bailment and a future sale with title passing on stipulated conditions, the transaction is to be deemed a present bailment and not a conditional sale. Jacquard Knitting Mach. Co., Inc. v. Vennell, (1932) 59 F.(2d) 496 (construing Pennsylvania Act).

Instrument whereby owner leased machines for specified rental, allowing credit for rentals under prior leases, with provisions for purchase after last rental payment, and for repossession, held bailment, not conditional sale. Id.

Whether a contract is a conditional sales contract or a consignment contract or a contract of bailment with power to sell must be determined from looking at the entire contract and not just individual portions thereof in a separate and distinct sense; it is the cumulative picture arrived at from the four corners of the instrument that must control. Minneapolis-Moline Co. v. Capitol Plumbing, Inc., 1961, 3 Storey 95, — Del. —, 164 A.2d 868.

One purpose of RSA 361:1 et seq., was to provide a standard method of terminating the buyer's rights in the goods on default, and of establishing the value of his rights by a public sale of the goods, which should be compulsory in all cases where more than fifty per cent of the purchase price had been paid, and optional with the buyer where less than fifty per cent had been paid. Randall v. Pingree, 1956, 100 N.H. 322, 125 A.2d 658.

That unsigned memorandum, showing transaction between automobile dealer and one taking possession of automobile under bailment lease, including down payments, rental installments, and information needed for registration of car, was made on partly printed sales slip form, did not change transaction from bailment lease to conditional sale. General Motors Acceptance Corp. v. Hartman, (1934) 114 Pa. 544, 174 A. 795.

Forms used in securing certificate of title to automobile from Department of Revenue cannot charge transaction from bailment lease to conditional sale. Id.

Automobile dealer's description of bailment as sale and of bailment lease as bill receivable on its books did not change bailment into conditional sale. Id.

Lease of mining machinery, tools, and equipment for definite term at fixed rental, with understanding for return of chattel at expiration of term, was "bailment," not "conditional sale," despite bailor's option to sell, bailee's power to remove part of property, and provisions for bailee's payment of fire insurance premiums and interest on rental notes. In re Miller Vein Coal Co., (1933) 3 F.Supp. 607 (construing Pennsylvania Act).

"The enactment of the Conditional Sales Act of May 12, 1925, P.L. 603 (69 P.S. 361 et seq.) did not affect our established law on the subject of bailment leases, for the provisions of the Uniform Conditional Sales Act in force in other states were changed, in our statute, so as to permit the continuance in force of our law as firmly established in the decisions of our courts of appeal." General Motors Acceptance Corp. v. Hartman, (1934) 114 Pa. 544, 174 A. 795.

That bailment lease of automobile allowed lessor to resell automobile upon lessee's noncompliance with terms of contract indicated that transaction was a "sale," but was not decisive of nature of transaction, where term "resell" stood alone and was not in harmony with other provisions of contract. General Motors Acceptance Corporation v. Horton, (C.C.A.Pa.1936) 85 F.(2d) 459

As regards whether seller under Pennsylvania law could reclaim from corporate buyer's receiver property sold to corporate buyer, a transaction whereby the property was committed to the buyer for trial purposes constituted a "bailment" and when option to purchase which was given to the debtor was exercised, a "sale" was consummated. Mayer v. Marcus Mayer Co., D.C.Pa. 1939, 25 F.Supp. 58, modified, Commercial Inv. Trust Co. v. Minon, C.C.A.1939, 104 F.2d 765.

A transaction whereby automobile was delivered to lessee under agreement to pay monthly rental, whereby lessee could purchase automobile for $1 additional after payment of total stipulated rental was a "bailment lease" rather than "conditional sale," precluding lessee's judgment creditor from levying on automobile under execution against lessee. Bradshaw v. General Motors Acceptance Corporation (D.C Pa.1937) 19 F.Supp. 993.

Generally, transaction will be upheld as bailment rather than conditional sale in absence of evidence other than writing itself, where writing clearly reserves title in lessor while entitling lessee to become owner by paying given sum after completing installments as consideration for his use of property which he was unable to pay for in lump sum at time of execution of writing. In re Guertler (D.C.Pa.1937) 17 F.Supp. 569.

In Pennsylvania, use of bailment lease by parties who originally intended to make a sale and who intend that sale shall take place on compliance with conditions of lease rebuts any presumption that owner was willing to sell chattel purely on credit, and in absence of evidence showing such willingness, form into which parties have cast their transaction will be sustained. In re Stein (D.C.Pa.1937) 17 F.Supp. 587.

In Pennsylvania, where parties have not, at time of entering into bailment lease, completed conditional sale of chattel which is subject of bailment contract will be sustained as bailment lease, if such in form, even though parties' original intention was to make a sale and their present intention is that a sale shall take place on compliance with conditions of lease. Id.

A written contract which was a bailment lease in form, and which did not specifically provide that bailee should get title to goods upon paying promissory note, created relationship of bailor and bailee rather than of conditional vendor and vendee. In re Clover Drugs, D.C.Pa.1938, 21 F.Supp. 107.

Where parties to bailment lease intend to retain title in lessor and to provide that after payment of all rentals lessee may become owner either with or without payment of additional nominal sum, and used approved form of Pennsylvania lease to put such intentions into effect, transaction will be sustained as a bailment though in fact it amounts to conditional sale. Id.

The mere use of technical words will not prevent a court from looking at the real nature of a transaction and declaring that an agreement purporting to be a bailment is really a conditional sale. Decker v. Williams, 1938, 130 Pa. Super. 100, 196 A. 910.

A contract entitled "Conditional Sales Contract," providing for "lease and demise" of office equipment and dental supplies for a down payment and certain number of monthly installments, providing that second party should return property at expiration of "lease" or buy property for certain sum, on which "rent" already paid should be applied, and giving first party right of repossession without notice, contemplated a "bailment" and not a "conditional sale," and hence first party was not liable under Uniform Conditional Sales Act for repossession and sale without notice. Id.

Generally, where one receives possession of chattel under agreement containing apt words of lease, fixing definite term and certain rental, and including undertaking to return same property at termination of lease, the mere fact that he has option to purchase during or at expiration of period of lease does not transform transaction into a "conditional sale," but transaction is a "bailment." Id.

The Uniform Conditional Sales Act, as adopted in Pennsylvania, does not apply to a bailment lease. Id.

"The mere use of technical words will not prevent a court from looking at the real nature of the transaction and declaring that an agreement purporting to be a bailment is really a conditional sale. Generally, where a person receives possession of a chattel under an agreement which contains apt words of lease, the mere fact that the bailee has an option to repurchase the property, during or at the expiration of the period of the lease, does not transform the transaction into a conditional sale." Id.

The fundamental distinction between a "bailment" lease and a "conditional sales contract" is that in one the parties stand in the relation of lessor and lessee and in the other of buyer and seller. W. K. Wetherill & Co. v. Scheffel, 1941, 144 Pa.Super. 165, 18 A.2d 680.

A contract providing for the leasing of an automobile to lessee for a definite term, for which he was to pay a stipulated rental, for return of the automobile to the lessor at the expiration of the term and for lessee's purchase of automobile during term of lease for stated amount, was a "bailment" lease and was to be so considered in determining rights of parties notwithstanding stipulation of counsel in action on the contract that it was a "conditional sales contract." Id.

In the case of a "bailment" the bailee receives possession but not title to the goods for a particular purpose and usually on an agreement to redeliver them to the bailor after the purpose has been fulfilled while under a "conditional sales contract" possession is delivered upon an agreement to sell and buy, the property in the goods to remain in the seller until the payment of the price or the performance of some condition. Id.

——Chattels not in esse.

Contract for sale of chattels and retention of title until payment held one of conditional sale, even though chattels were not in esse but were to be manufactured. Ganger, Inc., v. Angeli, (1935) 157 Misc. 143, 283 N.Y.S. 61, reversed on other grounds (1936) 159 Misc. 464, 287 N.Y.S. 948.

——Chattel Mortgage.

Under McKinney's Personal Property Law, § 60 et seq., essentially a conditional sale is only a credit device, with same purpose as purchase-money chattel mortgage, despite technical or theoretical differences between the two forms of security. International Harvester Credit Corp. v. Goodrich, 1956, 76 S.Ct. 621, 350 U.S. 537, 100 L.Ed. 681.

A contract whereby the price of machinery is payable in instalments with interest on deferred payments and the title is to remain in the vendor until the machinery is fully paid for is a conditional sale and not a chattel mortgage. Interstate Ice, etc., Corp. v. U. S. F. Ins. Co., (1926) 243 N. Y. 95, 152 N.E. 476.

Under Act seller retains title and not mere lien or claim, and while relationship between parties is in many respects similar to that under chattel mortgage, there is difference between conditional sale and chattel mortgage which can not be ignored by courts. In re Lake's Laundry, Inc., (1935) 11 F.Supp. 237 (construing New York Act), affirmed (1935) 79 F.(2d) 326.

Regardless of type of security device used, with possible exception of chattel mortgage, whether conditional sale or any other type of security devices mentioned in 12 A.P.S. § 9–102, holder of security interest in goods retains title in abstract when a purchase-financing transaction is entered into, as distinguished from a loan-financing on goods where chattel mortgage device would be used. Com. v. Two Ford Trucks, 1957, 185 Pa.Super. 292, 137 A.2d 847.

Conditional sale contract is equivalent of chattel mortgage in sense title is reserved solely as security for performance by buyer. Pisculli v. Bellanca Aircraft Corp., 1930, 17 Del.Ch. 151, 150 A. 81, affirmed in (1931) 18 Del.Ch. 427, 156 A. 508 (construing New York Act).

In replevin action in which chattel mortgagee and purchaser of personal property at execution sale and corporation, which claimed that machinery had been merely leased to defaulted chattel mortgagor, claimed right to possession of machine, evidence was insufficient to sustain finding that rentals paid by chattel mortgagor were to be considered as installments of purchase price notwithstanding existence of unsigned document headed "installment purchase". American Can Co. v. U. S. Canning Corp., 1958, 15 Misc.2d 549, 180 N.Y.S.2d 983, affirmed 9 A.D.2d 746, 193 N.Y.S.2d 986.

In conditional sales contract, title is in seller until payment, while in chattel mortgage it is in mortgagor until default. Meisel Tire Co. v. Mar-Bel Trading Co., (1935) 155 Misc. 664, 280 N.Y.S. 335; In re Lake's Laundry, (1935) 11 F.Supp. 237, affirmed (1935) 79 F.(2d) 326, 102 A.L.R. 247, and certiorari denied Lake's Laundry v. Braun, (1935) 56 S.Ct. 144, 296 U.S. 622, 80 L.Ed. 442 (construing New York Act); Allis-Chalmers Mfg. Co. v. Nein, (1935) 63 S.D. 635, 262 N.W. 235; Robinson v. Bowe, (1934) 73 F.2d 238 (construing South Dakota Act).

"The distinction between the lien created by a chattel mortgage and the rights of a vendee under a conditional sales contract has always been well recognized by the law. In the case of a mortgage, the lien arises from the act of the mortgagor, while in the case of conditional sale contracts, the title to the property is reserved by the vendor." Robinson v. Bowe, (1934) 73 F.(2d) 238 (construing South Dakota act).

In case of a chattel mortgage, mortgagor transfers his title to mortgagee as security for a pledge, loan, or some other condition, which title becomes reinvested in mortgagor on compliance with conditions. In a conditional bill of sale contract, title remains in seller until payment of consideration, or until other conditions mentioned in conditional bill of sale contract are performed by purchaser. In re Excelsior Macaroni Co., Inc., (1931) 55 F.(2d) 406 (construing New York Act).

Where an instrument recited the sale of an automobile by the purchaser to the seller as mortgagee, for the purpose of securing payment of the balance due in specified installments, and further provided that it should be void on the payment of such balance, the instrument constituted a chattel mortgage rather than a conditional sales contract. Universal Finance Corp. v. Hamner, (1933) 61 S.D. 540, 250 N.W. 33.

An absolute assignment by a seller of a conditional sale contract and the notes secured thereby, under which the seller reserved no right of redemption, is not a chattel mortgage, within the New Jersey Chattel Mortgage Act. In re B. & B. Motor Sales Corp., (1922) 277 F. 808.

——Identification of goods

Where contract between farm machinery manufacturer and its dealer described parties as if manufacturer was vendor and as if dealer was purchaser, and contract was denoted "Dealer's Sales Contract for Farm Machinery", and contract stated that its purpose was to govern sale of products by manufacturer to dealer and resale of such products by dealer to his customers, and contract provided that dealer was not manufacturer's agent and under contract title to the products would be retained by manufacturer as a security device to insure payment of unpaid products in future or dealer would become owner of products if dealer paid in cash, contract was not "consignment contract" or "contract of bailment with power to sell" but was "conditional sales contract" within definition of that term as set forth in 6 Del.C. § 901 et seq.; however, the contract was not in fact a conditional sales contract within the meaning of such act in view of failure of contract to identify or briefly describe the equipment sold to dealer. Minneapolis-Moline Co. v. Capitol Plumbing, Inc., 1960, 3 Storey 95, 164 A.2d 868.

While the Conditional Sales Act does not require a definite method of description or identification of goods or equipment, it is generally assumed that there must be some reasonable attempt to identify or describe the items the contract is intended to cover, and the requirement in the act that recording officer enter a brief description of goods in a separate book maintained by him for purposes of inspection by interested parties discloses a legislative intention that a brief description or identification of goods sold should be included as a part of the conditional sales contract. Id.

——Lease.

Lease of equipment was "conditional sale," where total cost of equipment, installed, was $90,729, about half that amount represented cost of installation, amount to be paid over initial five-year term was $113,229, at that point lessee had option to purchase for $11,341 and lessee's only sensible course at end of lease term would be to become owner of goods. In re Herold Radio & Electronics Corp., C.A.N.Y.1964, 327 F.2d 564.

A "lease" is substantially equivalent to a "conditional sale", when a buyer is bound to pay rent substantially equal to the value of the goods and has the option of becoming or is to become the owner of the goods after all the rent is paid, and in such case, the form of the contract and the use of the words "lease" and "rent" are immaterial. Breece Veneer & Panel Co. v. Commissioner of Int. Rev., C.A.7, 1956, 232 F.2d 319.

An instrument termed a "lease" of personal property, but answering the requirements of subdivision (2) of this section, was held to be a conditional sale. In re Press Printers, etc., Inc., (1924) 4 F.(2d) 159 (construing New Jersey Act).

Test in determining whether agreement is lease or conditional sale is whether option to purchase at end of lease term is for substantial or nominal amount and, if purchase price bears resemblance to fair market price of property, option is recognized as real one, but, if price is substantially less than fair market value of leased equipment, lease will be construed as mere cover for agreement of conditional sale. In re Crown Cartridge Corp., D.C.N.Y.1962, 220 F.Supp. 914.

Contracts whereunder manufacturer delivered machine tools to customers, who were required to make reasonable payments for use and had option to purchase at prices reasonable when established, were, under circumstances, leases, rather than conditional sales, for income tax purposes, although "rent" was not based on use. Kearney & Trecker Corp. v. U. S., D.C.Wis.1961, 195 F.Supp. 158.

Agreement, entitled an equipment lease, which required lessee to pay monthly rentals but gave lessee option to purchase and apply past rentals to purchase price was, under McKinney's Personal Property Law, § 61, a "conditional sales contract". U. S. v. Voges, D.C.N.Y.1954, 125 F.Supp. 916.

A finding that a buyer of shores purchased under a lease providing for a conditional sale held supported by the evidence. H. W. Roos Co. v. Brady, (1931) 103 Pa. Super. Ct. 579, 157 Atl. 490.

A purported lease of furniture was held, in Lifson v. Williams, (1931) 10 N. J. Misc. 982, 162 Atl. 129, to be in fact a conditional sale, so as to give the buyer title on making the stipulated payments.

Situation of subject-matter and parties and their apparent purpose should be considered in determining whether ambiguous instrument is lease or conditional sale of chattels. Jacquard Knitting Mach. Co., Inc. v. Vennell, (1932) 59 F.(2d) 496 (construing Pennsylvania Act).

Airplane lease agreement could not as a matter of law be construed to be a conditional sale in violation of chattel mortgage and equipment trust restrictions against acquisition of property subject to conditional sales agreement, where the agreement did not obligate lessee to pay for the exercise of the option to purchase, where the payment was not nominal, and where its exercise was in doubt. Canadian Limited v. Seaboard World Airlines, Inc., 1964, 43 Misc.2d 320, 250 N.Y.S.2d 723.

Fact that aggregate rentals of airplane over period of proposed lease would equal present purchase price did not require that lease be construed, on motion for temporary injunctive relief against alleged violation of restrictions of chattel mortgage and equipment trust, to be a prohibited conditional sale but actual intendment of parties should be resolved on trial. Id.

So-called rental agreement, whereunder "lessor" warranted to deliver title on day of full payment, was a conditional sales agreement, although "lessor" had no legal title. Carousel, Inc. v. Ingegno, 1963, 42 Misc.2d 161, 247 N.Y.S.2d 534.

To construe whether instruments denominated as equipment lease constituted actually a lease or a conditional sale within definition of McKinney's Personal Property Law, § 61 presented a question as to underlying intent of parties. American Can Co. v. U. S. Canning Corp., 1958, 12 Misc.2d 750, 170 N.Y.S.2d 727, reversed on other grounds 180 N.Y.S.2d 983, affirmed 9 A.D.2d 746, 193 N.Y.S.2d 986.

Instruments labeled equipment lease and instalment purchase which gave lessee absolute right to renew lease on machine for successive annual periods subject only to approval of lessee's credit and giving lessee option to purchase machine and apply any rentals paid against purchase price were conditional sales contracts within meaning of McKinney's Personal Property Law, § 61, and never having been filed, were void against subsequent mortgagee and purchaser without notice. Id.

The delivery of an automobile in Pennsylvania pursuant to a bailment lease which provided that lessee, if he complied with all terms of lease, had option at any time within 30 days after expiration of lease of purchasing automobile on payment of $1, was not a "conditional sale," under Pennsylvania law, and lessor was not required to file lease to preserve his claim to automobile against attaching creditor of lessee. Vella v. U. S. Fidelity & Guaranty Co., 1939, 257 App.Div. 459, 13 N.Y.S.2d 962.

In determining whether an instrument in form, style, and language of a lease had the essential attributes of a contract of conditional sale or of an installment sale, the rights and obligations it imposed would be looked to. New York World-Telegram Corp. v. McGoldrick, 1948, 298 N.Y. 11, 80 N.E.2d 61.

An agreement of October 1, 1931, between a newspaper publishing company and equipment company for former to lease all equipment and real estate of latter with an option to purchase was a "conditional sale", and payments provided for therein were exempt from city of New York sales tax even though made after the effective date of the Tax Law. Id.

Highway contractor's agreement to pay stipulated monthly rental for use of tractor with option to renew agreement or purchase tractor at price reduced by such rental held "lease" and not "conditional sale," notwithstanding installments of rent under renewals of contract amounted substantially to price of tractor. Western Material Co. v. Deltener, 1936, 64 S.D. 62, 264 N.W. 207.

——Trust Receipt.

A trust receipt acknowledging the receipt of goods to be held in trust for the seller until a certain sum is paid, when accompanied by a sale memorandum showing that the transaction is based on a sale, is a conditional sale within subdivision (1) of this section. In re Ford-Rennie Leather Co., (1924) 2 F.(2d) 750 (construing Delaware Act).

Where buyer ordered washing machines from manufacturer under a plan whereby buyer advanced ten per cent. of purchase price and other charges to credit company and signed purported trust receipts and notes, and credit company then sent purported trust receipts to manufacturer to fill in a description of machines, and credit company then paid full purchase price to manufacturer and received a bill of sale, and machines were then shipped to buyer and placed on display for sale by it, transaction did not constitute a "conditional sale" and was not governed by SDC § 54.0201 et seq. relating to conditional sale. Walton v. Commercial Credit Co., 1943, 69 S.D. 263, 9 N.W.2d 266, followed in Walton v. General Motors Acceptance Corporation, 1943, 69 S.D. 269, 9 N.W.2d 269.

——Conditions.

The expression "any other condition," in the first sentence of this section, means any other condition incident to the conditional sale. It would not include a condition that the buyer pay an open account not related to the sale. But it may include the happening of other contingencies incidental to the transaction; for example, that the cost of repairs to the article sold be paid by the vendee. Bucyrus-Erie Co. v. Casey, 1932, 61 F.2d 473 (construing Pennsylvania Act). But, see, Continental Bank, etc., Co. v. Webster Hall Corp. of America, 1933, 4 F.Supp. 337, affirmed, 1933, 66 F.2d 558 (construing Pennsylvania Act). It should be noted that Act No. 434 of the 1945 Pennsylvania General Assembly gives express recognition to the execution of chattel mortgages in that state.

A conditional sales contract may contain conditions other than the payment of the purchase price. Continental Bank, etc., Co. v. Webster Hall Corp. of America, (1933) 4 F. Supp. 337, aff. 66 F. (2d) 558 (construing Pennsylvania Act).

Where a written contract for the sale of a brick manufacturing plant and certain personalty used in the manufacture of brick provided that the purchase price was to be paid in specified annual installments, that the vendor

should deliver a deed to the premises when half of the purchase price was paid, and that the vendor should have a right to immediate possession on vendee's default, it was held that there was a conditional sale contract within the meaning of this section and of section 6. Leach Co. v. Trace, (1929) 199 Wis. 292, 226 N. W. 308.

——Intention.

Whether a contract is one of conditional sale is a question of the intent of the parties as shown by the language of the whole contract. Universal Finance Co. v. Hamner, (1933) 61 S.D. 540, 250 N.W. 33; In re Miller Vein Coal Co., (1933) 3 F.Supp. 607 (construing Pennsylvania Act).

Best evidence of intention of parties to contract is writing itself. In re Miller Vein Coal Co., (1933) 3 F.Supp. 607.

Procedure followed by transferor of stone crusher after appointment of receivers for transferee in filing copy of agreement with prothonotary of county where crusher was erected in accordance with terms of Conditional Sales Act and in filing with receiver proof of claim for balance alleged to be due upon sale of crusher held to show intention of parties to effect "conditional sale." Kennedy Van Saun Mfg. & Engineering Corp. v. Kinsella, (1934) 72 F.(2d) 338 (construing Pennsylvania Act).

On issue whether instrument constituted chattel mortgage or conditional sales contract, intention of parties will not control the legal effect of their transaction. Leach Co. v. Trace, (1929) 199 Wis. 292, 226 N.W. 308.

Whether contract is conditional sale or one of bailment depends on intention of parties expressed in written agreement. Leatherman v. Moyer, (1931) 104 Pa.Super. 363, 157 A. 622.

In determining whether contract is conditional sale or lease, Supreme Court is not bound by mere form or name parties have given contract, but contract's legal effect is determined by intent of parties as evidenced by entire contract. Western Material Co. v. Deltener, 1936, 64 S.D. 62, 264 N.W. 207.

That a written contract was entitled "Conditional Sales Contract" was not conclusive as to its nature, but question would be determined by intent of parties as shown by language of the whole contract. Decker v. Williams, 1938, 130 Pa.Super. 100, 196 A. 910.

Whether contract is one of conditional sale is a question of intent of parties as shown by language of the whole contract without regard to its form or the name which the parties have given it. Id.

Oral Conditional Sale.

An oral conditional sale seems to be valid except as affected by the rights of persons without notice. Babbitt, etc., Live Stock Co. v. Hooker, (1925) 28 Ariz. 263, 236 Pac. 722.

"Buyer."

Plaintiff who had orally notified seller's assignee of conditional sale contract for piano that plaintiff had acquired interest of buyer in piano was held "buyer" within statutory provisions requiring seller to make resale. Rost v. Wm. Knabe & Co., (1935) 154 Misc. 425, 277 N.Y.S. 896.

The statutory definition of "buyer" in A.R.S. § 44–301, to include the person who buys or hires the goods covered by the conditional sale or any legal successor in interest of such person does not include the seller either before or after he had assigned his rights and interest to a third party, and fact that seller may assign his rights as seller and agree to be secondarily liable for unpaid balance of underlying obligation does not convert his position into that of buyer and entitle him to benefits conferred by the Act upon the buyer. Maestro Music, Inc. v. Rudolph Wurlitzer Co., 1960, 88 Ariz. 222, 354 P.2d 266.

"Goods."

A vessel is a chattel within the definition of "goods" in this section. Rivara v. James Stewart & Co., Inc., (1925) 241 N. Y. 259, 149 N. E. 851, affirmed in 274 U.S. 614, 47 S.Ct. 718, 71 U.S. (L. ed.) 1234.

"Purchase."

A realty mortgage was a "purchase" within the intendment of this section. Cohen v. 1165 Fulton Avenue Corp., 1929, 251 N.Y. 24, 166 N.E. 792.

"Purchaser."

Warehouseman with whom furniture sold to conditional buyer under unrecorded conditional sales agreements, was stored by the conditional buyer, was not a "pledgee" within meaning of provision of this section that a "pur-

chaser" includes a pledgee, and hence warehouseman's unpaid lien did not have priority over rights of conditional seller on default of conditional buyer. Jersey Security Co. v. Lottimer, 1943, 20 N.J.Misc. 432, 28 A.2d 623.

In replevin action by conditional seller of furniture under unrecorded conditional sales agreements to recover possession of furniture from a warehouseman who claimed that its unpaid warehouseman's lien on furniture for storage charges had priority over seller's rights, warehouseman, in order to prevail, was required to qualify as a pledgee within purview of this section that a purchaser includes a pledgee. Id.

"Purchaser" not defined in New Jersey act. De Cozen Motor Co. v. Kaufman, (1934) 113 N.J.Law, 343, 174 A. 893.

Realty mortgagee held purchaser. Cohen v. 1165 Fulton Ave. Corp., (1929) 251 N.Y. 24, 166 N.E. 792.

A purchaser is not only one who buys the goods but includes a mortgagee, providing the latter is either a legal or equitable mortgagee. Pisculli v. Bel-Anca Aircraft Corp., (1929) 17 Del.Ch. 73, 149 A. 418 (construing New York Act); (1930) 17 Del.Ch. 151, 150 A. 81 (reversed on other grounds).

Conditional seller of automobile repurchasing it at auction sale is not "purchaser" within this section. Meisel Tire Co. v. Mar-Bel Trading Co., (1935) 216 Wis. 638, 266 N.W. 375.

A trustee in bankruptcy of a conditional purchaser is not a purchaser mortgagee, or pledgee within the statutory definition. In re Albanese, (1930) 44 F.(2d) 602 (construing New York Act).

Words "purchaser," "mortgagee," and "pledgee" have definite meanings and can not be enlarged to include warehouseman's lien. Banker's Capitol Furniture Co. v. Hall, (1932) 11 N.J.Misc. 13, 163 A. 556.

Question whether assignee of mortgagee was purchaser raised but not answered. Minett v. Durnherr, (1929) 135 Misc. 259, 238 N.Y.S. 448.

"Seller."

A credit company which purchased a conditional sales contract from the seller became the "seller." Central Acceptance Corp. v. Frye, (1927) 103 W. Va. 689, 138 S.E. 369.

Assignee of note and conditional sales contract held seller. Commercial Inv. Trust, Inc. v. Westling, (1928) 53 S.D. 337, 220 N.W. 855. Commercial Credit Corp. v. Satterthwaite, (1930) 107 N.J.L. 17, 150 A. 235, affirmed in (1931) 108 N.J.Law, 188, 154 A. 769.

Where defendants purchased a dining room suite from a third party with money loaned by plaintiff and some ten months later executed a conditional sales note to plaintiff to evidence the debt, reciting that title to the furniture did not pass from plaintiff until note was paid, no change of title between plaintiff and defendants took place and plaintiff was not entitled to maintain replevin to secure possession of the furniture on default in payment of note. Manlove v. Maggart, 1942, 111 Ind.App. 398, 41 N.E.2d 633.

In action by payee against maker on a note executed in connection with a void conditional sale of certain cattle, evidence sustained finding of trial court that payee was the seller under void conditional sales contract which was executed in connection with note delivered to payee. Ebenreiter v. Freeman, 1956, 274 Wis. 290, 79 N.W.2d 649.

Where terms of auction of personalty on farm required buyers to pay cash, unless auctioneer personally arranged for sale on credit, and successful bidder for hogs arranged with auctioneer to buy the hogs on credit, and auctioneer made the sale on credit and paid purchase price to seller less commission, seller's title to hogs passed to auctioneer rather than to successful bidder, and therefore the auctioneer was the seller of the hogs within meaning of St 1953, § 122.01(9), and conditional sales contract between auctioneer and successful bidder was valid. Tri-County Finance v. Miller, 1954, 65 N.W.2d 39, 267 Wis. 174.

The definition of "seller" in this section read in connection with section 2, declaring seller liable for breach of implied warranty, whether or not property in goods has passed to buyer, subjects assignee of conditional sales contract and purchase-money notes to defense of breach of implied warranty in assignee's action on notes. General Electric Contracts Corporation v. Heimstra, 1943, 69 S.D. 78, 6 N.W.2d 445.

The definition of "seller" in this section, read in connection with section 2, declaring seller liable for breach of implied warranty, whether or not

property in goods has passed to buyer, subjects assignee of conditional sales contract and purchase-money notes to defense of breach of implied warranty in assignee's action on notes. Id.

Option to purchase.

Lease with option to purchase is not within this Act when aggregate payments required of lessee are not substantially equivalent to purchase price Allen v Cohen, C A.N.Y.1962, 310 F.2d 312.

A written agreement, designated "rental agreement" and describing the parties as "lessor" and "lessee", for the rental of a compressor at $95 per month, with option to lessee to purchase, was not a "conditional sale" contract but an "option to purchase" which lessee who defaulted in rental payments and who never gave notice of intent to exercise the option failed to exercise. Oberan v. Western Machinery Co., 1946, 65 Ariz. 103, 174 P.2d 745.

Unless promise to pay by purchaser under alleged conditional sales contract is absolute, there is no "conditional sale," but only an "option to purchase." Automatic Voting Mach. Corporation v. Maricopa County, 1937, 50 Ariz. 211, 70 P.2d 447, 116 A.L.R. 320.

Pledge.

The Conditional Sales Law does not transform a pledge and the rights and obligations of that relationship into a sale with an absolute and unqualified title. Joseph T. Ryerson & Son v. A. V. O'Donnell, Inc., 1938, 253 App.Div. 1, 1 N.Y.S.2d 608, reversed on other grounds 279 N.Y. 109, 17 N.E.2d 788, reargument denied, 279 N.Y. 789, 18 N.E.2d 870.

"Legal Successor"

A corporation's president, to whom corporation sold automobile purchased by it under conditional sale contract reserving title in seller until full payment of price, one to whom president subsequently transferred automobile, and one purchasing it from such transferee before completion of payments never became "legal successor in interest" to corporation within provision of this section. Effron v. Haile, Sup.1951, 103 N.Y.S.2d 561.

Where buyer of an automobile from original buyer had actual as distinguished from constructive notice of the existence of a conditional sales contract held by seller's assignee, such second buyer was bound by the provision thereof which prohibited such original buyer from selling the automobile even though the contract was unrecorded, and therefore he was not a "legal successor in interest" of original buyer, within W.S.A. 122.01(2), although if second buyer had purchased without actual notice of the unrecorded contract, in such a situation, he would have been a "legal successor in interest" within said section of the Act. Northern Discount Co. v. Luebke, 1959, 6 Wis.2d 313, 94 N.W.2d 605.

Where a second buyer who purchased an automobile from original buyer had actual as distinguished from constructive notice of existence of seller's assignee's, unfiled conditional sales contract on the automobile, he was bound by the terms thereof, and was not a "legal successor in interest" of original buyer, within W.S.A. 122.01(2) and therefore, subsequent buyers of the automobile from such second buyer did not fall within class of persons protected by the statute, and reservation of title in unfiled conditional sales contract was therefore valid and binding against subsequent buyers who purchased from second buyer, even though they were without notice of such unfiled contract. Id.

§ 2. Primary Rights of Buyer.

Case Notes

Legislative Modifications.

It is within the power of the Legislature to declare that the vendee under a contract of conditional sale of an automobile shall be deemed the owner thereof. Welch v. Hartnett, (1926) 127 Misc. 221, 215 N. Y. S. 540, so holding with respect to a provision of the Highway Law of New York requiring an indemnity bond from certain owners of automobiles and providing that the vendor under a contract of conditional sale is not an owner.

Counterclaim.

In an action to replevin property held under a conditional sale contract the defendant may not counterclaim for breach of warranty. Call Hardware Corp. v. Duggan, (1926) 216 App. Div. 514, 215 N. Y. S. 581 (no reference to Uniform Act).

Counterclaim of conditional buyer, who attempted to rescind for breach of warranty, held proper in conditional seller's replevin action for nonpayment. Harrolds Motorcar Co. v. Gordon, (1927) 129 Misc. 348, 221 N.Y.S. 486 (no reference to Uniform Act).

Section 69 of the Uniform Sales Act providing that buyer may accept or keep goods and set up against seller a breach of warranty by way of recoupment in diminution or extinction of price does not apply in an action of replevin brought by seller to recover from buyer possession of chattel sold under a contract of conditional sale reserving title and right to retake on default in payment of price. Mills Novelty Co. v. Transeau, 1938, 9 W.W. Harr. 86, 196 A. 187.

Rescission.

Under a sales contract providing that title to a truck was to remain in sellers until payment of the balance due for the entire subject matter of the purchase, sellers were not obliged to rescind the contract before they were entitled to regain possession of the truck, upon buyer's failure to pay balance of purchase price. Hahn v. Andrews, 1952, 370 Pa. 65, 87 A.2d 284.

The section of the Uniform Sales Act authorizing a buyer to rescind the contract for breach of warranty by the seller applies to conditional sales. Russo v. Lavender, (1926) 216 App. Div. 823 mem., 215 N. Y. S. 642 (no reference to Uniform Act). See also Call Hardware Corp. v. Duggan, (1926) 216 App. Div. 514, 215 N. Y. S. 581 (no reference to Uniform Act).

In conditional seller's action to recover possession of house trailer from conditional buyers who had made the down payment and three required monthly payments after which they notified the seller in writing that they had rescinded contract because of breach of warranty, buyers' responsive pleading alleging that seller at time of making the contract had exhibited to buyers a sample of the trailer and had represented that trailer would be the same as the sample in description, quality, design and content and that such representation was falsely made to induce buyers to execute contract and that trailer actually offered to buyers was not the same as the sample and was defective in workmanship and materials was sufficient to plead cause of action for rescission of contract on ground of fraud. Baker v. Jewell, 1959, 77 S.D. 573, 96 N.W.2d 299.

In plea of fraud as ground for rescission of conditional sales contract, the allegation that the seller's representations were wholly untrue and fraudulently made implied that the seller either knew that they were false or made them in a manner not warranted by the information which he possessed. Id.

Rights against Third Persons.

Automobile buyer under installment contract could set up, against seller's assignee, defense of seller's fraud in not revealing that automobile was subject to mortgage, although contract provided that buyer should not assert against assignee defenses available against seller. Mohawk Nat Bank of Schenectady v. Chalifaux, 1962, 33 Misc.2d 987, 227 N.Y.S.2d 526.

The rights of a conditional seller and a conditional buyer with respect to recovery from a third person for the injury to or loss of the chattel cannot be affected by subsequent defaults in the performance of the conditional sales contract. Gas City Transfer Co. v. Miller, 1939, 107 Ind.App. 210, 21 N.E.2d 428.

A conditional buyer has the right to recover the full measure of damages occasioned by injury to or loss of the subject matter of the sale from third person causing the injury or loss and is not relieved from his obligation to pay the full purchase price agreed on even though the property be lost or destroyed. Id.

Buyer's action for damages for bank's seizure of automobile under attachment while buyer was entitled to possession was not destroyed by bank's subsequent acquisition of seller's interest in conditional sales contract and its termination of contract for nonpayment, notwithstanding that buyer had no title or right of possession when he instituted action. Southern Arizona Bank & Trust Co. v. Stigers, (1936) 47 Ariz. 31, 53 P.2d 422.

Conditional buyer's measure of damages for conversion of automobile by person in no way connected with title was difference between value of automobile and amount owed by buyer on purchase price. Id.

New Agreement.

Evidence justified finding that seller waived strict performance of automobile conditional sales contract providing for a forfeiture of all securities held by seller including amounts paid on purchase price, if payment should

not be made within a certain time, by parol agreement subsequent to signing of contract, hence tender of balance of purchase price by buyer a few days after expiration of such time precluded seller from claiming forfeiture. Turner v. Williams, 1945, 311 Mich. 563, 19 N.W.2d 100.

Generally, where the seller of property under a conditional sales contract enters into a new agreement whereby seller takes a chattel mortgage from buyer to secure payment of amount still due, seller abandons its right to retain title to property sold until final payment is made and transfers such title to buyer, reserving a mere lien thereon for balance of price. Valley Chevrolet Co. v. O. S. Stapley Co., 1938, 50 Ariz. 417, 72 P.2d 945.

Even if seller under conditional sales contract had abandoned its right to retain title to property sold and substituted therefor a mere lien by taking a chattel mortgage at the same time contract was executed, seller, as respects buyer, on default would have right of possession under either sales contract or chattel mortgage where both provided that, on default in payments due, the seller might take possession thereof. Id.

A seller of truck and trailer which took a chattel mortgage at same time it sold property under a conditional sales contract as part of one simultaneous transaction did not abandon its right to retain title to the property under the conditional sales contract and substitute therefor a mere lien with title passing to buyer, where it was intention of parties that title should be retained by seller. Id.

Warranty, Breach of.

Where property in possession of buyer under conditional sale contract was not in accordance with the warranty, express or implied, in the contract, and due notice of breach of warranty was given to seller, buyer was not in default for refusing to make further payment until compliance with warranty, and hence seller could not maintain replevin for the goods while the breach of warranty persisted. Capitol Refrigerator Co. v. Schmidt, 1939, 3 A.2d 603, 121 N.J.L. 581.

Where conditional sales contract recited that seller should not be bound by any warranties not written at foot of contract and signed by duly authorized representative of seller and that buyer would pay the contract irrespective of any imperfections in equipment or any breach of alleged representations, defense of breach of warranty was not available to buyer in action against buyer by assignee of contract to recover balance due under contract. Glens Falls Nat. Bank & Trust Co. v. Sansivere, 1955, —— Misc. ——, 136 N.Y.S.2d 672.

Agreement in conditional sale contract that buyer shall not assert a defense or counterclaim on account of breach of warranty or otherwise as against assignee of contract is generally binding on buyer so far as assignee in good faith is concerned. Id.

Complaint, which alleged a breach of warranty in that automobile purchased by plaintiff from automobile dealer was in fact inferior and defective rather than a first class automobile as represented by dealer, did not state a cause of action against manufacturer of the automobile. MacDonald v. Packard Rochester, Inc., 1954, 206 Misc. 16, 132 N.Y.S.2d 322.

Under conditional sales contract expressly providing that title to air conditioning equipment should not pass to buyer until purchase price was fully paid in cash, "property" in equipment did not pass to buyer, and buyer could set up as a defense in seller's action to recover price seller's failure to comply with an express warranty, and he was not required to avail himself of the remedy of rescission or counterclaim for damages for breach of warranty. Pullen v. Johnson, 1940, 67 S.D. 173, 290 N.W. 488, 130 A.L.R. 747.

As respects defense in seller's suit for price, a conditional sales contract expressly providing that title to air conditioning equipment should not pass to buyer until purchase price was fully paid in cash was a "contract to sell" within S.D.C. 54.0101, 54.0111(2), 54.0201, providing that, where property in goods has not passed, buyer may treat fulfillment by seller of obligation to furnish goods as described and as warranted in the contract to sell as a condition of buyer's obligation to perform his promise to accept and pay for goods. Id.

In seller's action against buyer to recover full purchase price of air conditioning equipment under an acceleration clause contained in conditional sales contract, whether there was a breach of seller's express warranty

guaranteeing that equipment would cool buyer's theater ten degrees below normal room temperature existing at the time was for jury. Id.

As respects defense in seller's suit for price, under a conditional sales contract expressly providing that title to air conditioning equipment should not pass to buyer until purchase price was fully paid in cash, "property" in equipment had not passed, and under S.D.C. 54.0111(2), 54.0175, 54.0201, buyer could treat as a condition to his obligation to accept and pay for equipment fulfillment of seller's express warranty guaranteeing that equipment would cool buyer's theater ten degrees below normal room temperature existing at the time. Id.

In rescission of conditional sales contract for fraud or breach of warranty or for any other cause, seller is entitled to return of his property and the buyer to any payments made thereon. California Steel Products Co. v. Wadlow, 1942, 58 Ariz. 69, 118 P.2d 67.

The definition of "seller" in section 1 read in connection with this section, declaring seller liable for breach of implied warranty, whether or not property in goods has passed to buyer, subjects assignee of conditional sales contract and purchase-money notes to defense of breach of implied warranty in assignee's action on notes. General Electric Contracts Corporation v. Heimstra, 1943, 69 S.D. 78, 6 N.W.2d 445.

The definition of "seller" in section 1 as person who sells goods or any "legal successor in interest" of such person, read in connection with this section, subjects assignee of conditional sales contract and purchase-money notes to defense of breach of implied warranty in assignee's action on notes. Id.

Breach of contract.

Where buyer entered into agreement for purchase of certain machinery and executed necessary instruments in blank to be completed by sellers in accordance with such agreement, sellers' act of filling in instruments so that they provided for a different method of paying balance owed than had been agreed upon amounted to breach of the contract. Ench Equipment Corp. v. Lorenzo, 1953, 23 N.J.Super. 63, 92 A.2d 480.

Title of Purchaser.

Where under provisions of conditional sales contract, seller retained title and conveyed only possession of truck to buyer, buyer did not obtain any absolute property or property rights in the truck, but received only a qualified property right or interest therein, which right or interest was subject to contract terms. U. S. v. Anders Contracting Co., D.C.S.C.1953, 111 F.Supp. 700.

An executory conditional contract for sale of personalty, however unique, does not transfer any interest in the property. Heyden Chemical Corp. v. Clark, D.C.N.Y.1948, 85 F.Supp. 919.

Where no mention was made in oral conversations, which constituted either oral sale contracts or negotiations leading to such contracts with respect to reservation of title in the seller, the retention by corporation of invoices which seller subsequently sent and which purported to reserve title in the seller, did not have effect of reserving title in the seller. I. Ohner & Co. v. All Am. Clothes, 1955, —— Misc. ——, 137 N.Y.S.2d 109.

The Conditional Sales Law does not change the terms or character of the title which a purchaser acquires but merely confirms and validates his rights according to the terms of his agreement. Joseph T. Ryerson & Son v. A. V. O'Donnell, Inc., 1938, 253 App.Div. 1, 1 N.Y.S.2d 608, reversed on other grounds, 1939, 279 N.Y. 109, 17 N.E.2d 788, reargument denied 279 N.Y. 789, 18 N.E.2d 870.

Under a "conditional sales contract" when the buyer performs the conditions of the sale his title becomes absolute. W. K. Wetherill & Co. v. Scheffel, 1941, 144 Pa.Super. 165, 18 A.2d 680.

Under this Act, buyer's rights are "property rights" and not mere "contract rights" and seller retains title solely for security, but other attributes of ownership belong to the buyer. Landis Machine Co. v. Omaha Merchants Transfer Co., 1943, 142 Neb. 389, 9 N.W.2d 198.

In conditional sales, the title is held only for security and when a vendor gets the whole amount due him, together with interest, costs and attorney's fees, he has recovered all he is equitably entitled to under his contract and should not be permitted to resume possession of the property sold and retain the initial payment and recover in addition damages for detention. U. S. Machinery Co. v. International Metals Development, 1946, 74 Cal.App.2d 5, 168 P.2d 37.

Conditional buyer after paying more than three-fourths of purchase price acquired equitable interest in property and such interest was transferable by bill of sale subject only to lien for balance of purchase money then due. Tildesley Coal Co. v. American Fuel Corp., 1947, 130 W.Va. 720, 45 S.E.2d 750.

As far as the purchaser of an automobile from a conditional vendee, and and far as any attaching creditors of the vendee intervening before the transfer of the vendee's title to the purchaser has been effectuated under the motor vehicle law are concerned, the title reserved by the conditional vendor automatically passes to the vendee under the contract and by operation of law without further consent or acts on the part of the vendor where the vendee or his purchaser as the implied agent of the vendee pays the balance due on the contract, or otherwise fully satisfies the vendee's contract obligation which is accepted as such by the vendor whose conduct with respect thereto is entirely repugnant to any further retention of title by him. Hess v. Paulo, 1951, 38 Haw. 279.

Damage to Property, Recovery for.

The right of a conditional seller to maintain an action for damages occasioned to the subject matter of the sale by the negligence of a third person depends on the right of possession at the time of the injury complained of. Gas City Transfer Co. v. Miller, 1939, 107 Ind.App. 210, 21 N.E.2d 428.

Redemption.

The parties to a conditional sale have divided property interests in the goods, with the buyer being the beneficial and substantial owner, with such attributes of ownership as possession, use and control, and an equity of redemption upon retaking by the seller, who has a reserved title to the goods solely as security for payment or performance by the buyer. Schnitzer v. Fruehauf Trailer Co., 1954, 283 App.Div. 421, 128 N.Y.S.2d 242, affirmed 307 N.Y. 876, 122 N.E.2d 754.

A conditional sales contract does not freeze a transaction so that it may not be modified, but the seller may waive his claim to title in the article sold, and buyer has a right of redemption after default. Fish v. Connecticut Fire Ins. Co., 1942, 241 Wis. 166, 5 N.W.2d 779.

Implied Warranty of Fitness.

The provision of Uniform Sales Act, § 15, that where buyer informs seller of purpose for which goods purchased are required and relies on seller's skill or judgment, there is "implied warranty" that goods shall be reasonably fit for such purpose, applies to conditional sale. General Electric Contracts Corporation v. Heimstra, 1943, 69 S.D. 78, 6 N.W.2d 445.

Venue.

The Delaware Code 1935, § 3535, providing that offense of desertion or nonsupport is committed in any county in which such wife, child or children may be at time such complaint is made is intended solely as an intrastate venue determination applicable only to those matters of venue of a local nature. In re Alexander, 1944, 3 Terry 461, 36 A.2d 361.

Jurisdiction.

Equity had jurisdiction of buyer's bill for relief from forfeiture claimed by seller on ground that payment was not made within time required by automobile conditional sales contract, on ground of subsequent parol waiver by seller of strict time of performance and to require seller to surrender to buyer automobile and bond plate which plate was necessary for operation of automobile as taxicab on tender of required payment. Turner v. Williams, 1945, 311 Mich. 563, 19 N.W.2d 100.

Possession of Buyer.

Under McKinney's Personal Property Law, § 60 et seq., parties to a conditional sale have divided property interests in the goods, buyer being the beneficial and substantial owner, with such attributes of ownership as possession, use and control, with equity of redemption, and seller reserves title solely as security for payment or performance by buyer. International Harvester Credit Corp. v. Goodrich, 1956, 76 S.Ct. 621, 350 U.S. 537, 100 L.Ed. 681.

Conditional seller who refused surrender of automobile and bond plate which plate was necessary for operation of automobile as taxicab, on tender of agreed purchase price, was required to do so upon deposit by buyer of purchase price with the clerk of court. Turner v. Williams, 1945, 311 Mich. 563, 19 N.W.2d 100.

A purchaser under a conditional sale contract may keep the goods upon payment of any balance due, after court determines the amount of any damages buyer has sustained by breach of warranty by seller, and, whatever may be the nature of the action brought, the equities between the parties should be adjudicated in the one action. U. S. Machinery Co. v. International Metals Development, 1946, 74 Cal.App.2d 5, 168 P.2d 37.

Evidence

In action by buyer against sellers for breach of conditional sale contract wherein sellers counterclaimed contending buyer had breached the agreement, evidence supported determination that it had been sellers rather than buyer, who had breached the agreement. Ench Equipment Corp. v. Lorenzo, 1953, 23 N.J.Super. 63, 92 A.2d 480.

In buyer's suit for replevin of a truck taken by sellers following buyer's failure to pay purchase price under sales contract whereby buyer was to receive sellers' entire retail fuel oil business including the truck, evidence offered by buyer that sellers often ignored orders for oil, to show that sellers had no fuel oil business to sell, was irrelevant and was properly excluded. Hahn v. Andrews, 1952, 370 Pa. 65, 87 A.2d 284.

In action by buyer under conditional sales contract against seller of dairy business for value of cattle which were allegedly lost while business was still under supervision or seller, evidence was insufficient to show that there had been loss of cattle during period alleged. Lunny v. Labrucherie, 1951, 130 Cal. App.2d 865, 230 P.2d 427.

Replevin

A buyer may maintain an action of replevin for goods sold to him even if he never had actual possession, but question is always one of intention of parties, and if jury finds that intention of parties is that upon nonpayment of a balance due upon contract, seller has right to possession, buyer may not maintain an action of replevin even though there has been physical delivery of the subject matter. Hahn v. Andrews, 1952, 370 Pa. 65, 87 A.2d 284.

In buyer's suit for replevin of a truck taken by sellers following buyer's failure to pay purchase price, where under the sales contract sellers specifically retained title to the truck as security for balance of purchase price, buyer could not complain because sellers gave him more time than buyer was entitled to before sellers took the truck. Id.

Forfeiture

Default by buyer does not operate automatically as a forfeiture of his rights under conditional sales contract in absence of affirmative action by seller who may either avoid contract or waive the default, and until exercise of seller's option to declare a forfeiture buyer has the right to pay the purchase price and retain the property purchased. Farm Bureau Mut. Ins. Co. of Ind. v. Emmons, 1952, 122 Ind.App. 440, 104 N.E.2d 413.

Seller by accepting an installment of the purchase money after default recognizes conditional sales contract as still subsisting and waives the default and repeated waivers of default by accepting delayed payments will bar seller's right to assert a forfeiture for any payment not made at the time stipulated in contract unless prior thereto seller has given notice to buyer that he will be held to original terms of contract and buyer has had a reasonable opportunity to comply therewith. Id.

§ 3. Primary Rights of Seller.

Case Notes

Assignee as Seller.

Transfer by the conditional seller of his interest is not prohibited by the Uniform Act, and the right so to transfer is recognized by the words "successor in interest" in the definition of "seller" contained in this section. General Motors Acceptance Corp. v. Smith, (1925) 101 N. J. L. 154, 127 Atl. 179.

A conditional sale agreement is assignable by the seller and such an assignment transfers to the assignee the reservation of property contained in the agreement. In re B. & B. Motor Sales Corp., (1922) 277 Fed. 808 (construing New Jersey act), holding that by such an assignment the right of the assignee to the property sold was superior to the rights of the seller or his creditors.

Conditional buyer of equipment, which signed conditional sales contract by which it agreed not to assert counterclaims or offsets as against assignee of

contract, was estopped from asserting as defenses against assignee of contract alleged breach of warranties and guarantees by seller which had assigned contract. Chemical Bank New York Trust Co. v. Blane's Inc., 1963, 39 Misc.2d 15, 239 N.Y.S.2d 758.

Where contract of conditional sales is complete on its face and purports to contain the entire contract between parties, assignee thereof is not liable to conditional buyer for subsequent breach of some independent agreement which, though relating to goods sold, is not a part of contract assigned by seller, provided, of course, assignee takes assignment in good faith and without intent to defeat any rights of buyer. Id.

A buyer who made payments directly to seller after receiving notice of assignment and statement from assignee reciting assignment of bills was liable to assignee for amount which seller failed to turn over to assignee. Whitehall Mercantile Corp. v. Wellbilt Corp., 1962, 36 Misc.2d 788, 233 N.Y.S.2d 10.

Notice by judgment debtor to sheriff who levied on automobile that debtor had purchased the automobile under motor vehicle retail installment contract and that seller's assignee claimed title was not notice to judgment creditor and did not preserve assignee's rights. Yantzi v. Manzer, 1961, 30 Misc.2d 770, 219 N.Y.S.2d 47.

Upon assignment of automobile conditional sales contract by conditional vendor to finance company, title to automobile vested in finance company, and conditional vendee had only a right of possession therein. De La Uz v. Car Val Motors Co. 1960, 24 Misc.2d 168, 198 N.Y.S.2d 476.

Assignee of conditional seller has all rights of his assignor. Snyder v. Gruder, 1959, 17 Misc.2d 558, 185 N.Y.S.2d 110.

Assignee of seller under conditional sales contract is the legal successor in interest of the seller and is the seller. Glens Falls Nat. Bank & Trust Co. v. Saasivere, 1955, 136 N.Y.S.2d 672.

Conditional seller may assign his interest to third party. Canandaigua Nat. Bank & Trust Co. v. Commercial Credit Corp., 1954, 285 App.Div. 7, 135 N.Y.S.2d 66.

Upon absolute and unconditional assignment of conditional sales contract by seller, assignee becomes legal owner of contract, acquiring all right, title and interest in property described in contract, together with any remedies to which seller is entitled. Royal Indem. Ins. Co. v. Shue, 1962, 134 Ind.App. 322, 182 N.E.2d 796.

A transfer of his rights by a conditional seller divests him of all interest in the goods which become the property of the transferee subject to the provisions of the Uniform Act. Western States Securities Co. v. Mosher, (1925) 28 Ariz. 420, 237 Pac. 192 (not subject to landlord's lien against original seller).

An assignment of a conditional sale agreement vests in the assignee ownership of the article sold. Karby v. Western States Securities Co., 1926, 31 Ariz. 104, 250 Pac. 766 (no reference to Uniform Act).

Conversion.

Assignee's acquisition of seller's title after conversion of article sold under conditional sale contract held not sufficient to support action. Bofird v. Brylinski, (1925) 101 N.J.Law, 144, 127 A. 194 (no reference to Uniform Act).

Vendor of furniture under conditional sales contract which was in default was not liable for unlawful entry or conversion in repossessing furniture by removing it from vendee's apartment after being admitted by vendee's cotenant. Rock v. Automo's, Inc., 1963, — Del.Super. —, 191 A.2d 651, affirmed in part, reversed in part 197 A.2d 737.

Where sheriff's original possession of conditionally sold automobile, seized under attachment against buyer, was lawful, buyer's subsequent default in payments could not make possession unlawful, and demand was prerequisite to seller's action for conversion. Universal Credit Co. v. Knights, (1932) 145 Misc. 876, 261 N.Y.S. 252.

Assignee of conditional sales vendee was not entitled to maintain action for conversion of refrigerators upon which there remained an unpaid balance, where title was retained by vendor. Grant v. Atlantic Assets (1937) 163 Misc. 728, 298 N.Y.S. 215.

Where conditional seller had actually converted trucks by causing sale and delivery thereof to a third party, prior demand by buyer was not a condition precedent to right to bring suit in trover. Spatuzzi v. Star Auto Truck Exchange, 1938, 119 N.J.Law 377, 196 A. 723.

Where a third party purchases personalty from the buyer under a conditional sales contract, reserving title in the seller, the seller is entitled to maintain an action of trover or conversion against the third party. Tri-County Finance v. Miller, 1954, 65 N.W.2d 39, 267 Wis. 174.

Fraud.

In a suit by the assignee of the conditional seller of a truck to replevin the truck, fraud perpetrated on the vendee by the seller may be set up as a defense. Auto Brokerage Co. v. Ullrich, (N. J. 1926) 134 Atl. 885 (no reference to Uniform Act).

Where conditional sales contract which is claimed to have been fraudulently obtained, contains clause waiving defense of fraud, the fraud which vitiates the contract also vitiates the waiver of defense clause, and even if the fraud alleged is proved, so that there can be no estoppel by contract, agreement not to plead defense of fraud against assignee may serve as basis of estoppel by conduct. President and Directors of Manhattan Co. v. Monogram Associates, 1949, 276 App.Div. 766, 92 N.Y.S.2d 579, appeal dismissed 300 N.Y. 677, 91 N.E.2d 328, reargument and appeal denied 276 App.Div. 870, 93 N.Y.S. 2d 923.

In replevin for automobile by assignee of conditional sales contract against buyer, evidence, establishing that that part of contract which was in unnecessarily fine type was not material to issues at bar, and that buyer, who was a 70 year old woman, read material part of contract, and failing to establish attempt by seller's agents to misstate or conceal terms of contract or mislead buyer, did not establish defense on ground of fraud. Universal Credit Co. v. Lowell, 1938, 166 Misc. 15, 2 N.Y.S.2d 743.

Distress for Rent.

This section does not change the rule that all goods found on demised premises are subject to distress for rent, and accordingly goods in the possession of a conditional buyer on demised premises are so subject. In re Brittingham Candy Mfg. Co., (1924) 1 F. (2d) 489 (construing Delaware act).

Modification of Contract.

A modification of the contract, made after an assignment by the seller, is good as against the assignee if the buyer has no notice of the assignment. Hare v. Volansky, (1926) 126 Misc. 26, 215 N. Y. S. 168 (no reference to Uniform Act).

Buyer's Receiver.

Provision that title to machine should remain in seller until payment of price and all other sums due or to become due to seller held effective, as against buyer's equity receiver, to extent of requiring payment of price and repair items, but not of open account not related to sale. Bucyrus-Erie Co. v. Casey, (1932) 61 F.(2d) 473 (construing Pennsylvania Act).

Payment.

Ordinarily, at moment assignee of conditional sales contract made charge back against assignor's dealer reserve account of unpaid balance due on assigned contract, assignor was entitled to have contract reassigned to him. Albany Discount Corp. v. St. Dennis, 223 N.Y.S.2d 668, 5 A.D.2d 707.

Note is not payment under conditional sales contract, if not so intended. Lyle Culvert, etc., Equipment Co. v. J. F. Anderson Lumber Co., (1923) 46 S.D. 366, 193 N.W. 58.

Under conditional contract of sale failure of buyer to include in tender a small amount of interest due did not render the tender insufficient.—U. S. Machinery Co. v. International Metals Development, 1946, 74 Cal.App.2d 5, 168 P.2d 37.

Loss of Title.

The seller does not release his reserved title by assigning the purchase money note. Van Marel v. Watson, (1925) 28 Ariz. 32, 235 Pac. 144.

Seller of automobile, covered by conditional sales contract, theretofore bought and paid for by another in good faith, had no title or interest therein. C. I. T. Corp. v. First Nat. Bank, (1928) 33 Ariz. 483, 266 P. 6.

Waiver.

Assignment by seller as payee of note guaranteed by him, together with conditional sales contract securing note, held not waiver of title to goods sold. Van Marel v. Watson, (1925) 28 Ariz. 32, 235 P. 144.

Buyer's delinquency in payments, during which time seller did not know or learn where truck was, not a waiver of seller's reserved title under conditional sale. Bradshaw v. Kleiber Motor Truck Co., (1925) 29 Ariz. 293, 241 P. 805.

Agreement by conditional seller of refrigerator to exchange it for another constituted waiver of right to enforce original contract under which on default in payment he could seize and sell refrigerator, credit amount received, and recover balance of price. Weller's Inc., v. Applegate, (1934) 112 N.J. Law, 388, 170 A. 849.

A renewal or extension of time of payment of conditional sales contract does not constitute a waiver by seller of his reservation of title to goods covered by the contract. Tri-County Finance v. Miller, 1954, 65 N.W.2d 39, 267 Wis. 174.

Where conditional seller knew that conditional buyer of hogs had sold and disposed of the hogs to third party, but seller nevertheless gave buyer an extension of time in which to pay for the hogs, the seller waived any right to proceed against the third party for conversion by electing to hold the buyer liable. Id.

A conditional sales contract does not freeze a transaction so that it may not be modified, but the seller may waive his claim to title in the article sold, and buyer has a right of redemption after default. Fish v. Connecticut Fire Ins. Co., 1942, 241 Wis. 166, 5 N.W.2d 779.

Pleading.

Discount corporation maintaining action on retail installment contract for purchase of $29.30 battery failed to prove to satisfaction of court that it met statutory prerequisites to entitle it to judgment for $128.80 assertedly due after buyer had paid $23.25 on debt he defaulted and his automobile which was additional security for debt was taken and sold at auction and the complaint would be dismissed. Imperial Discount Corp. v. Aiken, 1963, 38 Misc.2d 187, 238 N.Y.S.2d 269.

Conditional seller's complaint against sheriff to recover possession of automobile held defective in that it did not state that vendee was in default at time levy was made. Cohocton Garage v. Kellogg, (1930) 136 Misc. 283, 240 N.Y.S. 642.

Damage to Property, Recovery for.

The assignee of a conditional seller of an automobile had a sufficient interest in the automobile under R.S.1937, 46:32–1 et seq., to maintain an action founded on negligence against a third person to recover damages caused the automobile while it was in possession of the conditional buyer, who had not defaulted in the performance of his conditional sales contract. First Nat. Acceptance Corporation v. Annett, 1940, 124 N.J.L. 78, 11 A.2d 106, affirming 121 N.J.L. 356, 2 A.2d 650.

As against a third person, a conditional seller or his assignee has sufficient interest in chattel sold to maintain an action to recover damages to that chattel, even though the damages were inflicted prior to any default under the conditional sale contract. Id.

Where plaintiff purchased automobile under conditional sales contract that was acquired by finance company which took out collision policy, and, while payments were still owing, automobile was involved in a collision with an automobile of one who had a liability policy with defendant, and finance company settled with its insurer for part of the claim against plaintiff for balance due, finance company and its insurer had no right to intervene as parties plaintiff in action to recover amount due under compromise and settlement agreement between plaintiff and defendant, either on ground that finance company's insurer had a right to be subrogated, or that plaintiff was a trustee, or that finance company and its insurer were creditors of plaintiff. Lubowicki v. Travelers Ins. Co., 1939, 18 N.J.Misc. 19, 8 A.2d 842.

The right of a conditional seller to maintain an action for damages occasioned to the subject matter of the sale by the negligence of a third person depends on the right of possession at the time of the injury complained of. Gas City Transfer Co. v. Miller, 1939, 107 Ind.App. 210, 21 N.E.2d 428.

The rights of a conditional seller and a conditional buyer with respect to recovery from a third person for the injury to or loss of the chattel cannot be affected by subsequent defaults in the performance of the conditional sales contract. Id.

The right of a conditional seller to maintain an action for injury to or loss of the chattel against a third person depends on the seller's right to pos-

session thereof at the time of the wrongful act of the third person, and, in absence of showing that seller was entitled to possession of the property, he cannot maintain an action for damages. Id.

If by default of a conditional buyer, the conditional seller becomes entitled to possession of the property, then, ordinarily, the conditional buyer has no further right, title, or interest therein, and the conditional seller may maintain an action against a third person for the full amount of the loss of the property as a result of the third person's negligence. Id.

In absence of a default by a conditional buyer, a conditional seller's rights with respect to an action against a third person who has caused injury to or loss of the subject matter of the sale are determined by the contract of sale. Id.

Where conditional seller seeking to recover from third person for the destruction of a truck which had been sold under a conditional sale, and which was destroyed by fire after collision, failed to introduce evidence tending to show that the conditional buyer was in default in his payments for the truck, no recovery could be had. Id.

Breach by Vendor after Assignment.

Generally, where contract of conditional sale is complete on its face and purports to contain entire contract between parties, assignee thereof is not liable to conditional buyer for subsequent breach of some independent agreement, which, though relating to goods sold, is not part of contract assigned by seller. Glens Falls Nat. Bank & Trust Co. v. Sansivere, 1955, 136 N.Y.S.2d 672.

Generally, where contract of conditional sale is complete on its face and purports to contain entire contract between parties, assignee thereof is not liable in an independent action for subsequent breach of some independent agreement of such seller, nor does such breach furnish a proper counterclaim or defense against assignee's right to recover on contract, provided that assignee takes assignment in good faith without intent to defeat any rights of buyer. Id.

Where buyer agreed, in conditional sale contract for sale of heating device, not to assert any defense or counterclaim buyer might have against seller, as against assignee of the contract, the buyer could not, as against assignee, contend that performance of conditional sale contract was dependent upon performance on part of seller of a separate agreement to supply buyer with coal at stated price. National City Bank of New York v. Prospect Syndicate, 1939, 170 Misc. 611, 10 N.Y.S.2d 759.

A conditional sale contract for sale of heating device and an instrument simultaneously executed, under which seller agreed to supply buyer with coal at stated price, were construable as constituting separate agreements, under which assignment of conditional sale agreement to finance the sale was contemplated, and as requiring buyer to make installment payments to assignee of conditional sale contract, regardless of seller's default under the agreement to supply coal. Id.

Where conditional sale contract for sale of heating device provided that all its provisions were contained in the contract and that no promise would be binding upon seller unless indorsed in writing thereon, buyer, who certified by executing "installation certificate" that conditional sale contract had been fully and satisfactorily performed, was estopped to claim, as against assignee of the conditional sale contract, that such contract was dependent upon performance of separate agreement of seller to supply buyer with coal, or that buyer was induced by misstatements of fact to sign the instruments. Id

Injury by Third Parties, Recovery.

As against a third person, a conditional seller or his assignee has sufficient interest in chattel sold to maintain an action to recover damages to that chattel, even though the damages were inflicted prior to any default under the conditional sale contract. First Nat. Acceptance Corporation v. Annett, 1938, 121 N.J.L. 356, 2 A.2d 650, affirmed, 1940, 124 N.J.L. 78, 11 A.2d 106.

The assignee of a conditional seller of an automobile had a sufficient interest in the automobile under R.S.1937, 46:32–1 et seq., to maintain an action founded on negligence against a third person to recover damages caused the automobile while it was in possession of the conditional buyer, who had not defaulted in the performance of his conditional sales contract. Id.

Use of Property, recovery for

Where contract for sale of machinery provided that upon buyer's default the amount paid by buyer should be retained as rental for the use of the machinery, but the machinery as delivered was not assembled and had no rental value, court improperly awarded seller damages for the use thereof, in addition to the machinery and the amount paid thereon. U. S. Machinery Co. v. International Metals Development, 1946, 74 Cal.App.2d 5, 168 P.2d 37.

Replevin.

In replevin action for recovery of automobile which plaintiff sold and delivered to third party who sold it to defendant, facts and circumstances concerning plaintiff's sale to third party were such as to constitute contract of conditional sale clothing third party with power to transfer title, and evidence likewise established that defendant was bona fide purchaser for value without notice, actual or constructive, or knowledge of conditional sale. Smith v. Parr Motor Sales, 1952, 279 App.Div. 1118, 112 N.Y.S.2d 329, affirmed 305 N.Y. 615, 111 N.E.2d 734

On buyer's default, replevin is available to conditional seller, but procedure in such action must be construed so as not to violate the remedial provisions of statute governing conditional sales. Kahl v. Winfrey, 1956, 81 Ariz. 199, 303 P.2d 526.

In replevin action by conditional seller of harvester and tractor, wherein buyer's counterclaim alleged that seller had agreed to take back the harvester and allow buyer a credit therefor, buyer had burden of sustaining such contention by fair preponderance of evidence. Id

Owner selling automobile conditionally subject to receiving of full payment of purchase price and transferring possession of automobile and its title, would not be allowed to replevin automobile from innocent purchaser of vendee for value without notice if he should be unable to collect purchase price. Kelsoe v. Grouskay, 1950, 70 Ariz. 152, 217 P.2d 915.

Evidence

In action in replevin to recover possession of personal property which was used in plaintiffs' dry cleaning business and which was sold to defendant under written conditional sales contract, evidence was insufficient to show that defendant was in default on the contract. Whelchel v. Barton, 1952, 122 Ind. App. 81, 102 N.E.2d 917.

Breach of contract

Failure of buyer to execute notes required in connection with conditional sale of certain equipment was not a breach of conditional sales contract where sellers did not, as promised, deliver notes to buyer for execution. Ench Equipment Corp. v. Lorenze, 1953, 23 N.J.Super. 16, 92 A.2d 480.

§ 4. Conditional Sales Valid Except as Otherwise Provided.

CASE NOTES

Construction

This section is clearly an acceptance of the common-law rule except as it may be modified in relation to the rights of third persons by the requirements of filing the contract as provided in subsequent sections. Under it where there has been a compliance with the statutory requirements of filing, every provision in a conditional sales contract is valid as to all persons, and, therefore, it would seem that the rights of a conditional vendor in property sold under a conditional sales contract would be the same as in any other chattel owned by him, subject always, however, to the provisions of the contract. Starr v. Govatos, (1925) 3 W. W. Harr. (Del.) 66, 130 Atl. 392.

Effect on Former Law.

This section is a legislative declaration which completely reverses the common law of Pennsylvania. In re Collins Hosiery Mills (D.C.Pa.1937) 19 F Supp. 500.

Delivery.

Valid conditional sale necessitates delivery vesting possession in buyer. Burnett County Abstract Co. v. Eau Claire Citizen's L. & I. Co., (1934) 216 Wis. 35, 255 N.W. 890.

"Property."

"Property" rights under this section partake of the nature of a lien, or pledge, although they are none the less recognized by law. In re Baker (1932) 5 W.W.Harr.(Del.) 198, 162 A. 356.

Validity as to Persons.

As between buyer and seller a conditional sale agreement is valid though not recorded. In re B. & B. Motor Sales Corp. (1922) 277 Fed. 808 (construing New Jersey act), holding that an unrecorded conditional sale agreement was valid as between the buyer and the creditors of the seller represented by a receiver in bankruptcy.

Presumptions.

"A conditional sales contract is presumptively valid as against the world, and the person attacking the validity of the seller's reservation of title must show that his case falls within one of the exceptions mentioned in section 4." Continental Bank, etc., Co. v. Webster Hall Corp., (1932) 4 F.Supp. 337, affirmed (1933) 66 F.(2d) 558 (construing Pennsylvania Act).

In Pennsylvania, a conditional sales contract is presumptively valid against all the world, and any one attacking its validity must show that his case falls within one of exceptions mentioned in sections 5, 7 or 14. In re Collins Hosiery Mills (D.C.Pa.1937) 19 F.Supp. 500.

Buyer as Agent.

Where buyer entered into conditional sale contract for benefit of corporation which he and others were then in process of organizing, and contract contained no provision authorizing corporation when formed to be substituted in buyer's place, but provided that in case of assignment buyer's personal obligation should continue, buyer was not agent of undisclosed buyer known to seller, but was actual "buyer" within conditional sales act, as regards enforceability of contract against buyer's transferee. In re Collins Hosiery Mill (D.C.Pa.1937) 19 F.Supp. 500.

Provisions Accelerating Maturity.

A conditional sale contract may without offending public policy provide for acceleration of price payment on buyer's refusal to accept the goods or to make the payments provided for, notwithstanding that property in the goods has not passed to the buyer. National Cash Register Co. v. Lyon, 1939, 13 N.Y.S.2d 1, 257 App.Div. 273.

Cognovit Clause.

Inclusion of a cognovit clause in a conditional sale contract did not invalidate the contract where the clause was separable without affecting the remainder of the contract and sellers did not attempt to act under the clause but filed their complaint in due form and process issued thereon. Simpson v. Fuller, 1943, 114 Ind.App. 583, 51 N.E.2d 870.

Defenses

Agreement, even though oral, by automobile dealer to take back automobile sold under conditional sales contract and to cancel balance of conditional sales obligation in consideration of buyers' repair of automobile would if established, constitute a defense to action against buyers on contract, in absence of assignment of contract. Associates Discount Corp. v. Commander, 1963, 40 Misc.2d 782, 244 N.Y.S.2d 103.

§ 5. Conditional Sales Void as to Certain Persons.

STATUTORY NOTES

The **Indiana** act omits this section.—See Laws 1935, ch. 182.

The **New York** act was amended in 1938 to conform to this section except that it provides in addition that the "section shall not apply to conditional sales of goods for resale."—See Laws 1938, c. 628; McKinney's Personal Property Law, § 65.

Panama Canal Zone. Omits "unless such contract or copy is so filed within ten days after the making of the conditional sale" at end of section, and adds sentence reading: "This section shall not apply to conditional sales of goods for resale". 4 C.Z.C. § 1575.

The **Wisconsin** act was amended in 1935 by adding a subdivision prohibiting the amendment of a conditional sales contract for sale of household goods, clothing, farm machinery, food, automobiles and auto trucks, to include a later sale of such goods or articles. See Laws 1935, c. 67.

CASE NOTES

I. GENERALLY.
II. FILING.
III. PRIORITY AMONG PARTIES.

I. GENERALLY.

Construction.

McKinney's Personal Property Law, §§ 65, 66-a, relating to filing of conditional sales contract are for benefit of creditors and bona fide purchasers and are construed strictly against parties to contract and with liberality as to those for whose protection the statutes were enacted. In re Amity Dyeing & Finishing Co., D.C.N.Y.1962, 200 F.Supp. 823, affirmed 304 F.2d 831.

The rule laid down by this section, that an unrecorded conditional sales contract shall be void as to one purchasing from a conditional buyer without notice, is not affected by the provisions of the Uniform Sales Act, section 23. Anchor Concrete Machinery Co. v. Pennsylvania Brick, etc., Co., (1928) 292 Pa. 86, 140 Atl. 766.

This section provides no protection to one purchasing from persons other than conditional vendee. Associates Discount Corp. v. Davis Motor Sales, 1949, 275 App.Div. 745, 87 N.Y.S.2d 757.

Provisions of section under New York Act made inapplicable to conditional sales of goods for resale. Meisel Tire Co. v. Mar-Bel Trading Co., (1935) 155 Misc. 664, 280 N.Y.S. 535.

Where owner of lunchonette business in which carbonator was installed was not owner, purchaser, or mortgagee of realty, this section, not section 7, applied. Russ Soda Fountain Co. v. Desind, (1934) 150 Misc. 568, 268 N.Y.S. 452.

This section, being in derogation of the common law, should not be carried beyond the clear import of its language. Quinn v. Bancroft-Jones Corp., (1927) 18 F. (2d) 727 (construing New York act).

This section does not apply to sales of property in another state. Braushaw v. Kleiber Motor Truck Co., (1925) 29 Ariz. 293, 241 Pac. 305; Goetschius v. Brightman, (1925) 214 App. Div. 158, 211 N. Y. S. 703.

A warehouseman does not fall under any of the classifications protected by this section. Bloomingdale Bros., Inc. v. Cook, (1930) 8 N. J. Misc. R. 824, 152 Atl. 666.

A purchaser at a mortgage foreclosure sale is within the protection of this section. Babbitt, etc., Live Stock Co. v. Hooker, (1925) 28 Ariz. 263, 236 Pac. 722.

This section covers all classes of chattels except goods purchased for resale. Chasnov v. Marlane Holding Co., Inc., (1930) 137 Misc. 332, 244 N.Y.S. 458.

This section operates only in favor of buyer's vendee or creditor, who, without notice of contract, purchases goods or acquires lien thereon by attachment or levy before contract is filed. In re Tonawanda Brewing Corporation, (D.C. N.Y.1936) 13 F.Supp. 345.

Prior Law.

The common law rule that an unrecorded conditional sales contract is good as against one acquiring title to, or a lien upon, the property from the conditional buyer remains unchanged except for the provisions of this section. Banker's Capitol Furniture Co. v. Hall, (1932) 11 N. J. Misc. 13, 163 Atl. 556.

Under the New York Uniform Conditional Sales Act the common-law rule that property held by conditional buyer is property of conditional seller until contract price is paid prevails, except as to purchaser from or creditor of buyer, who, without notice of contract, purchases goods or acquires by attachment or levy a lien on them before contract or copy thereof is filed. In re Lake's Laundry, (1935) 79 F.(2d) 326, aff (1935) 11 F.Supp. 237.

Conditional sales are valid at common law and are invalid under a recording statute only to the exent that such statute provides. Bay State Merchants Nat. Bank v. Colling, 1958, 101 N.H. 232, 139 A.2d 71.

At common law, and in absence of statute requiring it, filing or recording of conditional sale contract is not essential to its validity against third persons. Champa v. Consolidated Finance Corp., 1953, 231 Ind. 580, 110 N.E.2d 289, 36 A.L.R.2d 185.

At common law, neither title nor interest of conditional vendee could be levied on by his creditors until vendee had complied with condition of pay-

ment of amount due. E. L. Jones & Co. v. Unruh, 1935, 7 W.W.Harr. 241, 182 A. 211.

Purpose.

The theory of the Uniform Conditional Sales Act is that a conditional seller of a fixture should be given protection and allowed to retain title as security for payment of the price, but that in order to retain such title he should be required to give notice adapted as nearly as possible to reaching dealers in real property. In re Brownsville Brewing Co., C.C.A.1941, 117 F.2d 463.

Under the common law title of a seller under a contract of conditional sale could be enforced against all the world, and in order to protect subsequent purchasers and creditors of buyer, Legislature enacted that conditions or reservations in conditional sales contract are void as against subsequent purchasers and creditors of buyer unless contract is filed within ten days after making of conditional sales, but common law rights still exist except as modified by McKinney's Personal Property Law, § 65. Universal C. I. T. Credit Corp. v. Schlossman's, Inc., 1963, 37 Misc.2d 1097, 237 N.Y.S.2d 17, reversed on other grounds 248 N.Y.S.2d 626, 12 Misc.2d 613.

This section has for its purpose the protection of the conditional seller and his assignee against purchasers and creditors of the buyer. C. I. T. Corp. v. First Nat. Bank, (1928) 33 Ariz. 483, 266 Pac. 6.

This section is intended to protect the bona fide purchaser and the creditor without notice, and not those who knew of the conditional contract and its reservation to the seller. Castaneda v. National Cash Register Co., (1934) 43 Ariz. 119, 29 P. (2d) 730.

This section lays down a requirement of public record for the protection of persons who rely on the appearance of absolute ownership which the conditional sale gives to the buyer. Guthrie v. Howe, (1931) 110 W.Va. 164, 157 S.E. 168.

Legislative Intent

In enacting the 75 P.S., §§ 32, 33, 38, the Pennsylvania Legislature meant to deal comprehensively and exclusively with ownership, sale, and financing of motor vehicles, and, therefore, the recordation provision of the 69 P.S. § 402, in so far as it had applied to motor vehicles. In re Miller, D.C.Pa.1953, 107 F.Supp. 1006.

Attachment or Levy.

Exercise by receiver, appointed in proceedings supplementary to judgment under New York Civil Practice Act, § 773 et seq., of his dominion over debtor's property was neither levy upon nor attachment of property and therefore judgment creditor, who had receiver appointed, could not avoid conditional seller's reservation of title to property, by relying upon receiver's exercise of dominion even if seller had not filed his contract, and trustee in bankruptcy stood in no better position than receiver. Sims v. Capitol Refrigeration Co., C.A.N.Y.1961, 294 F.2d 111.

To avoid reservation of title in conditional vendor, one must be either bona fide purchaser for value or one who acquires by attachment or levy lien upon goods sold. Id.

Under McKinney's Personal Property Law, § 65 to effect that unrecorded conditional sales agreement is void as to creditor of buyer who, without notice of such provision, acquires by attachment or levy a lien upon property, trustee in bankruptcy of conditional buyer has status of levying or attaching creditor. In re Crown Cartridge Corp., D.C.N.Y.1962, 220 F.Supp. 914.

Under N.J.S.A. 46:32–11, a conditional sales contract is void as to any creditor who, without notice of reservation of title, acquires by attachment or levy a lien upon chattels before contract or copy thereof is filed. In re Lindsey, D.C.N.J.1955, 131 F.Supp. 11.

Execution, levied on automobiles in dealer's garage for satisfaction of judgment against dealer, was subject to conditional sale contracts, under which two of automobiles were delivered to dealer by manufacturer, and right of credit company, to which manufacturer assigned contracts, equitably passed to finance company paying balance due credit company, which agreed to assign contracts to finance company. First Nat. Bank of Emlenton v. Emlenton Motor Co., 1943, 153 Pa.Super. 404, 34 A.2d 43.

A judgment creditor may levy execution on debtor's personalty claimed by another, where sale thereof has been made and completed and lease of property executed only as collateral security for payment of purchase price, where lease is attempted to be made by one not in possession of leased property, or

where owner of personalty borrows money thereon and attempts to secure loan by executing bill of sale to lender, who executes bailment lease to owner without change of possession. Id.

Words "acquires, by attachment or levy, a lien" have definite meaning and can not be enlarged to include warehouseman's lien. Banker's Capitol Furniture Co. v. Hall, (1932) 11 N.J.Misc. 13, 163 A. 556.

Unrecorded transfer agreement providing that buyer sold all his right, title, and interest in automobile subject to terms of original conditional sales contract and that vendee assumed buyer's obligation as though vendee were original purchaser was a new "conditional sales agreement", and consenting seller's title to automobile was not protected against levy by vendee's judgment creditor. Universal C I T Credit Corp v Schlossman's, Inc 1964, 42 Misc 2d 613, 248 N Y S.2d 626

In proceeding to determine title to automobile, evidence failed to establish that judgment creditor acquired lien by levy of execution without notice of the conditional sales contract McLinden v. McLinden, 1955, 138 N.Y.S.2d 407

Where conditional seller acted in good faith in selling to individual goods which were delivered in first instance to restaurant in which individual was financially interested and in which they remained, and complied with McKinney's New York Personal Property Law, § 66, in filing lien, title to such goods which were levied on under execution against restaurant was in conditional seller who was not estopped from asserting such title by delivering goods to place other than individual's residence. Greenberg v. Rogers Restaurant Corp., 1950, 196 Misc. 951, 96 N.Y.S.2d 601.

Levy or attachment requisite to creation of lien on property conditionally sold must be one evidenced by judicial process at suit of creditor. John W. Snyder, Inc., v. Aker, (1929) 134 Misc. 721, 236 N.Y.S. 28.

Conditional sales contract does not pass title subject to lien of execution, except as to buyer's creditors acquiring lien by levy or attachment before contract is filed. Baker v. Hull, 1929, 250 N.Y. 484, 166 N.E. 175.

Under this section a condition, by which title is reserved in the seller, becomes invalid as to a creditor of the buyer only when such a creditor has acquired a lien, not by issuance of an execution, but through a levy under an execution. Id.

Under this section, failure properly to file a contract renders void condition reserving title to property involved only as against creditors of buyer, who, without notice of such provision, acquire by attachment or levy a lien upon such property. Application of American Optical Co., 1943, 38 N.Y.S.2d 663.

The levy by a judgment creditor of the purchaser on goods conditionally sold the latter does not create a lien thereon, where the sales contract was filed before the creditor obtained or executed his attachment or levy. White v. E. C. McKallor Drug Co., (1933) 239 App. Div. 210, 268 N. Y. S. 371.

A creditor who seized goods under execution by levy thereon, the title to which is reserved to the seller under a conditional sales contract to secure a balance of the purchase price, which contract was recorded prior to such levy of the creditor, but not within 10 days after making the sale, is not a creditor who has acquired by attachment or levy a lien on the goods, within the meaning of this section, although such execution went into the hands of the officer prior to the recordation of such reservation of title. Bent v. H. W. Weaver, Inc., (1928) 106 W. Va. 164, 145 S. E. 594.

That execution was in sheriff's hands would not constitute "levy" without actual levy. Stallknecht v. Gilbert Appliance Corp., (1932) 144 Misc. 626, 259 N.Y.S. 189.

Levy on personalty held valid where deputy sheriff locked door and subsequently placed levy sticker on property involved, notwithstanding he meanwhile permitted another to have key to premises. Id.

The issuance of executions which are not levied before the contract is recorded, or where the sixty days within which they may be levied has expired without a levy before such recording, does not create a lien within the meaning of this section. In re Avlon Syrup Corp., (1928) 25 F. (2d) 342.

Proper levy under attachment upon automobile in hands of conditional buyer, where sheriff was ignorant of seller's reservation of title, and buyer was not in default, held not conversion. Universal Credit Co. v. Knights, (1932) 145 Misc. 876, 261 N.Y.S. 252.

Interest of conditional buyer of chattel not subject to levy and sale under execution. C. I. T. Corporation v. Miklow Realty Corporation, (1935) 157 Misc. 120, 282 N.Y.S. 447

Attachment of automobile held to constitute "lien," within requirement of conditional sales contract that vendee keep car free of all liens and incumbrances. Starr v. Govatos, (1925) 3 W.W.Harr.(Del.) 66, 130 A. 392.

That sheriff and attorney for attachment plaintiff were informed at sale under execution that conditional vendor had claim against property did not affect lien acquired on property by attachment and execution before notice. Harnischfeger Sales Corporation v. Spellman, (1936) 160 Misc. 350, 289 N. Y.S. 352.

Conditional vendee, under contract giving vendor right to repossess goods upon disposition by vendee of his interest without vendor's consent, had leviable interest in goods conditionally sold. E. L. Jones & Co. v. Unruh, 1925, 7 W.W.Harr. 241, 182 A. 211.

Creditor.

Assignee of conditional seller seizing trucks sold held not "creditor" of purchaser where there had been no action to recover purchase price of statutory resale. John W. Snyder, Inc., v. Aker, (1929) 134 Misc. 721, 236 N.Y.S. 28.

A landlord who distrains goods for rent is not a creditor who has acquired "by attachment or levy a lien" on the goods within the purview of this section, and a purchaser of the goods at the sale under the distress proceedings is not entitled to the protection of the statute. Commercial Credit Co. v. Vineis, (1923) 98 N. J. L. 376, 120 Atl. 417.

Purchaser.

Seller of automobile under contract reserving in seller title to automobile until payment held "conditional seller" and not a "lienor" or "purchaser"; hence, under definition of purchaser as including mortgagee and pledgee, seller of automobile did not, under statute rendering unrecorded conditional sales contract void as to purchaser of buyer without notice, through purchasing automobile at auctioneer's sale, acquire title to tires and heater which had been sold under unrecorded conditional sales contract. Meisel Tire Co. v. Mar-Bel Trading Co., 1935, 155 Misc. 664, 280 N.Y.S.2d 335.

Buyer of automobile at auctioneer's sale without notice of unrecorded conditional sale of tires and heater on automobile held, notwithstanding he was conditional seller of automobile, a "purchaser" as to whom reserved title in tires and heater was void under statute so providing, in case of purchaser of buyer without notice of unconditional sales contract. Id.

Where truck conditionally sold is seized for overloading, state is not "purchaser" or "creditor acquiring lien" within statute invalidating conditional sales contract not filed. General Motors Acceptance Corp. v. Haves Motor Co., (1934) 12 N.J.Misc. 384, 172 A. 343.

A state is not, in a condemnation proceeding involving a truck sold under a conditional sales contract, either a creditor or a purchaser. State v. Hall, (1922) 91 W.Va. 648, 114 S.E. 250.

Where a conditional sales contract was filed improperly, in view of section 6 (N. Y. Personal Property Law, § 66, as amended in 1927), it was nevertheless not void as against one claiming a lien under a chattel mortgage which was given by the conditional purchaser before he acquired title to the property and hence was invalid. Such a claimant was neither a creditor having a lien by levy or attachment, nor a purchaser, within the meaning of this section, notwithstanding the definition of "purchaser" in section 1 Pisculli v. Bellanca Aircraft Corp., (1929) 17 Del. Ch. 73, 149 Atl. 418 (construing New York act).

Description of Goods.

Where conditional sales contract referred for description of the goods sold to annexed specifications which were made part of the contract, filing of the contract without the specifications was not valid under McKinney's N. Y. Personal Property Law, § 60 et seq. without reservation of possession. Empire State Chair Co. v. Beldock, C.C.A.N.Y. 1944, 140 F.2d 587, certiorari denied 64 S.Ct. 1278, 322 U.S. 760, 88 L.Ed. 1587.

Where motor number of an automobile was incorrectly given, but the general description was sufficient to identify the car, held there was an adequate description. Huber v. Cloud, (1925) 102 N.J.Law, 181, 130 A. 562.

In describing cattle in conditional sales contract, the use of earmarks, the reference to age, color and breed, locus of farm upon which they are to be kept, and pet name given to the animal, are all helpful but not obligatory. In re Central Park Dairyland, 1942, 179 Misc. 611, 37 N.Y.S.2d 270.

Where conditional sales contract described property as "fixtures as per plans and specifications, the latter marked 'Exhibit A' and attached hereto and made a part hereof", and where such exhibit was not made part of contract as filed, contract was void and filing did not constitute constructive notice of any right, title or interest of conditional vendor in the property. Commercial Service Corp. of Dell Rapids v. L. Paulle-Midway Fixture & Show Case Co., 1956, 75 N.W.2d 310, 76 S.D. 178.

Recorded conditional sales contract covering automobile held insufficient to give third party notice of assignee's interest in attached automobile, where both engine and serial numbers in contract differed from those on attached automobile. C. I. T. Corporation v. Naudack, (1934) 44 Ariz. 413, 38 P.(2d) 310.

Description is sufficient if language puts one on inquiry, leading to knowledge of property intended. Huber v. Cloud, (1925) 102 N.J.Law, 181, 130 A. 562.

Description in contract of conditional sale may be aided by parol evidence. Huber v. Cloud, (1925) 102 N.J.Law, 181, 130 A. 562; C. I. T. Corporation v. Naudack, (1934) 44 Ariz. 413, 38 P.(2d) 310.

Fraud.

This section, requiring conditional sales contracts to be filed within 10 days, is not relevant to a situation where the conditional buyer obtained possession of the goods by fraud, and the seller, on discovering the fraud, could retake possession from one who had acquired a lien by attachment, notwithstanding the contract had not been filed within the 10 day period. General Equipment Co. v. Zein, (1932) 10 N. J. Misc. R. 443, 159 Atl. 400, affirmed in (1933) 110 N.J.Law, 23, 164 A. 20.

Levying Officer as Agent.

An officer making a levy under an execution in accordance with specific directions by the execution creditor as to the goods to be seized, acts as the agent of the creditor, and knowledge on the officer's part that the goods are held by the debtor under a conditional contract of sale is imputed to the creditor. **Lyle Culvert, etc., Equipment Co. v. J. F. Anderson Lumber** Co., (1923) 46 S. D. 366, 193 N. W. 58

Limited Interests of Parties.

Only interest of buyer under conditional sales contract liable to distress by his landlord. Hawley v. Levy, (1925) 99 W.Va. 335, 128 S.E. 735.

Recorded chattel mortgage pledging after-acquired property held to cover electric motor and appurtenances purchased by chattel mortgagor under unrecorded conditional sale contract only to extent of chattel mortgagor's interest therein. Diana Paper Co. v. Wheeler-Green Electric Co., (1930) 228 App.Div. 577, 240 N.Y.S. 108.

Conditional vendee, under contract giving vendor right to repossess goods upon disposition by vendee of his interest without vendor's consent, had leviable interest in goods conditionally sold. E L. Jones & Co. v. Unruh, (1935) 7 W.W Harr. 241, 182 A 211

Conditional buyer of chattel does not have such interest in property as is subject to levy and sale under execution. C. I. T. Corporation v. Miklow Realty Corporation, (1935) 157 Misc. 120, 282 N.Y.S. 447.

Interest of conditional buyer in possession was not leviable under execution in favor of third person. Edwards v. Walker (1937) 162 Misc. 96, 293 N.Y.S. 1007.

Validity as Between Vendor and Vendee.

Recording of conditional sale contract is of no moment as between parties thereto. Carroll v. Godding, 1944, 155 Pa.Super. 490, 38 A.2d 720.

This section and section 6 are without importance except where the rights of third persons, not parties to the contract, are involved. As between the parties themselves the contract of conditional sale is valid though it is not filed anywhere, or even put in writing. Rivara v. James Stewart & Co., Inc., (1925) 241 N. Y. 259, 149 N. E. 851, affirming (1925) 214 App. Div. 737, 210 N. Y. S. 911, affirmed in (1927) 274 U. S. 614, 47 S. Ct. 718, 71 L.Ed. 1234. To same effect, see Delco Ice Mfg. Co. v. Frick Co., (1935) 318 Pa. 337, 178 A. 135; New Dells Lumber Co. v. Pfiffner, (1935) 216 Wis. 638, 258 N.W. 375; Central Chandelier Co. v. Irving Trust Co., (1932) 259 N.Y. 343, 182 N.E. 10; In re Ford-Rennie Leather Co., (1924) 2 F.(2d) 750 (construing Delaware Act); In re White Plains Ice Service, C.C.A.N.Y.1940, 109 F.2d 913.

Notice.

Actual knowledge of unrecorded deed mortgage or conditional sales contract is equivalent to recording of it as to party having such knowledge J. R. Townsend Co. v. New Hampshire Auto Co 1962 104 N H 81, 178 A 2d 688

Absent a statute, a purchaser for value of an article conditionally sold and without notice gains no rights as against the conditional seller Bay State Merchants Nat. Bank v. Collins, 1958, 101 N.H. 232, 139 A 2d 71

Where search of record disclosed conditional sales contract by means of which machinery covered thereby was located, it could not be said that certain persons had no actual notice of reservation of title. York Ice Machinery Corporation v. Kearney, 1942, 344 Pa. 659, 25 A.2d 179, 141 A.L.R 1280.

It has been said by way of dictum that the notice contemplated by this section on the part of an attaching creditor is a notice of the provisions of the conditional sale contract prior to the execution of the writ of attachment. The fact that on the day the writ is issued the seller retakes the goods is no notice that the sale was conditional or of its provisions relating to retaking goods. "To allow a party to withhold a bill of sale from record until the very day judgment is entered or an attachment levied, and then seize or retake the goods, would destroy the very purpose of the act." Brown v. Christian, (1922) 97 N. J. 56, 117 Atl. 294. And see Commercial Credit Corp. v. Smith, (1930) 106 N. J. L. 94, 148 Atl. 756, 73 A. L. R. 161.

The recordation by a dealer in automobiles of a conditional sale contract for the purchaser of an automobile and of its assignment to a third person does not constitute notice to an innocent purchaser of the car from the dealer where the purchase is made in the ordinary course of business while the car is being used by the dealer as a demonstration car and bears his license plate. Kearby v. Western States Securities Co., (1926) 31 Ariz. 104, 250 Pac. 766 (no reference to Uniform Act).

A landlord who has actual notice that chattels in possession of his tenant are held under an unfiled conditional sale cannot as against the unpaid seller enforce a landlord's lien thereon. Brown v. Woody, (1925) 98 W. Va. 512, 127 S. E. 325, 45 A. L. R. 945.

A subsequent purchaser or mortgagee with knowledge of the rights of a conditional vendor in the property cannot avail himself of the fact that the contract of conditional sale was not filed. Biederman v. Edson & Co., Inc., (1926) 128 Misc. 455, 219 N.Y.S. 115. And to same effect, see Riccardi Motor Car Co v. Weinstein, (1929) 98 Pa. Super. Ct. 41 (holding that lack of knowledge must be alleged and proved by one relying on this section).

Indorsement by buyer on conditional contract was not notice to attaching creditors of seller's rights. Cashman v. Lewis, (1924) 26 Ariz. 95, 222 P. 411.

Conditional sales contract describing personal property in general terms but giving date of purchase and providing that property was to be kept at specified address left a great deal to be desired but was nevertheless sufficient to give constructive notice of rights of conditional seller's assignee to judgment creditor or his assignee Appliance Buyers Credit Corp. v. Square Houses, Inc., 1964, 41 Misc 2d 337, 240 N.Y.S 2d 20

Automobile conditional sales contract which had not been properly filed was not "notice," within McKinney's Personal Property Law, § 65 making reservation of property in seller void as against creditor who acquires lien by levy without notice of the provision reserving title, to conditional buyer's wife who obtained judgment against buyer for moneys due under provisions of separation agreement and for whom sheriff thereafter levied on the automobile. Quinn v Quinn, 1962, 17 A D.2d 1028, 235 N Y S 2d 609

That conditional buyer told sheriff attaching automobile that automobile was not fully paid for held not notice to sheriff of existence of conditional sales contract. Universal Credit Co. v. Knights, (1932) 145 Misc. 876, 261 N.Y.S. 252.

Conditional sale of automobile, where contract is not filed, would be void as to creditors of buyer without notice. Harding v. First Mechanics Nat. Bank, (1933) 113 N.J.Eq. 129, 166 A. 142.

Where conditional sales contract, covering computing scales sold to bankrupt, was not recorded, filing of bankrupt's schedules disclosing existence of conditional sales contract held insufficient notice to trustee in bankruptcy of existence of contract, necessary to defeat trustee's lien. In re Miller, (1934) 6 F.Supp. 79 (construing New Jersey Act).

Judgment-debtor's statement to deputy sheriff attaching automobile that automobile was not fully paid for and was not owned by judgment-debtor was not notice of existence of unrecorded conditional sales contract reserving property in seller, which notice was necessary under Personal Property Law to defeat right of judgment-creditor under levy. N. B. I. Corporation v. Keller, 1940, 175 Misc. 231, 23 N.Y.S.2d 59.

A corporatiou, purchasing automobile under conditional sale contract reserving title in seller until full payment of price, corporation's president, to whom corporation sold automobile, one to whom he transferred it, and one to whom such transferee sold it before completion of payments, never received title thereto, in absence of knowledge of or notice to original seller of transfers made after filing of copy of contract in office of clerk of town wherein corporation had its principal place of business, as contract was valid, assured seller of his title, and constituted constructive notice thereof to all others. Effron v. Haile, Sup.1951, 103 N.Y.S.2d 561.

Judgment-debtor's notice, if any, to deputy sheriff attaching automobile of existence of conditional sales contract reserving property in the automobile in the seller was not notice to judgment-creditor so as to defeat judgment-creditor's right under levy. N. B. I. Corporation v. Keller, 1940, 175 Misc. 231, 23 N.Y.S.2d 59, affirmed, 1941, 261 App.Div. 881, 25 N.Y.S.2d 1017, reargument denied, 1941, 261 App.Div. 1044, 27 N.Y.S.2d 451.

A conditional sales contract duly filed describing subject matter thereof as "18 black and white cows of various markings and ages, two pure bred Ayrshire cows", was not insufficient as a matter of law to give "constructive notice" of conditional seller's rights against good faith purchaser from conditional buyer. In re Central Park Dairyland, 1942, 179 Misc. 611, 37 N.Y.S.2d 270.

"Notice" must be given its ordinary legal meaning, where the statute defining rights of parties to conditional sales contracts, and those of purchasers without notice does not define notice. New Dells Lumber Co. v. Pfiffner, (1935) 216 Wis. 638, 258 N.W. 375.

Evidence presented question of fact for jury as to whether bank, which had a chattel trust deed on a trailer house, had actual notice of unrecorded conditional sales contract covering sale of another trailer house on which former one was traded in, at time that bank attached latter trailer house. Security Bank of Huntington v. McGinnis, 1961, W.Va. -, 122 S.E.2d 189.

Taxation

Statutory lien for delinquent personal property tax held not to attach to interest of conditional buyer in electric refrigerator, since title to refrigerator remained in seller, and hence seller could recover tax paid under protest to prevent sale of refrigerator. General Motors Acceptance Corporation v. Whitheld, (1934) 62 S.D. 415, 253 N.W. 450.

Delivery of Goods.

Provisions in sales contracts, reserving title to reinforcing bars in seller thereof until full payment of price, were void as against subsequent bona fide purchaser thereof for value, where contracts were not filed as required by McKinney's Personal Property Law, § 65, and bars were delivered to buyer at sites of theaters for use in construction of which they were sold. Joseph T. Ryerson & Son v. A. V. O'Donnell, Inc., 1939, 279 N.Y. 109, 17 N.E.2d 788, reargument denied 1939, 279 N.Y. 789, 18 N.E.2d 870.

Burden of Proof.

Where a conditional sale contract has not been recorded the burden of proving want of good faith on the part of a purchaser from the conditional vendee who has proven his purchase and the payment of value is on the one asserting that the purchase was made with notice of the reservation of title. Commonwealth Finance Corp. v. Schutt, (1922) 97 N.J.L. 225, 116 Atl. 722.

Conditional seller has burden of proving that no creditor of bankrupt was without notice of unrecorded conditional sales contract, in order to recover property from trustee. In re Master Knitting Corp., (1925) 7 F.(2d) 11 (construing New York Act).

"In the absence of compliance with the provision of [this section] as to filing the contract, in order to defeat the rights of a judgment creditor of the buyer acquired by his levy, he must be shown to have had knowledge or

notice, not only of the existence of the contract, but of the provision thereof reserving property in the seller and the right to elect that the whole purchase price shall be due on default in payment of any installment, at the time the writ is executed." Commercial Credit Corp. v. Smith, (1930) 106 N. J. L. 94, 148 Atl 756, 73 A. L. R. 161.

Burden of proof is always placed upon party who attempts to show that conditional vendor's rights have been cut off. De La Uz v. Car Val Motors Co., 1960, 24 Misc.2d 168, 198 N.Y.S.2d 476.

A creditor or transferee claiming title to a chattel as against a conditional seller has the burden of proving that his title or interest was acquired without notice of unrecorded conditional sales contract. Bankers Trust Co. v. Island Discount Corp., 1957, 158 N.Y.S.2d 715.

Transferee claiming title to automobile as against conditional seller had burden of proving that title to automobile was acquired without notice of the unrecorded sales contract. McLinden v. McLinden, 1955, 138 N.Y.S.2d 407

Conditional vendee's judgment creditor claiming property under levy, had burden of establishing lien was acquired on property by levy of execution without notice of unrecorded sales contract. Id.

Evidence.

In proceeding to determine title to automobile registered in name of judgment debtor's wife two days after sheriff had visited judgment debtor's home and informed debtor's wife he was seeking property on which to levy, evidence established that wife had actual notice of unrecorded sales contract when title was transferred to her and therefore her claim to title was inferior to claim of conditional vendor. McLinden v. McLinden, 1955, —— Misc. ——, 138 N.Y.S.2d 407.

In action by conditional seller against conditional buyer's mortgagee for conversion, evidence sustained finding that sleighs involved had been sold to buyer under conditional sale contract. New Dells Lumber Co. v. Pfiffner, (1935) 216 Wis. 638, 258 N.W. 375.

Ratification

One selling automobile under conditional sale contract did not ratify corporate purchaser's delivery thereof to corporation's president, as purported buyer from corporation, or deliveries of automobile by him to his vendee and by such vendee to subsequent buyer, by silence, inaction, and acceptance of payments on purchase price, where neither corporation, its president, nor his vendee was original seller's agent or assumed or professed to act for him in any of such transactions. Effron v. Haile, Sup.1951, 103 N.Y.S.2d 561.

A seller of automobile under conditional sale contract did not impliedly adopt and confirm corporate purchaser's delivery of automobile to corporation's president, as purported buyer thereof, or deliveries thereof by president to his vendee and by such vendee to subsequent buyer, without authority from original seller or any profession to represent him, by silence, inaction, and receipt of payments on unpaid purchase price, in absence of any independent consideration moving to such seller. Id.

II. Filing.

Generally.

Where conditional sales contract was duly filed in proper district, contract was enforceable against the world. Universal C. I. T. Credit Corp. v. Schlossman's, Inc., 1963, 37 Misc.2d 1097, 237 N.Y.S.2d 14, reversed on other grounds 248 N.Y.S.2d 626, 12 Misc.2d 613.

Commencement of Statutory Period.

Section 404 of P.S. of Pennsylvania, requiring that a contract for the conditional sale of fixtures be filed in order to be good as against a subsequent purchaser, subsequent mortgagee, or other subsequent encumbrancer of the realty, without notice, requires that the contract be filed within a reasonable time from the sale and delivery of the fixtures. In re Brownsville Brewing Co., C.C.A.1941, 117 F.2d 463.

Where goods are shipped by the seller from outside the state, the bill of lading being accompanied by a draft for the first payment and a conditional sale contract securing the balance, the ten days for filing runs from the signing of the contract by the buyer, not from the date of shipment. Hawley v. Levy, (1925) 99 W. Va. 335, 128 S. E. 735.

That portion of this section requiring filing of conditional sale contract within 10 days after making conditional sale contemplates period running from delivery to buyer. Guthrie v. Howe, (1931) 110 W.Va. 164, 157 S.E. 168.

Expiration of Statutory Period.

Where the seller of a stone crusher failed to record the conditional sales contract until after the appointment of a receiver for the buyer, seller's petition for reclamation of the crusher was denied. Kennedy-Van Saun Mfg. Co. v. Kinsella, 1934, 72 F.2d 338.

Where a conditional bill of sale is not recorded until after the expiration of the 10-day period prescribed by this section but is in fact recorded long anterior to the issuing of a writ of attachment, so that one searching the records must have been confronted with its existence and contents and so acquired the notice contemplated by the statute, the reservation of title is valid as against the attaching creditor. Morey v. Schaad, (1923) 98 N. J. 799, 121 Atl. 622, wherein the court said: "In construing a statute of this remedial character, we are guided by the obvious fundamental rule furnished by the purpose of the Legislature, which was to give notice to a bona fide purchaser or creditor of the exact legal status and property rights of the parties to the contract, so as to enable such intending purchaser or creditor to guide himself accordingly. Pursuant to the express language of the statute, this purpose may be accomplished, either by the imparting of actual notice to such parties, or by the filing of the contract itself within the 10 days prescribed by the act . . . The fourteenth section of the act lends emphasis to this construction, by providing that the sale shall be void only as to those creditors acquiring liens by attachment or otherwise, prior to the filing of the contract or a copy thereof. It will be observed, therefore, that both the legislative provisions and the decisions construing it are based upon the theory that, if actual notice be imparted to the subsequent attaching creditor of the contractual status existing between the vendor and vendee, such sale is not invalidated, and that whether the notice be actually imparted within the 10 days recording period, or thereafter constructively by filing the instrument, the legal effect is the same." To the same effect see Bent v Weaver, (1928) 106 W.Va. 164, 145 S.E. 594.

Where a conditional sales contract was filed after the expiration of the ten day filing period, but prior to the sale of the property by the buyer, the conditional seller's assignee was entitled to recover the property from one who obtained possession from the conditional buyer. Commercial Credit Co. v. Gaiser, (1932) 134 Kan. 552, 7 P.(2d) 527 (construing Arizona Act).

Where a conditional sales contract was recorded after the expiration of the ten day filing period, but prior to the execution by the buyer of a chattel mortgage on the property, the conditional seller had a superior right to the proceeds from the sale of the property on the foreclosure of the mortgage as against the mortgagee. In re Baker, (1932) 5 W.W.Harr.(Del.) 498, 162 Atl. 356.

Where a conditional sales contract was recorded after the expiration of the ten day filing period, but long prior to a general assignment by the buyer for the benefit of his creditors, the conditional seller had title to the goods as against the assignee. Castaneda v. National Cash Register Co., (1934) 43 Ariz. 119, 29 P.(2d) 730.

Where a conditional sales contract was recorded nine days after the expiration of the ten day filing period, but three hours prior to the recordation of a subsequently executed chattel mortgage on the property, it was valid as against a purchaser at a foreclosure sale under the mortgage. Such foreclosure purchaser could acquire no greater rights than the chattel mortgagee had. Manchest v. Long Island Finance Corp., (1933) 11 N. J. Misc. 719, 168 Atl. 35.

Conditional seller is protected although contract is filed more than 10 days after execution, if filed before right of intervening parties accrues. Bloomingdale Bros., Inc., v. Cools, (1930) 8 N.J.Misc.R. 824, 152 A. 666.

Failure to File, Effect of.

Under New York law neglect of bank to file conditional sales contract assigned to it by original vendor, from January 19, 1948 until March 31, 1948, would render the contract void as against lien creditors, though it would be good as between the bank and the conditional buyer. Whiteford Plastics Co. v. Chase Nat. Bank of New York City, C.A.N.Y.1950, 179 F.2d 582.

In Pennsylvania where printing presses were delivered upon execution of orders in form of agreements of sale providing for a selling price payable in installments and that vendee should execute a chattel mortgage or bailment lease as collateral security for deferred installments, sale was complete

upon execution of orders and delivery of presses, and, in absence of recording of contracts, presses could not be reclaimed by vendor upon default in payments by insolvent vendee under bailment leases subsequently executed. Commercial Inv. Trust Co. v. Minon, C.C.A.Pa.1939, 104 F.2d 765.

Failure to file forfeits all preferential rights of the seller against subsequent creditors. In re Press Printers, etc., Inc., (1924) 4 F. (2d) 159 (construing New Jersey Act).

Under Wisconsin law, unfiled contract is void as to all subsequent purchasers and creditors without notice. In re Rosenberg Iron & Metal Co., D.C.Wis. 1964, 228 F.Supp. 12.

Unrecorded New York conditional sales contract is void as to debtor in possession. In re Crown Cartridge Corp., D.C.N.Y.1962, 220 F.Supp. 914.

Transaction whereby purported lessee was given option to purchase equipment at termination of lease period for about $1,500, although it had market value of $24,000, was in fact a conditional sale rather than a lease agreement, and, inasmuch as seller had failed to record it pursuant to New York law, seller was not entitled to reclaim equipment from buyer's successor in interest when successor, who was in possession of equipment, was involved in corporate reorganization. Id.

A conditional sales contract which was not filed in prothonotary's office was void as to any purchaser from or creditor of buyer who, without notice of provision reserving property in seller, purchased the goods or acquired by attachment or levy a lien upon them. Roesch v. Mark, 1944, 35 A.2d 774, 154 Pa.Super. 188.

Failure to file contract renders title absolute in protection of an intervening purchaser for value without notice. Holland Furnace Co. v. Suzik, (1935) 118 Pa.Super. 405, 180 A. 38.

Judgment creditor of conditional buyer's vendee without notice of transfer by buyer is protected where transfer agreement incorporates original conditional sale contract and original conditional seller consents in writing to the transfer but fails to file the transfer agreement. Universal C. I. T. Credit Corp. v. Schlossman's, Inc., 1964, 42 Misc.2d 613, 248 N.Y.S.2d 626.

Under McKinney's Personal Property Law, § 65 pertaining to refiling in the state of a contract relating to conditionally sold property brought into the state from another state within ten days after conditional seller received notice of its removal to New York, if the contract is filed within 10 days, interest of the seller is deemed perfected from the beginning but if he fails to file within 10 days, security interest remains unperfected from time of the original sale. Churchill Motors, Inc. v. A. C. Lohman, Inc., 1962, 16 A.D.2d 560, 229 N.Y.S.2d 570.

Even an unrecorded conditional sales contract has validity against buyer and anyone having actual notice of its existence before acquiring his rights. Petition of D. L. Dineen Sales & Service Corp., 1958, 13 Misc.2d 560, 178 N.Y.S.2d 102.

It is date of actual levy rather than date of issuance of execution which is crucial date in respect to McKinney's Personal Property Law, § 65, making reservation of property in conditional sale invalid as against one acquiring lien by levy without notice; and where judgment creditor had personal knowledge of existence of conditional sales contract three days before levy was made, conditional sales contract, even though unfiled, was not invalid as to judgment creditor. Id.

The failure of an assignee of a conditional sales contract to file the same, having agreed to do so, held not to preclude a recovery against the assignor, who guaranteed payment, where the conditional buyer absconded with the property. Finance Co. of America v. Bailey, (1929) 106 W. Va. 651, 146 S. E. 723.

As between original parties, conditional sale contract was binding even though not filed. Stibinger v. Van Wormer, 1957, 8 Misc.2d 1038, 168 N.Y.S.2d 482.

Assignment of conditional sales contract need not be filed in order for it to be effective as against a subsequent chattel mortgagee, although from a practical viewpoint it is advisable and safer practice to file an assignment. Bankers Trust Co. v. Island Discount Corp., 1957, —— Misc.2d ——, 158 N.Y.S.2d 715.

Seller of gas ranges, under conditional sales agreement which was not filed, was not entitled to recover from purchaser of realty on which gas ranges were installed, on theory of "unjust enrichment", balance due for ranges from buyer of ranges who was a predecessor in title of purchaser of realty.

Paragon Utilities Corporation v. Apartment Investing Corporation, 1943, 266 App.Div. 739, 40 N.Y.S.2d 922.

A conditional vendor who fails to file conditional sales contract as prescribed by McKinney's Personal Property Law, § 65, does so at his peril in so far as rights of one changing his position in reliance upon apparent ownership of conditional vendee are involved. Prudential Ins. Co. of America v. Estates of Cotswold, Limited, 1940, 17 N.Y.S.2d 302.

The delivery of an automobile in Pennsylvania pursuant to a bailment lease which provided that lessee, if he complied with all terms of lease, had option at any time within 30 days after expiration of lease of purchasing automobile on payment of $1, was not a "conditional sale," under Pennsylvania law, and lessor was not required to file lease to preserve his claim to automobile against attaching creditor of lessee. Vella v. U. S. Fidelity & Guaranty Co., 1939, 257 App.Div. 459, 13 N.Y.S.2d 962.

Failure to file contract renders it void against subsequent mortgagees in good faith. Diana Paper Co. v. Wheeler-Green Electric Co., (1930) 228 App. Div. 577, 240 N. Y. S. 108.

Where Oklahoma conditional sales vendor of automobile failed to file contract in Wisconsin within 10 days after receiving notice that automobile had been removed to Wisconsin, vendor's reservation of title in conditional sales contract was void as against good faith purchaser Hudiburg Chevrolet, Inc v. Ponce, 1962, 17 Wis.2d 281, 116 N.W.2d 252

A delay in filing a conditional sales contract does not affect the rights of the seller as against creditors who have not acquired a lien on the property. Thorne v. Webster, (1927) 193 Wis. 97, 213 N. W. 646.

Conditional seller's default in exercising right of possession under unrecorded conditional sales contract was a waiver of condition of contract so as to preclude recovery for conversion of property by chattel mortgagee who foreclosed chattel mortgage and resold property. Veenema & Wiegers v. White Co. (1937) 14 N.J.Misc. 798, 187 A. 529.

Intervening Rights in Period.

Seller filing conditional contract within 10 days after execution has absolute protection for such period, although intervening party's purchase or levy is made before filing. Bloomingdale Bros., Inc., v. Cook, (1930) 8 N.J.Misc. R. 824, 152 A. 666.

Property taken into other states.

Where automobile dealer in New York sold vehicle on conditional sale contract to New York resident who brought automobile into North Carolina, if automobile did not acquire a situs in North Carolina within meaning of G.S § 44–38.1, New York conditional sale contract was valid as against purchaser for valuable consideration from New York resident only from date of due registration of conditional sale contract in proper office in state from which property was brought. Franklin Nat. Bank v. Ramsey, 1960, 252 N.C. 339, 113 S.E.2d 723

McKinney's Personal Property Law, § 65, providing that every provision in conditional sale is void as to any purchaser who without notice purchases goods before contract or copy is filed, unless contract or copy is filed within 10 days after making of conditional sale, is not controlling in North Carolina with respect to property brought into state from New York, if it is in conflict with G.S. § 44–38.1, providing that conditional sale contract covering personal property brought into state and acquiring no situs in state is valid only from date of due registration of encumbrance in proper office in state from which property was brought. Id.

Portion of Agreement.

Where a conditional sale agreement is embodied in a "trust receipt" and a memorandum of sale, the filing of the "trust receipt" alone is not sufficient. In re Ford-Rennie Leather Co., (1924) 2 F. (2d) 750 (construing Delaware act).

Cancellation of Record.

Where employee of assignee of conditional sale contract, under which truck had been sold, caused lien of record in vehicle commissioner's office to be marked "Paid" when contract was modified, everyone chargeable with notice of record could treat the property as having been discharged from provisions of contract, unless chargeable with actual or constructive notice in some other

way. Maryland Credit Finance Corporation v. Campbell, 1938, 195 A. 277, 8 W.W.Harr. 575.

The fact that an employee of assignee of conditional sale contract, under which truck was sold, erroneously caused lien of record in vehicle commissioner's office to be marked "Paid" when contract was modified, would not be sufficient to terminate the reservation of title to the property sold under the terms of the conditional sale contract. Id.

Refiling.

Where statement of refiling of contract for conditional sale of fixtures contained a fuller description than that contained in original statement and contract, but description merely added one correct street designation to prior incorrect designations, and where three years had elapsed at time of refiling since the original sale, and a state receivership had superseded buyer in operation of its business, insufficiency of original filing was not cured by the refiling. In re Brownsville Brewing Co., C.C.A.1941, 117 F.2d 463.

Under McKinney's Personal Property Law, § 65, a conditional sale contract which was duly filed and was once refiled within time prescribed by law upon being refiled too late at a later time became void as to any purchaser from or creditor of the buyer, who without notice of conditional sale contract purchased the goods or acquired a lien upon them. American Laundry Machinery Co. v. Simon, 1938, 255 App Div. 203, 6 N.Y.S.2d 943.

Sufficiency of Contract or Filing.

Under 69 P.S.Pa. § 404, relating to filing of contracts for conditional sale of fixtures, where bottling equipment sold to brewing company, which was later adjudicated bankrupt, was installed in ice plant on realty which did not belong to the brewing company, and neither the statement accompanying filed contract, nor the contract, nor statement of refiling accurately described the realty by street or street numbers, the filing was invalid as to trustee in bankruptcy and holder of mortgage on the realty without notice In re Brownsville Brewing Co., C.C.A 1941, 117 F 2d 463.

Under 69 P.S.Pa. § 404, conditional seller of fixtures should not get protection by filing contract with ordinary conditional sale contracts and making a record similar to that made in the case of chattel mortgages. Id.

Where a conditional seller left conditional sales contract with proper officer, and directed officer to file the contract and paid legal filing fee, the contract was "filed" as required by McKinney's N. Y. Personal Property Law, §§ 65, 70, and upon buyer's bankruptcy seller was entitled to protection of the conditional sales contract, notwithstanding that officer in indexing contract indexed the name of seller as the buyer and the buyer's name as the seller. In re Labb, D.C.N.Y.1942, 42 F.Supp. 542.

Under McKinney's Personal Property Law, § 66 et seq., security interest of assignee of conditional sales contract on automobile was valid against all persons where contract was filed within 10 days of sale. Casterline v. General Motors Acceptance Corp., 1961, 195 Pa Super 334, 171 A 2d 813

Assignee-bank's proper filing of first conditional sales contract, whereunder partnership sold trailer to partner and wife, was constructive notice of bank's title, which was not defeated by partnership's purported second sale. Albany Discount Corp. v. State of N. Y. Nat Bank, 1962, 15 A.D.2d 625, 222 N.Y.S.2d 518.

In action by ultimate purchaser of automobile against his vendor for breach of implied warranty of title to the automobile and against finance company, to whom conditional sales contract on automobile had been assigned, for conversion, evidence established existence of a valid conditional sales contract which had been duly filed. De La Uz v Car Val Motors Co., 1960, 24 Misc.2d 168, 198 N.Y.S.2d 476.

Where makers of automobile conditional sales contract set forth the address to be 453 Woodward Avenue, Brooklyn, New York, and actually 453 Woodward Avenue was in Queens County, the filing of the contract in Kings County, where Brooklyn was situated was ineffective and the contract was void. Manekas v. Allied Discount Co., 1957, 6 Misc.2d 1079, 166 N.Y.S.2d 366.

Where makers of automobile conditional sales contract stated their address to be in Brooklyn and actually the address was in Queens County, ordinary prudence did not require holder of contract to make further inquiry as to geographical location of makers' residence before filing contract in Kings County where Brooklyn was situated and consequently the holder's wrongful seizure

of automobile from subsequent bona fide buyer, standing alone, was not so malicious as to entitle buyer to punitive damages. Id.

III. Priority Among Parties.

Generally.

Under McKinney's Personal Property Law, §§ 65 and 66, it is not until conditional sales contract is filed in proper filing district that rights of sellers would become superior to rights of transferees of goods who had no actual notice of sellers' lien. In re Morasco, C.A.N.Y.1956, 233 F.2d 11.

Under McKinney's Personal Property Law, §§ 65 and 66, a conditional sales lien when filed in place of buyer's residence within state is so far perfected that no subsequent lien upon such property obtainable by legal or equitable proceeding on a simple contract could become superior to rights of seller. Id.

Under McKinney's Personal Property Law, § 60 et seq., security interest under conditional sales contract on automobile was perfected at once when contract took effect, subject to losing its priority if contract was not filed in time. Casterline v. General Motors Acceptance Corp., 1961, 195 Pa.Super 344, 171 A.2d 813.

Where automobile finance company paid credit company balance due from automobile dealer on purchase price of two automobiles under agreement obligating credit company to assign conditional sale contracts to finance company, attempt to secure loan of purchase money to dealer further by bailment lease of automobiles was futile, but did not deprive finance company of its equitable rights under such contracts. First Nat. Bank of Emlenton v. Emlenton Motor Co., 1943, 153 Pa.Super. 404, 34 A.2d 43.

At common law, the ownership of a conditional vendor is paramount to claims of creditors of conditional vendor's vendee. Commercial Credit Corporation v Hild, 1940, 18 N.J.Misc. 72, 11 A.2d 428, affirmed, 1940, 125 N.J.L. 285, 15 A.2d 762.

Title reserved in sales contract held void against purchaser from or creditor of buyer, if filing is not in conformity with § 6 of Act. Pisculli v. Bellanca Aircraft Corp., (1929) 17 Del.Ch. 73, 149 A. 418 (construing New York Act); (1930) 17 Del.Ch. 151, 150 A. 81 (reversed on other grounds).

Where wife was not party to sale of automobile to husband, was not mentioned in conditional sale contract and was not obligated for payment of price, though seller gave her a certificate of ownership and automobile was registered in her name, one purchasing from wife eight days after conditional sale contract was filed was not protected as a "purchaser in good faith for value and without notice" against claims of conditional seller's assignee. Associates Discount Corp. v. Davis Motor Sales, 1949, 275 App.Div. 745, 87 N.Y.S.2d 757.

If transaction was sale on memorandum, in which title did not pass, it would be a "conditional sale" within Personal Property Law, §§ 61, 62, contract for which must be filed under § 66 to be valid as against subsequent bona fide purchaser, pledgee, or mortgagee. Sanette Corp. v. Sanette Corp., (1928) 132 Misc. 455, 230 N.Y.S. 102.

The lien of a lienor, who has actual notice of existence of unrecorded conditional sales contract, is entitled to only such priority as it would have had if conditional sales contract had been timely recorded. Security Bank of Huntington v. McGinnis, 1961, — W.Va. —, 122 S.E.2d 489.

Assignee of Vendor.

Where automobile was conditionally sold to buyer and conditional sales contract was assigned to defendant and never recorded and subsequently buyer by fraudulent bill of sale negotiated a loan from bank which took a mortgage on automobile which mortgage was also not recorded, prior conditional sales agreement of defendant was valid when defendant repossessed automobile, since it was unaffected by 20 day requirement of the statute and hence it took precedence over subsequent mortgage held by bank and unrecorded until subsequently. Bay State Merchants Nat. Bank v. Collins, 1958, 101 N.H. 232, 139 A.2d 71.

Whatever rights holder of contract for conditional sale of showcase had when execution was levied on showcase passed to holder's subsequent assignee who could utilize all remedies available to his assignor. Roesch v. Mark, 1944, 35 A.2d 774, 154 Pa.Super. 188.

Though seller had assigned contract of conditional sale of showcase before execution was levied on showcase, title reserved by contract revested in seller

upon subsequent reassignment of contract to seller and was sufficient to entitle seller to file claim under. Id.

Where on date of seizure of mortgaged automobile by mortgagee's assignee because of mortgagor's default in payment of arrears on mortgage, transferee of automobile conditional sales contract assignee was entitled to possession of automobile by reason of mortgagor's prior default under the contract, transferee could bring action of conversion against mortgagee's assignee. Bankers Trust Co. v. Island Discount Corp., 1957, —— Misc.2d ——, 158 N.Y.S.2d 715.

Assignee of conditional sales contract of automobile in dealer's possession held estopped to assert title as against innocent purchaser from dealer. Kearby v. Western States Securities Co., (1926) 31 Ariz. 104, 250 P. 766 (no reference to Uniform Act).

Assignee of conditional sale contract held not entitled to automobile as against corporation purchasing like contract from assignor's vendor before sale to assignor, where corporation did not know conditional buyer did not have it in county within which contract was filed. C. I. T. Corp. v. First Nat. Bank, (1928) 33 Ariz. 483, 266 Pac. 6.

Assignee of conditional seller of trucks did not by seizing trucks acquire lien on tires, so as to render conditional sale contract for tires void. John W. Snyder, Inc. v. Aker, (1929) 134 Misc. 721, 236 N.Y.S. 28.

Assignee of conditional sales contract could not acquire lien on trucks by merely repossessing trucks on purchaser's default. Id.

Alleged conditional sale of automobile, not accompanied by delivery or change of possession, held presumptively fraudulent and void under statute, as against bona fide assignee of subsequent conditional sales contract therefor and buyer thereunder. Burnett County Abstract Co. v. Eau Claire Citizen's L. & I. Co., (1934) 216 Wis. 35, 255 N.W. 890.

Assignee of conditional seller of automobile who filed affidavit of claim to automobile with judgment creditor of conditional buyer and officer prior to sale of automobile on execution to satisfy such creditor's claim against conditional buyer could recover balance due on conditional sales contract from creditor and officer executing execution sale. C. I. T. Corporation v. Miklow Realty Corporation, (1935) 157 Misc. 120, 282 N.Y.S. 447.

Evidence that vendor assigned conditional sales contract in consideration of payment of amount due thereunder, that nothing was ever paid to assignee, that sale under subsequent chattel mortgage was subject to assignee's rights, and that assignee demanded possession of goods from purchaser at chattel mortgage sale before bringing replevin suit against purchaser, sustained judgment of possession for assignee. Glickfeld v. Venokur, 1938, 119 N.J.Law, 431, 197 A. 25.

Attachment Creditors.

An attachment by a creditor without notice prevails over an unrecorded conditional sale agreement. Cashman v. Lewis, (1924) 26 Ariz. 95, 222 Pac. 411, holding that notice that the goods had been bought by the person in possession was not notice that they were purchased conditionally.

Vendor's right, under conditional sales contract, to retake possession on vendee's default superior to attachment creditor's right to possession. Starr v. Govatos, (1925) 3 W.W.Harr.(Del.) 66, 130 A. 392.

An attaching creditor of the conditional seller was not entitled as a "creditor" to protection of N.J.S.A. 46:32–11, requiring recording of bill of conditional sale, notwithstanding that he held a mortgage upon the goods, which was not involved in the attachment proceeding. Levinson v. Godfrey, 1909, 79 N.J.L. 212, 74 A. 278.

Title to automobile purchased under motor vehicle retail sales contract by judgment debtor was in debtor as to creditor, and automobile might be sold at execution sale free of claim of seller's assignee, where contract had not been recorded and creditor had no notice of contract prior to levy, although debtor had told sheriff of contract and of claim of assignee at time of levy. Yantzi v. Manzer, 1961, 30 Misc.2d 770, 219 N.Y.S.2d 47.

Where almost a year elapsed from the date of a conditional sale to the date the property was attached in the hands of buyer, who was in actual or apparent possession, the conditional sale was not recorded, and attaching creditors had no actual notice thereof, their attachment lien prevails over the claim of conditional seller. Cashman v. Lewis, (1924) 26 Ariz. 95, 222 Pac. 411.

Conditional seller held entitled to possession under judgment foreclosing lien as against prior levy by judgment creditor having notice of unfiled contract. Biederman v. Edson & Co., Inc., (1926) 128 Misc. 455, 219 N.Y.S. 115.

Unrecorded instrument authorizing confession of judgment against makers and reserving title in property until payment therefor held conditional sale, and void as to execution creditors. Leatherman v. Moyer, (1931) 104 Pa. Super.Ct. 363, 157 A. 622.

On default, conditional seller's right to possession is superior to lien under execution against conditional buyer. Cohocton Garage v. Kellogg, (1930) 136 Misc 283, 240 N.Y.S. 642.

Ordinary creditors are not protected by recording requirements for bill of sale contract, and such creditors acquire no superior rights to seller on failure to file contract. In re Excelsior Macaroni Co., Inc., (1931) 55 F.(2d) 406 (construing New York Act).

Notice of conditional sales contract given by buyer to sheriff prior to levy of execution upon property as that of buyer as judgment debtor defeated claim of execution creditor as against seller, since sheriff was agent of creditor in levying execution. Edwards v. Walker (1937) 162 Misc. 96, 293 N.Y.S. 1007.

General Creditors.

A contract for the conditional sale of furniture between the trustee of a hotel company as seller and the company as buyer, such trustee holding a mortgage on the company's realty, was valid as against the company's general creditors, the contract having been properly filed. Webster Hall Corp. v. Continental Bank, etc., Co., (1933) 66 F. (2d) 558, affirming (1932) 4 F. Supp. 337 (construing Pennsylvania act).

Garageman.

A garageman who stored a truck, seized by the state for violation of a loading law, had no lien thereon for storage, as against the conditional seller of the truck, where the contract was properly filed. General Motors Acceptance Corp v. Hayes Motor Co., (1934) 12 N. J. Misc. 384, 172 Atl. 343

Conditional seller who files contract within 10 days has lien prior to that of garage keeper whom the conditional purchaser engaged to repair car sold under the contract. Commercial Credit Trust v. Barbier, (1929) 7 N. J. Misc.R. 1109, 147 A. 861.

Garage keeper has lien on motor vehicle for storage superior to conditional vendor, and purchaser of car at lienor's sale received good title thereto. Decision conforms with other New York cases in point, and is founded upon Lien Law § 184, which gives to the bailee of motor vehicles a lien superior to the title of a conditional vendor or mortgagee. Commercial Credit Corp. v. Moskowitz, (1932) 142 Misc. 773, 255 N.Y.S. 525.

Sale of motor vehicle to satisfy storage lien held valid without notice to conditional vendor, where garage keeper had no actual notice of filed conditional sales contract; the constructive notice of a filed conditional contract not being sufficient to meet the requirements of Lien Law, § 201. Id.

Lien for repairing automobile at request of conditional vendee was inferior to assignee of conditional vendor's lien where conditional sale contract was recorded. Cherry's, Inc. v. Sharpensteen, (1928) 33 Ariz. 342, 265 P. 90.

Where garage keeper's lien on automobile is inferior to conditional seller's lien, so, also, is his right to possession. C. I. T. Corporation v. Jorgensen, (1932) 60 S.D. 7, 242 N.W. 594.

Landlord of Buyer.

Tenant's transfer to landlord of property covered by unrecorded conditional sale contract, of which landlord had no actual knowledge, in satisfaction of claim for rent, held good as against seller; being supported by lawful consideration. Toledo Scale Co. v. Mucha, (1929) 7 N.J.Misc.R. 569, 146 A. 587, affirmed in (1930) 106 N.J.Law, 605, 150 A. 921 (no reference to Uniform Act).

Mortgagee.

The lien of a mortgage which, after describing the property subject thereto, continues, "together with all fixtures and articles of personalty now or hereafter attached to or used in connection with the premises, all of which are covered by this mortgage," attaches to gas ranges sold under a contract of conditional sale and attached to the described premises, where the mortgage was taken without knowledge of the reservation of title prior to the filing of the contract. Cohen v. 1165 Fulton Ave. Corp., (1929) 251 N. Y. 24,

166 N.E. 792. See also G. Goldberg & Sons, Inc. v. Gilet Bldg. Corp., 1929, 135 Misc. 158, 237 N.Y.S. 258 (no reference to Uniform Act.)

Unless deed or mortgage expressly covers sale of chattels, purchaser of realty to which chattels were annexed acquires no title to chattels under law making conditional sales contract void as to purchaser without notice. Chasnov v. Marlane Holding Co., Inc., (1930) 137 Misc. 332, 244 N.Y.S. 455.

A building loan mortgagee is not a purchaser without notice as to amounts advanced prior to the delivery and installation of chattels, because at the time of such advances the mortgagor did not have title of possession of the chattels. But as to the installments advanced subsequent to the installation of the chattels the mortgagee becomes a purchaser without notice, where the payments are made before the conditional contract has been filed and without knowledge of such a contract. Id.

One who takes a mortgage on cattle covering "additions" has no rights under the mortgage against cattle subsequently bought on condition by the mortgagor though the conditional sale agreement is not recorded. Babbitt, etc., Live Stock Co. v. Hooker, (1925) 28 Ariz. 263, 236 Pac. 722.

An oral conditional sale contract is void as to conditional buyer's mortgagee, except where mortgagee had actual knowledge of such facts as would put a prudent man upon inquiry, and if prosecuted with ordinary diligence would lead to actual knowledge of the right or title in conflict with that which he was about to purchase. New Dells Lumber Co. v. Pfiffner, (1935) 216 Wis. 638, 258 N.W. 375.

Building loan mortgagee making last advance after delivery of lighting fixtures at premises held bona fide incumbrancer as against whom unfiled conditional bill of sale was void as to fixtures included within mortgage terms. Central Chandelier Co. v. Irving Trust Co., (1932) 259 N.Y. 343, 182 N.E. 10.

Building loan mortgage given before ranges were purchased by mortgagor held not to give mortgagee priority over conditional seller, though final advances on mortgage were made after ranges were installed and before conditional sales agreement was filed. New York Title, etc. Co. v. Mapark Holding Corp., (1932) 236 App.Div. 219, 258 N.Y.S. 378.

Where plaintiff failed to show that it was a mortgagee in good faith or a purchaser for value, it is not entitled to avail itself of the provisions of this section, notwithstanding the sellers' omission to file the conditional sales agreements until a year after the mortgages were executed. New York Title, etc., Co. v. Grossman Properties, (1931) 142 Misc. 274, 253 N. Y. S. 533.

Unrecorded conditional sale contract of stone crusher installed in quarry held void as to mortgagee, who entered judgment on bond accompanying mortgage on quarry, and who received notice of reservation of title to stone crusher in seller after date when writ of fieri facias came into sheriff's hands and was properly indorsed, but before date when sheriff made actual levy on stone crusher. Williams Patent Crusher & Pulverizer Co. v. Reily, (1935) 118 Pa.Super. 64, 180 A. 156.

Pawnbroker.

Pawnbroker did not acquire lien superior to rights of original owner, regardless of whether recorded contract under which pledgor obtained possession was conditional sales agreement or lease. Tappin's Jewelry Stores, Inc., v. Rosner, (1933) 111 N.J.Law, 301, 168 A. 676.

Where conditional sales agreement, covering diamond ring, provided that merchandise was consigned with understanding that title should remain property of consignor until actual payment of invoice or was returnable on demand, was not filed, agreement was invalid as to pawnbroker with which consignee pawned the ring, so that the pawnbroker had a lien for loan proceeds and interest. Brodsky v. T. Cohen, Inc., 1943, 46 N.Y.S.2d 126, 180 Misc. 536.

Purchaser From Vendee.

In an action to foreclose a mortgage on which no advances were made until the assignment thereof and to have it adjudged that a contract of conditional sale of fixtures to the mortgagee, not filed until after the recording of the mortgage and assignment, was void, a contention that since the mortgage in the hands of the named mortgagees constituted no incumbrance upon the fixtures, it constituted none in the hands of their assignee, cannot be sustained. The assignee for value owned the instrument from the moment of its inception as a mortgage, and where he had no knowledge of the conditional sale contract was a "purchaser" without notice within the meaning

of this section. Kommel v. Herb-Gner Constr. Co., Inc., (1931) 256 N. Y. 333, 176 N.E. 413.

One who purchased from a conditional buyer before the conditional sales contract was filed, and without notice of the conditional seller's interest, is protected by this section. Russ Soda Fountain Co. v. Desind, (1934) 150 Misc. 568, 268 N. Y. S. 452.

Innocent purchaser for value from conditional buyer in possession acquires title to personal property as against seller. Holland Furnace Co. v. Suzik, (1935) 118 Pa.Super. 405, 180 A. 38.

Seller's rights under conditional sales contract duly filed within ten days are superior to any claim or lien acquired against buyer by innocent purchasers or creditors within ten-day period. General Motors Acceptance Corp. v. Hayes Motor Co., (1934) 12 N.J.Misc. 384, 172 A. 343.

Purchaser without notice of conditional sale is protected, regardless of character of chattels and whether they are to become part of realty. Chasnov v. Marlane Holding Co., Inc., (1930) 137 Misc. 332, 244 N.Y.S. 455.

Conditional vendor of machinery purchased by contractor to be used in brick plant of contractor's vendee, lost title as against contractor's vendee for failure to record contract. Anchor Concrete Machinery Co. v. Pennsylvania Brick, etc., Co., (1928) 292 Pa. 86, 140 A. 766.

Conditional seller could recover tires or value against purchaser of trucks knowing of seller's contract before purchasing. John W. Snyder, Inc. v. Aker, (1929) 134 Misc. 721, 236 N.Y.S. 28.

Purchaser at Foreclosure.

Purchaser of cattle at foreclosure sale held to have acquired no title superior to that of mortgagor's vendor who failed to record reservation of title. Babbet, etc., Live Stock Co. v. Hooker, (1925) 28 Ariz. 263, 236 P. 722.

Where one of two judgment creditors had no actual notice of conditional sale contract under which machines levied upon were sold to judgment debtor and conditional sale contract was not refiled within time prescribed by law, buyer at execution sale bought in the right of the judgment creditor which had no actual knowledge of the conditional sale contract and took a good title as against judgment creditor who had actual knowledge of such contract. American Laundry Machinery Co. v. Simon, 1938, 255 App.Div. 203, 6 N.Y.S. 2d 943.

Where contract for conditional sale of excavator was filed in town other than that in which excavator was first kept for use by vendee after sale and at time of levy under attachment and under execution on property, creditor had no notice of conditional vendor's claim, purchaser at execution sale held to have title and right to possession of excavator. Harnischfeger Sales Corporation v. Spellman, (1936) 160 Misc. 350, 289 N.Y.S. 352.

In action in detinet for truck by assignee of conditional sale contract, under which truck had been sold, to recover truck after it had been sold to buyer's mother at execution sale as property of buyer, and assigned to buyer, principle that a mortgagor in possession, who permits taxes on mortgaged property to become delinquent and thereafter purchases property at tax sale, cannot claim that mortgage was extinguished by tax sale, would not apply, in absence of fraud, in view that property was bought by a stranger to the contract. Maryland Credit Finance Corporation v. Campbell, 1938, 195 A. 277, 8 W.W.Harr. 575.

Where truck being bought under a conditional sale contract was sold on execution against buyer as his property, and buyer at execution sale acquired title free from claim of assignee of conditional seller because of assignee's failure to record contract in filing district to which property had been removed, conditional buyer was estopped from asserting title which he acquired from buyer at execution sale against assignee of conditional seller. Id.

Receiver.

A receiver of the conditional vendee who takes possession of the goods is not entitled to the protection afforded by this section to a creditor acquiring a lien by attachment or levy Koerner v. United States Waxed, etc., Paper Co., (1923) 94 N. J. Eq. 655, 121 Atl. 338.

As against a receiver of the buyer an unrecorded conditional sale is valid, no rights of creditors having intervened. Delaware Trust Co. v. Elder, (1920) 12 Del. Ch. 263, 112 Atl. 370.

A receiver of the buyer is bound by an unfiled conditional sale contract. Depew v. Depew, (1925) 98 N. J. Eq. 461, 131 Atl. 76.

A receiver appointed on a general creditors' bill is bound by an unfiled conditional sales agreement, no lien by attachment or levy having been obtained by a creditor within the provisions of this section. Quinn v. Bancroft-Jones Corp., (1927) 18 F. (2d) 727 (construing New York act).

A receiver in bankruptcy who takes possession of the assets of a corporation that goes into voluntary bankruptcy does not thereby make a "levy" under this section. Mlodzik v. Ackerman Oil Co., (1926) 191 Wis. 233, 212 N. W. 790, wherein the court said: "While the appointment of a receiver may be said to constitute an equitable levy, it is not a legal levy that changes the rights of existing creditors of the insolvent. Whatever effect the appointment of a receiver has, it should affect the rights of the creditors alike. It should not advance one and retard another. The reason why the Conditional Sales Act provides that an attachment or levy destroys the vendor's lien is no doubt to reward the diligent creditor. In a voluntary assignment, no creditor has been diligent as against others. They all stand on a parity, and they should be entitled to enforce the rights they have. The New Jersey cases are the only ones we have been able to find that directly construe the Conditional Sales Act, and our statute (section 122.30) provides: 'This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.' Hence, on the grounds of logic, equity, and uniformity, we adopt the construction given the act by the New Jersey courts."

Unrecorded conditional sale is valid between buyer and receiver of assignor. In re B. & B. Motor Sales Corp., (1922) 277 Fed. 808 (construing New Jersey Act).

Because receiver not in possession does not prevent conditional vendors from obtaining rights. Delaware Trust Co. v. Elder, (1920) 12 Del.Ch. 263, 112 A. 370.

State.

Where the conditional seller of an automobile filed the contract within the ten day period, his reservation of title to the car was valid as against the state, which had seized the car for violation of a loading statute. The state was not a lienholder, purchaser, or attaching creditor within the meaning of this section. General Motors Acceptance Corp. v. Hayes Motor Co., (1934) 12 N. J. Misc. 384, 172 Atl. 343.

The vendor under a duly recorded conditional sales contract, wherein title to property sold was retained by vendor until full payment of purchase price, so that vendee had no legal or equitable property interest in the property, was entitled to have paid any balance due him thereon before payment of any lien on the property except the lien of a levy for a property tax, and vendor's lien was thus superior in priority to state's lien for gross sales and consumer's sales taxes. Moran v. Leccony Smokeless Coal Co., 1940, 122 W.Va. 405, 10 S.E.2d 578, 136 A.L.R. 1007, certiorari denied, 1941, 61 S.Ct. 396, 311 U.S. 714, 85 L.Ed. 465.

Trustee in Bankruptcy.

A conditional buyer's trustee in bankruptcy could take advantage of the improper filing of conditional sales contract under McKinney's N. Y. Personal Property Law, § 60 et seq. Empire State Chair Co. v. Bedlock, C.C.A.N.Y. 1944, 140 F.2d 587, certiorari denied 64 S.Ct. 1278, 322 U.S. 760, 88 L.Ed. 1587.

The status given a trustee in bankruptcy by 11 U. S. C. A., § 75 [a] as that of a creditor holding a lien does not arise until the filing of the petition in bankruptcy, and cannot aid him in holding the property purchased by the bankrupt under a conditional sale contract which, by being recorded, had become valid before the bankruptcy as against all creditors. In re Avlon Syrup Corp., (1928) 25 F.(2d) 342 (construing New York Act).

A trustee in bankruptcy of the buyer has a right paramount to that of the seller under an unrecorded conditional sale agreement. In re Master Knitting Corp., (1925) 7 F.(2d) 11 (construing New York Act).

So where property was purchased conditionally in Connecticut and used in New York and the contract was not filed in either state, the trustee in bankruptcy of the buyer in New York was held to be entitled to sell the property free of the claim of the seller. In re F. L. Bradbury Co., (1925) 8 F.(2d) 496 (construing New York Act).

However, it has been held that a conditional sale contract was not void as against the trustee in bankruptcy of the purchaser where it was not recorded until the day after the filing of the petition in bankruptcy, there being no judgment creditors and the schedules in bankruptcy revealing the conditional sale contract. In re Golden Cruller, etc., Co., Inc., (1925) 6 F. (2d) 1015 (construing New Jersey Act).

Where conditional sales contracts were filed four and five months respectively after execution, but prior to the filing of an involuntary bankruptcy petition against the buyer, they were held valid under this section and section 4 of the Uniform Act. A trustee in bankruptcy acquires his rights only from the date of the filing of the petition in bankruptcy, and not prior thereto. In re Excelsior Macaroni Co., Inc., (1931) 55 F. (2d) 406 (construing New York Act). To the same effect, see In re Lloyd, (1934) 6 F. Supp. 514 (construing Pennsylvania Act)

Where the conditional seller of a pneumatic tubing system failed to record the contract, his reservation of title was void as against the trustee in bankruptcy of the conditional buyer, it being conceded that the property was not affixed to realty within section 7 of the Uniform Act. In re Imber Bros. Inc., (1933) 5 F. Supp. 513. affirmed in Lamson Co., Inc. v. Bland, (1933) 68 F.(2d) 369 (construing Pennsylvania Act).

Where seller was given preference under Bankruptcy Act not obtaining in case of ordinary seller, he was entitled to reclaim property and proceeds from trustee, notwithstanding failure to record conditional sales contract. In re Ford-Rennie Leather Co., (1924) 2 F.(2d) 750 (construing Delaware Act).

Where trust receipt and memorandum constituted conditional sales contract and the memorandum was not recorded, trustee in bankruptcy acquired title as against the seller; he being deemed a henholder without notice of petitioner's rights, by virtue of Bankruptcy Act. In re Ford-Rennie Leather Co., (1924) 2 F.(2d) 750 (construing Delaware Act).

Where conditional sale contract. covering computing scale sold to bankrupt, was not recorded, conditional seller held not entitled to reclaim scale as against buyer's trustee in bankruptcy. In re Miller, (1934) 6 F.Supp. 79 (construing New Jersey Act).

An instrument called a lease held a conditional sale contract under the New Jersey statute, and void as a retention of title as against the trustee in bankruptcy of the purchaser for want of record in compliance with the statute. In re Press Printers, etc., Inc., (1924) 4 F.(2d) 159.

Warehouseman.

Right of conditional seller under contract filed before chattels were deposited with warehouseman held superior to warehouseman's lien. Bloomingdale Bros., Inc. v. Cook, (1930) 8 N.J.Misc.R. 824, 152 A. 666.

Warehouseman storing furniture purchased under unrecorded conditional sale contract held entitled to lien for storage charges, as against claim of conditional seller. Lifson v. Williams, (1931) 10 N.J.Misc. 982, 162 A. 129.

Unrecorded conditional sale contract held valid as against warehouseman with whom buyer or his agent had stored chattels, seller not having conferred on buyer indicia of title beyond mere possession or forfeited his rights by fraudulent conduct. Banker's Capitol Furniture Co. v. Hall, (1932) 11 N.J.Misc. 13, 163 A. 556

Except as modified by this section, the common-law rule that ownership of the conditional seller is paramount to the claim., of a warehouseman's lien against the conditional buyer still prevails. Jersey Security Co. v. Lottimer, 1943, 20 N.J.Misc. 432, 28 A.2d 623.

Section 28 of the Uniform Warehouse Receipts Act asserting a right of lien in a warehouseman on goods belonging to others does not constitute a warehouseman a "pledgee" within meaning of section 1 of the Uniform Conditional Sales Act, and does not give the warehouseman a lien on personalty stored in warehouse by conditional buyer, paramount to claim of conditional seller, though conditional seller's contract of sale is unrecorded. Id.

In replevin action by conditional seller of furniture under unrecorded conditional sales agreements to recover possession of furniture from a warehouseman who claimed that its unpaid warehouseman's lien on furniture for storage charges had priority over seller's rights, warehouseman, in order to prevail, was required to qualify as a pledgee within purview of provision of section 1 of the Uniform Conditional Sales Act that a purchaser includes a pledgee. Id.

Warehouseman with whom furniture sold to conditional buyer under unrecorded conditional sales agreements, was stored by the conditional buyer, was not a "pledgee" within meaning of provision of section 1 of the Uniform Conditional Sales Act that a "purchaser" includes a pledgee, and hence warehouseman's unpaid lien did not have priority over rights of conditional seller on default of conditional buyer. Id.

Judgment Creditors.

Where one of two judgment creditors had no actual notice of conditional sale contract under which machines levied upon were sold to judgment debtor and conditional sale contract was not refiled within time prescribed by law, execution of judgment creditor which had no notice of conditional sale contract became a lien on the machines from the time of the delivery of the execution to sheriff. American Laundry Machinery Co. v. Simon 1938, 255 App. Div. 203, 6 N.Y.S.2d 943.

Where one of two judgment creditors had no actual notice of conditional sale contract under which machines levied upon were sold to judgment debtor and conditional sale contract was not refiled within time prescribed by law, execution of the judgment creditor which had no actual notice had preference over the execution of the judgment creditor who had notice of the conditional sale contract. Id.

Where one of two judgment creditors had no actual notice of conditional sale contract under which machines levied upon were sold to judgment debtor and conditional sale contract was not refiled within time prescribed by law, levy under the two executions, though in form made simultaneously, would be deemed to have been made consecutively, first under the execution of the judgment creditor having no notice and secondly under the execution of the judgment creditor who had actual notice of the conditional sale contract. Id.

General Contractor.

A building contractor, advancing to subcontractor more money than he was entitled to at time in reliance on his possession of reinforcing bars purchased by him on building sites, at which they were delivered to him by conditional seller, and provisions of subcontracts that principal contractor could use them in buildings, if subcontractor failed to do so, took them as matter of contractual right, not under loan agreement, after subcontractor's default and bankruptcy, and hence was not obligated to pay seller difference between value thereof when taken and amount advanced, as contractor was bona fide purchaser thereof for value, in absence of actual notice of title reservation provisions in sales contract, which were not filed as required by law. Joseph T. Ryerson & Son v. A. V. O'Donnell, Inc., 1939, 279 N.Y. 109, 17 N.E.2d 788, reargument denied 279 N.Y. 789, 18 N.E.2d 870.

A building contractor, advancing to subcontractor more than was due latter at time in reliance on right, reserved in subcontracts, to use steel, purchased by and delivered to subcontractor, in buildings, if subcontractor defaulted, which he did, had right to steel superior to that of conditional seller, which failed to file sales contracts, reserving title to steel until paid for, as required by McKinney's Personal Property Law, § 65 et seq. Id.

§ 6. Place of Filing.

Statutory Notes

The corresponding section of the Indiana act reads as follows: "It shall not be necessary to the validity of such conditional sale contract that it be acknowledged or attested. This section shall not apply to contracts described in section seven [section 8 of the Uniform Act] hereof."—See Laws 1935, Ch. 182.

The New York act as last amended in 1960 reads as follows: "A conditional sale contract or a copy thereof relating to the sale of a canal boat, tug, scow or other similar craft, or of the appurtenances thereto navigating the canals of this state, must be filed in the office of the superintendent of public works, and need not be filed elsewhere. Every other conditional sale contract or a copy thereof, except contracts for the conditional sale of goods specified in section sixty-seven of this article must be filed in the office of the city or town clerk in the city or town in which the buyer resides, if he resides within the state at the time of the execution thereof, and if not, in the city or town where the goods are first kept for use by the buyer after sale, and if there is

more than one buyer, the conditional sale contract or a copy thereof must be filed in each city or town within the state where each buyer resides at the time of the execution thereof, and if any of such buyers, being more than one, be a non-resident of the state and the goods are first kept for use by the buyers after sale in a city or town in which none of such buyers resides, then the conditional sale contract or a copy thereof must also be filed in such city or town in which such goods are first kept for use by the buyers after sale, except that where there is a recording officer's office in such city or town or borough of a city in which such conditional sale contract or copy thereof is required to be filed as aforesaid, such conditional sale contract or copy thereof must be filed in such recording officer's office. All such instruments or copies thereof, heretofore filed in the office of the register of the county of Queens shall be deemed filed in accordance with this act, but this provision shall not affect any pending action or right of action. This section shall not apply to the contracts described in section sixty-eight of this article. Where such contract is for goods specified in section sixty-seven of this article, the contract or a copy thereof must be filed in office of the recording officer of the county in which the realty is situated." McKinney's Personal Property Law, § 66.

The New York act was amended in 1933 by adding thereto an additional section, immediately following this one, as follows: "Additions to conditional sales contract. No conditional sales contract once filed can have any additions made to it so as to include other purchases or transactions between the same parties. A new contract must be made and filed."—See Laws 1933, ch. 572; McKinney's Personal Property Law, § 66-a.

New York. Section was amended by L.1960, c. 1004, § 1, L.1961, c. 573, § 2 L.1962, c. 539, § 3. McKinney's Personal Property Law, § 66.

Panama Canal Zone. Among other changes, provides for filing in the "office of the registrar of property of the Canal Zone." 4 C.Z.C. § 1576

The West Virginia act supplies the omission in this section by designating the "office of the clerk of the county court" as the filing office.—Code 4012.

The Wisconsin act was amended in 1923 by adding to this section the provision that "no such conditional sale contract or copy shall be filed in the office of the clerk of cities of the first class unless the debt secured by said contract is five dollars or more"— See Laws 1923, ch. 128.

The Wisconsin act was again amended in 1931 to read as follows: "122.06 The conditional sale contract or copy, and any assignment thereof and affidavits pertaining thereto, shall be filed * * * in the office of the register of deeds of the county in which the goods are first kept for use by the buyer after the sale; provided, that * * * in such cities or villages which are located in more than one county and the place where the goods are to be kept cannot be definitely located as being within one of such counties, then and in that event duplicate originals or copies may be filed in the recorder's office of each county in which such city or village is situated. Provided, further, that no such conditional sale contract or copy shall be filed * * * unless the debt secured by said contract is * * * ten dollars or more. It shall not be necessary to the validity of such conditional sale contract, or in order to entitle it to be filed, that it be acknowledged or attested. This section shall not apply to the contracts described in section 122.08."—See Laws 1931, ch. 291.

Case Notes

Construction.

Section held to require merely filing of contract, not recording. Finance Co. of America v. Bailey, (1929) 106 W. Va. 651, 146 S. E. 723.

Under the provisions of the Pennsylvania statute, it is directed that the instrument be filed, not recorded. Delco Ice Mfg. Co. v. Frick Co., (1935) 318 Pa. 337, 178 A. 135.

A conditional sales contract not filed in the place required is void as to any creditor acquiring a lien by levy on the property. Stallknecht v. Gilbert Appliance Corp., (1932) 144 Misc. 626, 259 N.Y.S. 189.

This section constituted a part of agreement between buyer and assignee of conditional sale contract whereby original contract was modified with respect to amount due, amount of monthly payments, and place where property sold

was to be kept. Maryland Credit Finance Corporation v. Campbell, 1938, 195 A. 277, 8 W.W.Harr. 575.

Purpose

The purpose of McKinney's Personal Property Law §§ 60–81, requiring conditional sales contract to be filed in Register's Office is to give notice to creditors of conditional buyer that title is not in him despite his possession of the goods. Newfield v. National Cash Register Co., C.A.N.Y.1951, 186 F.2d 883.

Purpose of recording of conditional sales contract is to put persons dealing with property on notice to seller's rights. Appliance Buyers Credit Corp. v. Squire Houses, Inc., 1964, 41 Misc.2d 337, 246 N.Y.S.2d 20.

Residence of Vendee.

For purposes of filing conditional sales agreements under McKinney's Personal Property Law, § 66, the "residence" of corporate buyer was county designated in its certificate of incorporation as its principal place of business; and conditional sales agreements filed elsewhere were unenforceable against debtor in possession after filing arrangement petition, even if debtor no longer maintained place of business in county designated in certificate and even if agreements had been filed where debtor maintained its only place of business. In re Savage Mills, Inc., D.C.N.Y.1959, 170 F.Supp. 559.

Where buyer resided in city of Schenectady, conditional sales contract was properly filed in office of Schenectady county clerk, notwithstanding contention that it should have been filed in office of city or town clerk. Appliance Buyers Credit Corp. v. Squire Houses, Inc., 1964, 41 Misc.2d 337, 246 N.Y.S.2d 20.

For purposes of venue and for requiring a nonresident plaintiff to give security for costs and in determining the place of filing a conditional sale contract, the term "residence" is in each instance construed in its popular sense and not as meaning "domicile." Kemp v. Kemp, 1939, 172 Misc. 738, 16 N.Y.S.2d 26.

Where it appears that prior to execution and levy an automobile conditional sales contract was filed in the office of the clerk of the county which the vendee had designated as his actual residence, the judgment creditor, the garage keeper in whose garage the automobile was stored, and the person to whom the latter assigned his lien were in no position to impair the vendor's lien under its contract. General Motors Acceptance Corp. v. Barnett, (1931) 142 Misc. 192, 254 N. Y. S. 166.

Evidence showing that actual physical abode of conditional vendee was county in which contract was filed held sufficient to show filing in county of vendee's "residence"; term "residence" not being synonymous with "domicile." Id.

Where a conditional sales contract was not filed in the office of the clerk of the town in which the buyer lived, it was void as against a creditor of the buyer acquiring a lien by levying on the goods. Stallknecht v. Gilbert Appliance Corp., (1932) 144 Misc. 626, 259 N. Y. S. 189.

Where a conditional sales contract was filed in the county where the purchaser was stated in the contract to reside, but where he did not in fact reside, it was held to have been improperly filed. Pisculli v. Bellanca Aircraft Corp., (1929) 17 Del. Ch. 73, 149 Atl. 418 (construing New York act—see "Statutory Notes" for amendment of this section).

Where excavator was delivered to buyer at a particular town and remained there until after making of conditional sales contract, but copy of the contract was filed in office of clerk of another town, the contract did not become a lien as against third parties. Harnischfeger Sales Corporation v. Spellman, 1939, 9 N.Y.S.2d 241, 256 App.Div. 879.

Filing of conditional sales contract in township of buyer's "domicile" did not give notice of contract to execution creditor, where buyer resided in another township. Edwards v. Walker (1937) 162 Misc. 96, 293 N.Y.S. 1007.

Filing in Additional Counties.

Where conditional bill of sale of automobile was assigned to assignee in New York, the situs of parties and automobile, and bill of sale was not recorded in New York, and assignee, pursuant to statute, within 10 days after receiving notice that automobile was in New Jersey, filed copy of bill of sale with clerk of Bergen county, assignee's claim was prior to claim of conditional vendee's judgment creditor who levied on automobile under alias execution issued out of district court of Bergen county, after assign-

ment of bill of sale. Commercial Credit Corporation v. Hild, 1940, 18 N.J. Misc. 72, 11 A.2d 428, affirmed, 1940, 125 N.J.L. 285, 15 A.2d 762.

A purchaser of goods from a dealer who has possession of and an apparent right to sell them, having no knowledge that the same goods had been previously sold in another county under a conditional bill of sale filed only in the latter county, is an innocent purchaser for value without notice. Halliwell v Trans States Finance Corp (1922) 98 N.J.L. 133, 118 Atl. 837.

Where a conditional sales contract was filed in the county in which the automobile sold was first kept for use by the buyer after the sale, the detention of the car by the state in another county for violation of a loading law would not require the filing of the contract in the latter county. General Motors Acceptance Corp. v. Hayes Motor Co., (1934) 12 N. J. Misc. 384, 172 Atl. 343.

The vendor under a conditional sale contract valid as to a subsequent purchaser without notice, when put on notice of location of goods after their removal from territory to which that validity of the contract originally extended, as provided in Code 1931, 4-3-5, 14, 16, 18, is not required to file a contract for record, following repossession within ten days of being informed of the goods' location. Richardson v. Lumbermen's Ins. Co., 1940, 122 W.Va. 82, 7 S.E.2d 436.

Repossession of automobile by vendor under conditional sales contract valid in another state as against a subsequent purchaser without notice, was valid as to such purchaser in West Virginia until and unless there was a noncompliance with provisions of Code 1931, 40-3-14, that after seller has received notice that subject-matter of conditional sales contract has been removed from county in which contract has been filed for record and carried into another, or from another state, contract shall be void as to purchasers and creditors unless recorded within ten days. Id.

County Recorder's Office.

Contract to be filed in office of county recorder. C. I. T. Corporation v. Naudack, (1934) 44 Ariz. 413, 38 P.(2d) 310; Treat v. Nowell, (1930) 37 Ariz. 290, 294 P. 273.

Prothonotary's Office.

Instrument to be filed in office of prothonotary. Delco Ice Mfg. Co. v. Frick Co., (1935) 318 Pa. 337, 178 A. 135; Williams Patent Crusher & Pulverizer Co. v. Reily, (1935) 118 Pa.Super. 64, 180 A. 156; Kennedy-Van Saun Mfg. & Engineering Corp. v. Kinsella, (1934) 72 F.(2d) 338 (construing Pennsylvania Act).

Acknowledgment.

Copy of conditional sale contract of truck sold to corporation in Connecticut which was recorded without being acknowledged by the judgment debtor was insufficient to constitute constructive notice of reservation of title to judgment creditors of buyer who obtained judgments after execution of contract. Faust Auto Service v. New London Motor Freight (1937) 250 App. Div. 855, 294 N.Y.S. 806.

In determining sufficiency of acknowledgment of conditional sale contract of truck to constitute constructive notice to judgment creditors of buyer, law of Connecticut controlled, where buyer was a Connecticut corporation and copy of acknowledgment was filed in Connecticut. Id.

Motor Vehicle Commission's Office.

Statute providing that, in cases of conditional sale of a motor vehicle, record of sale with commissioner of motor vehicles shall be deemed sufficient compliance with provisions of Conditional Sales Act, is constitutional. Automobile Banking Corporation v. Klein, 1938, 16 N.J.Misc. 127, 197 A. 422.

The filing of title papers to an automobile with deputy commissioner of motor vehicles is a sufficient compliance with statute providing that, in conditional sale of motor vehicle, record of sale with commissioner of motor vehicles shall be deemed sufficient compliance with provisions of Conditional Sales Act. Id.

Name of buyer

A conditional sales contract in which officer of corporation bought cash register for corporation as disclosed principal, and in which such officer was named as buyer, and which was filed in Register's Office in New York State, was in-

effectual against trustee in bankruptcy of corporation because of failure of contract to contain name of corporation as real buyer. Newfield v. National Cash Register Co., C.A.N.Y.1951, 186 F.2d 883.

Place of business

Filing of bill of sale in town indicated in certificate of incorporation of buyer constituted compliance with McKinney's Personal Property Law § 66 even though not filed in town in which buyer had its principal place of business, and in view of evidence that machinery in question was readily removable filing of the conditional bill of sale in the county in which installed was not necessary, and lien obtained by seller by virtue of such filing took precedence over a subsequent second mortgage. Highland v. Long Island Arena, Inc., 1963, 40 Misc.2d 1051, 244 N.Y.S.2d 686.

§ 7. Fixtures

Statutory Notes

The New York act was amended in 1930 by an act requiring the certificate of the seller to contain the name of the owner of the realty, inserting the clause "who is not the buyer of the goods" in the third sentence after the words "owner of realty," and inserting the words "containing the name of the owner thereof" in the same sentence after the words "describing the realty and".—See McKinney's Personal Property Law, § 67.

Panama Canal Zone. Omits this section.

The Wisconsin act was amended in 1931 by substituting after the word "office" in both the second and third sentences of this section, the words "of the register of deeds of the county where such realty is located * * * and also entered in the tract index, when kept."—See Laws 1931, ch. 291.

Case Notes

I. GENERALLY.
II. FILING.
III. ANNEXATION TO REALTY.
IV. PRIORITY BETWEEN CLAIMANTS.

I. Generally.

Construction.

It has been said with regard to the provisions of this section, that "there is no statutory provision that should have a stricter construction and observance." Greene v. Elkins, (1929) 134 Misc. 118, 235 N.Y.S. 438.

The rights of the parties to a conditional sales contract, and of third parties also, are controlled, since the adoption of the Uniform Act, by law of conditional sales (this section), and not by the law of fixtures, the latter law being important only in determining what is, or is not, "material injury to the freehold." Bank of America Nat. Assoc. v. La Reine Hotel Corp., (1931) 108 N. J. Eq. 567, 156 Atl. 28, holding also that the basic law of fixtures is not changed by this section, but merely restricted in its application. To the same effect see People's Sav., etc., Co. v. Munsert, (1933) 212 Wis. 449, 249 N. W. 527, 88 A. L. R. 1306, rehearing denied (1933) 212 Wis. 449, 250 N. W. 385, 88 A. L. R. 1306.

This section applies only to purchasers or owners of the realty in which the property conditionally sold is installed. Russ Soda Fountain Co. v. Desind, (1934) 150 Misc. 568, 268 N. Y. S. 452.

This section is inapplicable where owner of realty is vendee under conditional sale contract. American Laundry Machinery Co. v. Larson, (1934) 217 Wis. 208, 257 N.W. 608.

Section does not apply where owner of realty himself purchases goods conditionally sold, but only where conditional buyer attaches goods to another's realty. People's Sav., etc., Co. v. Munsert, (1933) 212 Wis. 449, 249 N.W. 527, 88 A.L.R. 1306, rehearing denied (1933) 212 Wis. 449, 250 N.W. 385, 88 A.L.R. 1306.

The second sentence of this section does not protect a prior mortgagee or a creditor of a conditional vendee. Prudence-Bonds Corp. v. 1000 Island House Co., (1930) 141 Misc. 39, 252 N.Y.S. 60; People's Sav., etc., Co. v. Munsert, (1933) 212 Wis. 449, 249 N.W. 527, 88 A.L.R. 1306, rehearing denied (1933) 212 Wis. 449, 250 N.W. 385, 88 A.L.R. 1306.

The last sentence was intended to apply to the case of a sale of goods to a contractor to be affixed to realty owned by a person other than such contractor. Crown v. Regna Constr. Co., (1929) 104 N. J. Eq. 469, 146 Atl. 346.

Binding Effect of Foreign Decisions.

Decisions of U. S. Supreme Court as to whether machinery sold under conditional sales contract become part of realty do not control state Supreme Court. Central Lithograph Co. v. Eatmor Chocolate Co., (1934) 316 Pa. 300, 175 A. 697.

Prior Law.

At common law, when goods were used in connection with realty, if they were not affixed thereto, they remained personalty and were removable, but if they were closely united or securely attached to the realty, they lost their separate existence and passed with the realty. Keil Motor Co. v. Home Owners Loan Corp., 1941, 47 A.2d 164.

Uniform Conditional Sales Act alters general rule that intent determined whether chattels affixed to realty became fixtures. Crown v. Regna Constr. Co., (1929) 104 N.J.Eq. 469, 146 A. 346.

Conditional Sales Act, providing test as to whether goods are severable without material injury to freehold, held not to affect basic law of fixtures except as to matters coming within its purview, being inapplicable where rights of conditional seller not involved. Farmers' Nat. Bank of Sussex, N. J., v. Salmon, (1935) 118 N.J.Eq. 241, 178 A. 635.

Purpose.

This section reflects an intention that some personal property previously considered as fixtures, by reason of its connection with realty, should retain its character of personalty. Keil Motor Co. v. Home Owners Loan Corp., 1941, 4 Terry 322, 47 A.2d 164.

Intent of this section is to perpetuate common-law rule that removal of fixtures will not be adowed where article conditionally sold is so closely incorporated with or into realty that removal would materially injure the structure and conversely to authorize removal when such can be made without serious or material injury to the freehold. Id.

"This section is designed for a double purpose. It protects buyers of real estate upon which some types of property are attached in such a manner as to render uncertain their character as realty or personalty. Equally, it operates as a protection to the conditional vendor of a fixture. A stove, a pump, a dynamo may be a chattel belonging to the owner of the realty or it may be so firmly fastened to the freehold as to constitute a part of it and yet, by reason of some agreement, may conditionally belong to its original owner. Such doubts respecting the character of this kind of property and its ownership can reasonably be entertained as may require prolonged litigation for their solution. The thing may be realty belonging to the vendor of the land or it may be personalty to which a reserved title may reside in a stranger. The statute informs the vendee of the land concerning his rights and duties." Kohler Co., Inc. v. Brasun, (1928) 249 N. Y. 224, 164 N. E. 31, reversed; American Laundry Machine Co. v. Larson, 1934, 217 Wis. 208, 257 N.W. 608.

Sections 65, 67 of Personal Property Law providing that conditional sales shall be void as to certain persons and concerning fixtures are intended to protect persons dealing with a conditional vendee in possession of goods to which no conditional sales contract is filed. Prudential Ins. Co. of America v. Estates of Cotswold, Limited, 1940, 17 N.Y.S.2d 302.

One of purposes of statute defining rights of parties to property conditionally sold and attached to realty is to protect conditional sales, not to thwart or prevent them. People's Sav., etc., Co. v. Munsert, (1933) 212 Wis. 449, 249 N.W. 527, 88 A.L.R. 1306, rehearing denied (1933) 212 Wis. 449, 250 N.W. 385, 88 A.L.R. 1306.

The only purpose of the requirement of this section that a statement be filed describing the realty on which goods conditionally sold are installed, is to give actual or constructive notice to subsequent purchasers of such realty. Public Service Electric Gas Co. v. Sanford, (1932) 10 N. J. Misc. 885, 161 Atl. 507.

"Freehold."

The word "freehold" as used in this section refers to the freehold as of the time as of which the inquiry is made. It may mean before or after

annexation depending on whether the identity of the chattel is lost or not. Bank of America Nat. Assoc. v. La Reine Hotel Corp., (1931) 108 N. J. Eq. 567, 156 Atl. 28.

Charge that "freehold" meant premises as they were to-day, held sufficiently clear, although not exact legal definition. Independent Ætna Sprinkler Corporation v. Morris, (1934) 114 N.J.Law, 23, 175 A. 102.

"Freehold," when applied to industrial plant, means plant in its complete integrity. Central Lithograph Co. v. Eatmor Chocolate Co., (1934) 316 Pa. 300, 175 A. 697.

"Realty."

"Realty," when applied to industrial plant, means plant in its complete integrity. Central Lithograph Co. v. Eatmor Chocolate Co., (1934) 316 Pa. 300, 175 A. 697.

"Material Injury."

The phrase "without material injury to the freehold", as used in this section, must be construed with chief reference to the act itself and to advance the obvious purposes of it. Keil Motor Co. v. Home Owners Loan Corp., 1941, 47 A.2d 164.

The phrase "material injury to the freehold", as used in provision of this section relating to removal of certain fixtures, means physical injury to the building and not merely the deprivation of things which may be advantageous or even essential to the usefulness or functioning of a plant or building. Id.

The word "material", as used in this section, means in one sense material injury to the structure, but it also connotes injury to the institution of which the structure is a part. Future Bldg., etc., Ass'n v. Mazzochi, (1931) 107 N. J. Eq. 422, 152 Atl. 776 (statement applied to refrigerators and gas ranges installed in apartment houses). To the same effect see MacLeod v. W. J. Satterthwait, Inc., (1932) 109 N. J. Eq. 414, 157 Atl. 670 (electric refrigerators installed in apartment house); Domestic Electric Co. v. Mezzaluna, (1932) 109 N. J. L. 574, 162 Atl. 722 (electric refrigeration system installed in apartment house); Russ Distributing Corp. v. Lichtman, (1933) 111 N. J. L. 21, 166 Atl. 513 (refrigeration system installed in apartment house).

The words "material injury to the freehold," when applied to an industrial plant have been held to mean material injury to the operating plant, and are not confined to the physical structure of the building alone. Central Lithograph Co. v Eatmor Chocolate Co., (1934) 316 Pa. 300, 175 A. 697; Central Lithograph Co. v. Eatmor Chocolate Co., (1934) 316 Pa. 312, 175 A. 701; Central Lithograph Co. v. Eatmor Chocolate Co., (1934) 316 Pa. 310, 175 A. 702; Lumpkin v. Holland Furnace Co., (1935) 118 N.J.Eq. 313, 178 A. 788.

"Owner."

"Owner of realty" within statute making reservation of title under unfiled conditional sales contract void as to fixtures means owner not party to contract. In re St. Mark's Hospital, (1932) 59 F.(2d) 1001 (construing New York Act).

A receiver cannot be regarded as an "owner" within the last sentence of this section. Crown v. Regna Constr. Co., (1929) 104 N. J. Eq. 469, 146 Atl. 346.

"Subsequent Purchasers."

Holders of mechanic's liens, judgment creditors, and purchasers of bonds subsequent to their original issue and sale are not "subsequent purchasers" of realty within the second sentence of this section. People's Savings & Trust Co. v. Munsert, (1933) 212 Wis. 449, 249 N. W. 527, 88 A. L. R. 1306, rehearing denied (1933) 212 Wis. 449, 250 N. W. 385, 88 A. L. R. 1306.

One to whom mortgagee, purchasing theatre at foreclosure sale, conveyed premises after installation of opera chairs under conditional sales contract recorded before conveyance, was subsequent purchaser. National Theatre Supply Co. v. Mishler Theatre Co., (1933) 312 Pa. 250, 167 A. 324.

Election by Vendor.

The holder of a mortgage on quarry in which stone crusher was installed who levied on stone crusher as personal property was bound by his election to treat crusher as personal property as respects validity of conditional sale of crusher. Williams Patent Crusher & Pulverizer Co. v. Reily, (1935) 118 Pa.Super. 64, 180 A. 156.

Conditional seller of sprinkler equipment by filing claim for mechanic's lien and foreclosing lien precluded himself from retaking equipment. Viking Automatic Sprinkler Co. v. Thwaits, (1934) 215 Wis. 225, 253 N.W. 398.

Descriptive Statement.

Where an electric refrigerator, conditionally sold, is attached to realty so as to be easily severable without material injury thereto, the seller, in order to retain title thereto as against a subsequent purchaser of the realty, must record a statement describing such realty, the presumption being, in the absence of a contrary showing, that the purchaser of the realty intended to purchase it only as including the refrigerator. Public Service Electric Gas Co. v. Sanford, (1932) 10 N.J.Misc. 885, 161 A. 507.

Where no statement describing the realty to which refrigeration equipment was attached was filed with the conditional sales contract, or at any time thereafter, the conditional seller of such equipment was not entitled to recover therefor against the purchaser of the realty, though the equipment was removable without material injury to the realty. General Motors Acceptance Corp. v. Capitol Associates, (1932) 108 N. J. L. 421, 158 Atl. 107, affirmed in (1932) 110 N. J. L. 61, 164 Atl. 20.

Failure to describe realty held inconsequential. Crown v. Regna Constr. Co., (1929) 104 N. J. Eq. 469, 146 Atl. 346.

Where a properly recorded conditional sales contract covering pumping equipment did not describe the realty on which it was installed, but referred to the buyer's ranch, the description was held sufficient to put an intending purchaser on inquiry. Treat v. Nowell, (1930) 37 Ariz. 290, 294 Pac. 273.

Where a statement properly recorded with a conditional sales contract correctly described the premises in which the goods were installed by lot and plot number on the municipal assessment map, but incorrectly stated the street number and name, the description of the realty was held sufficient. Public Service Electric Gas Co. v. Sanford, (1932) 10 N. J. Misc. 885, 161 Atl. 507.

Variance in description where contract stated "Twenty-six (26) ranges as had #822," and filed instrument said "26 #822 A. B. gas ranges," held unsubstantial Crown v. Regna Constr. Co., (1929) 104 N.J.Eq. 469, 146 A. 346.

Owner of building was entitled to restrain conditional seller who failed to describe realty in recorded instrument, where chattels were attached to realty Lifschitz v. Vorclone Corp., (1930) 8 N.J.Misc.R. 83, 148 A. 899.

Owners of building were not entitled to restrain conditional seller from removing machinery not attached to realty, where no description of the realty was given. Id.

Conditional sale contract between materialman and manufacturer reserving manufacturer's title to theatre chairs screwed to theatre floor held void as against theatre owner for failure to make required statutory statement for filing; hence materialman could assert his lien against theatre chairs as part of realty. Pike v. Naylor Securities Co., (1931) 140 Misc. 734, 251 N.Y.S. 659.

Failure to file statement describing real estate in compliance with provisions of this section can not defeat vendor's right to repossess goods, where owner of realty is the vendee. American Laundry Machinery Co. v. Larson, (1934) 217 Wis. 208, 257 N.W. 608.

Seller of boiler, which became fixture in industrial plant of bankrupt purchaser, could assert no rights thereto under conditional sale contract, where neither contract nor verification thereof described realty on which installed. In re Famous Cleaning & Dyeing Co., (1934) 7 F.Supp. 280 (construing Pennsylvania Act).

Conditional bill of sale covering elevator system held to comply with provisions of section in respect to form, contents, and filing. Harvard Financial Corp. v. Greenblatt Constr. Co., Inc., (1933) 261 N.Y. 169, 184 N.E. 748, reversing (1932) 236 App.Div. 742, 258 N.Y.S. 993.

Illegal Provisions.

Conditional sales contract held valid as to provisions affecting property transferred thereby, notwithstanding illegal provision that additions to buyer's stock or fixtures were to be seller's property. White v. E. C. McKallor Drug Co., (1933) 239 App.Div. 210, 268 N.Y.S. 371.

Intention.

Act alters general rule that intent determined whether chattels affixed to realty became fixtures. Crown v. Regna Constr. Co., (1929) 104 N.J.Eq 469, 146 A. 346.

When the conditional seller of gas ranges and refrigerators to be attached to realty expresses in the contract his intention that such equipment shall not become part of the realty, it retains its character as personalty and does not become subject to a mortgage of the realty. A successor of the buyer

cannot repudiate the buyer's agreement and prevent the seller from removing the equipment on default in payment. Manufacturer's Bldg., etc., Ass'n v. Public Service Electric, etc., Co., (1930) 106 N. J. Eq. 68, 150 Atl. 196 (proper recordation).

Chattels sold under conditional sales contract are regarded as real or personal property, depending on intention with which they are annexed to realty. Future Bldg., etc., Ass'n v. Mazzochi, (1931) 107 N.J.Eq. 422, 152 A. 776.

Conditional vendor's retention of title under agreement expresses intention that chattels should remain personalty. Workingmen's Bldg., etc., Assoc. v. Smith, (1931) 108 N.J.Eq. 349, 155 A. 20 (no reference to Uniform Act).

Intention of parties to conditional sale of electric refrigerator must be considered in determining whether personalty became part of realty, so as to require seller to record statement describing realty to retain title against subsequent purchaser thereof. Public Service Electric Gas Co. v. Sanford, (1932) 10 N.J.Misc. 885, 161 A. 507.

Nature of chattel conditionally sold and annexed to realty, under law of fixtures, depends on intention of parties; under law of fixtures, appropriation of chattel to use of property is controlling as evidence of intention, while degree of annexation is of minor importance. Bank of America Nat. Assoc. v. La Reine Hotel Corp., (1931) 108 N.J.Eq. 567, 156 A. 28.

Liability upon Removal.

Conditional seller, removing sprinkler system on purchaser's default, held not liable to prior mortgagee, for amount necessary to restore building to original condition. Prudence-Bonds Corp. v. 1000 Island House Co., (1930) 141 Misc. 39, 252 N.Y.S. 60.

Conditional seller held not required to furnish bond to indemnify vendee for injuries to freehold in removing them, where subsequent purchaser furnished security to retain possession of chairs after seller obtained writ of replevin. National Theatre Supply Co. v. Mishler Theatre Co., (1933) 312 Pa. 250, 167 A. 324.

Waiver.

Title reserved in conditional sales agreement may be waived, either expressly or impliedly; vendor's acquiescence to such use of property by vendee as destroys chattel's identity generally constitutes waiver of title reserved in conditional sales agreement. Bank of America Nat. Assoc. v. La Reine Hotel Corp., (1931) 108 N.J.Eq. 567, 156 A. 28.

Conditional seller's agreement evidencing intention to subordinate to first mortgage did not deprive it of right to repossess itself of movables on default in payment. Kelvinator Sales Corp. v. Byro Realty Corp., (1930) 136 Misc. 720, 241 N.Y.S. 632.

Pleading.

Complaint held insufficient against conditional vendor of fixtures. Boriskin v. Toll Realty & Constr. Co., Inc., (1928) 225 App. Div. 695, 231 N. Y. S. 701 (no reference to Uniform Act).

Where a conditional seller relies on the first sentence of this section to protect chattels affixed to realty, he must allege the removability of the chattels and the assent to his reservation of property in them. Harmony Realty Co., Inc. v. Bronxwick Holding Corp., (1930) 137 Misc. 16, 242 N. Y. S. 125.

Allegation in complaint of conditional vendor in replevin that demand was previously made of defendant for possession of fixtures, which demand was refused, held sufficient. Perfect Lighting Fixtures Co., Inc. v. Grubar Realty Corp., (1930) 228 App.Div. 141, 239 N.Y.S. 286.

Evidence.

Evidence sustained finding that sprinkler system was not removable without material injury to freehold, thus preventing removal over objection of prior real estate mortgagee. Buss Mach. Works v. Watsontown Door, etc., Co., (1932) 2 F.Supp. 758 (construing Pennsylvania Act).

Evidence insufficient to establish that sellers had elected to treat transaction as unconditional sale. Crown v. Regna Constr. Co., (1929) 104 N.J.Eq. 469, 146 A. 346.

II. Filing.

Notice.

Filing of contract is constructive notice to purchasers at foreclosure sale. Sellitto v. Heating & Plumbing Finance Corp., (1934) 116 N.J.Eq. 247, 174 A. 147, aff (1934) 117 N.J.Eq. 19, 174 A. 708.

Verified statement of conditional sales contract which was filed in prothonotary's office and indexed in conditional sales docket held insufficient to charge purchaser with constructive notice, where statement did not contain description of realty sufficient to identify it as land to which chattels were to be affixed. Delco Ice Mfg. Co. v. Frick Co., (1935) 318 Pa. 337, 178 A. 135

Recording in "conditional sales" book of conditional sales contracts covering pumping equipment was constructive notice to purchasers of land on which equipment was installed. Treat v. Nowell, (1930) 37 Ariz. 290, 294 P. 273.

Where mortgagee's title officer, before mortgage on building was executed, was furnished with title abstract showing lease of pipe organ to mortgagors, such actual notice held sufficient and valid regardless of validity of lease record. M. P. Moller, Inc. v. Meinker, (1934) 314 Pa. 314, 171 A. 476.

Place of Realty.

Conditional sale contract covering electrical lighting fixtures to be attached to certain building held properly filed in county where building was located, not county of purchaser's principal place of business, as respects rights of subsequent purchaser. Lightolier Co. v. Del Mar Club Holding Co., Inc., 1933, 237 App.Div. 432, 262 N.Y.S. 32.

Annexation, Filing After.

Conditional seller held not prevented from removing sprinkler system because of failure to file conditional sales contract until after system was installed. Prudence-Bonds Corp. v. 1000 Island House Co., (1930) 141 Misc. 39, 252 N.Y.S. 60.

Chattels Not Affected by Filing.

Filing of conditional sales agreement held not essential to reservation of title by seller, where gas ranges covered by agreement remained personalty after their annexation to realty, independently of agreement between buyer and seller. Orborn Stove Co. v Schroeder, (1934) 241 App.Div. 832, 271 N.Y.S. 242.

Electric refrigerators were movables, and retained character of personal property, regardless of conditional seller's failure to file contract before conveyance. Kelvinator Sales Corp. v. Byro Realty Corp., (1930) 136 Misc. 720, 241 N.Y.S. 632.

III. Annexation to Realty.

Chattels Severable.

Some articles, such as gas ranges, are treated as personalty for all purposes, and not governed by statute as to goods affixed to realty. Modern Security Co. v. Thwaites, 1930, 138 Misc. 469, 246 N.Y.S. 405.

The fact that a chattel has become an integral part of a common plant, and with the building forms a unit for the prosecution of a common purpose, is unimportant in determining rights arising out of a conditional sales contract, if the chattel is, in fact, detachable without material injury to the freehold; if the chattel is so detachable, the conditional vendor is entitled to recover the same. Bank of America Nat. Assoc. v. La Reine Hotel Corp., (1931) 108 N. J. Eq. 567, 156 Atl. 28.

—Boilers.

Conditional seller of boilers installed in residence under recorded sales contract held entitled to removal thereof as against mortgagee purchasing at foreclosure sale where property was easily severable from freehold without material injury thereto, and contract was recorded before foreclosure and sale. Arlotto v. Hauck Realty Co., (1935) 13 N.J.Misc. 305, 177 A. 691.

—Bowling Alleys.

Conditional sale contract and chattel mortgage held as between parties to have fixed status of bowling alley as chattel, but not as to other persons not having knowledge thereof. Brunswick-Balke-Collender Co. v. Franske-Schiffman Realty Co., (1933) 211 Wis. 659, 248 N.W. 178.

—Compressors.

Compressors and coils constituting part of refrigerating system held removable by conditional vendor on foreclosure of realty mortgage. Workingmen's Bldg., etc., Assoc. v. Smith, (1931) 108 N.J.Eq. 349, 155 A. 20 (no reference to Uniform Act).

—Elevators.

Elevator system installed in building held severable without material injury to freehold. Harvard Financial Corp. v. Greenblatt Constr. Co., Inc., (1933) 261 N.Y. 169, 184 N.E. 748.

—Electric Light Fixtures.

Electric light fixtures sold under conditional sales contract remain personalty, as regards claim of one holding mortgage on realty. New York Title, etc., Co. v Grossman Properties, (1931) 142 Misc. 274, 253 N.Y.S. 533.

—Fountain.

A concrete stone fountain connected to a water main and electrically lighted, and concrete window boxes, have been held severable without material injury to the freehold. Metropolitan Stone Works, Inc. v. Probel Holding Corp., (1928) 131 Misc. 519, 227 N. Y. S. 414.

—Gas Burner.

A gas burner installed in a coal furnace subject to approval and subsequently removed without injury to the freehold retained its character as personalty and was held not subject to the provisions of this section. Delaware Hill Development Co., Inc. v. Delaware Bldg. Corp., 1930, 137 Misc. 672, 244 N.Y.S. 324.

—Heating Plant.

A hot water heating plant may be removed without "material injury to the freehold" and the fact that holes were left in the floors is not in itself sufficient to compel a contrary conclusion. It did not contribute to the support of the building, nor form part of its inner surface, it could be removed without injury to itself and replaced without injury to the realty, and so a reservation of title in the conditional vendor was not void. Modern Security Co. v. Thwaites, (1930) 138 Misc. 469, 246 N. Y. S. 405, reversing (1930) 137 Misc. 485, 242 N. Y. S. 594. To the same effect see Reliance Bldg., etc., Assoc. v. Purifoy, (1932) 111 N. J. Eq. 575, 163 Atl. 151, distinguishing Domestic Electric Co. v. Mezzaluna, (1932) 109 N.J.L. 574, 162 A. 722.

Heating plant held severable without material injury to freehold. Sellitto v. Heating & Plumbing Finance Corp., (1934) 116 N.J.Eq. 247, 174 A. 147, aff., (1934) 117 N.J.Eq. 19, 174 A. 708.

—Kitchen Cabinets.

Kitchen cabinets, attached to walls by two nails, are removable without material injury to the premises and retain their character as personalty. Whatever slight injury may have followed from the extraction of the nails was within the fair contemplation of the vendor and vendee. Accordingly, when such cabinets were sold under a conditional sales contract, they were not subject to the lien of the mortgage on the premises. Prisco & Soverio, Inc. v. Bifulco Bros., Inc., (1931) 234 App. Div. 122, 254 N. Y. S. 459.

—Machinery.

Factory machinery and sprinkler system held severable without material injury. People's Sav., etc., Co. v. Munsert, (1933) 212 Wis. 449, 249 N. W. 527, 88 A. L. R. 1306, rehearing denied (1933) 212 Wis. 449, 250 N. W. 385, 88 A. L. R. 1306.

Where the machinery of a refrigerating plant could be unbolted from the foundation without injury to the building, it was held not affixed to the realty within the meaning of this section. In re Lloyd, (1934) 6 F. Supp. 514 (construing Pennsylvania act).

Machines and motors resting on the floor in a building, with screws through the feet into the floor to keep them steady, and with removable connections to steam pipes, and with shafting affixed to the walls by screws were held not to be "so affixed to the realty as to become part thereof", within the meaning of this section. Lifschitz v. Vorclone Corp., (1930) 8 N. J. Misc. R. 83, 148 Atl. 899.

—Opera Chairs.

Opera chairs, fastened to floor of theatre auditorium, held not fixtures, passing with realty to mortgagee's grantee. National Theatre Supply Co. v. Mishler Theatre Co., (1933) 312 Pa. 250, 167 A. 324.

—Pipe Organ.

Pipe organ held chattel and removable without injury to freehold. Washington Mortg. Corp. v. Forways Realty Corp., (1932) 235 App. Div. 642, 255 N. Y. S. 110, holding also that where a mortgage by its terms purported to cover personal property (and as to such was a chattel mortgage), advances thereon could not be made in disregard of what might be learned from an examination of the records in the register's office affecting personal property, where that property was not of a character that it might become part of the realty.

Where a pipe organ can be removed from a building without material injury to anything, and the building itself would still be intact if the organ were taken out, it has every attribute of personal property affixed to realty in such a way as to bring it within the provisions of this section. In re St. Mark's Hospital, (1932) 59 F. (2d) 1001 (construing New York act).

Leased pipe organ which was not in use for as long as eight weeks at one time held not so intimately connected with building and so essential to moving picture business conducted therein that, upon installation, it became part of realty. M. P. Moller, Inc. v. Mainker, (1934) 314 Pa. 314, 171 A. 476.

—Pneumatic Tubing System.

Pneumatic tubing system held not affixed to realty. In re Imber Bros., Inc., (1933) 5 F. Supp. 513, affirmed in Lamson Co., Inc. v. Bland, (1933) 68 F. (2d) 369 (construing Pennsylvania act).

—Range.

Conditional seller of ranges installed in residence under recorded sales contract held entitled to removal thereof as against mortgagee purchasing at foreclosure sale where property was easily severable from freehold without material injury thereto, and contract was recorded before foreclosure and sale. Arlotto v. Hauck Realty Co., (1935) 13 N.J.Misc. 305, 177 A. 691.

Gas ranges sold under conditional sales contract remain personalty, as regards claim of one holding mortgage on realty. New York Title, etc., Co. v. Grossman Properties, (1931) 142 Misc. 274, 253 N.Y.S. 533.

In conditional seller's action in replevin to recover gas stove from buyer's grantees to whom buyer had conveyed realty on which stove was located, evidence that stove remained personalty, because affixed to realty only by way of couplings screwed to permanent pipes, that price was not paid, that grantees had notice of seller's ownership before conveyance of realty to them, and evidence as to value of stove at time of trial, was sufficient to justify judgment awarding possession of stove to seller and fixing of value thereof. W. M. Whitney & Co. v. Brown, 1938, 253 App.Div. 180, 1 N.Y.S.2d 754.

—Refrigerators.

Electric refrigerator held detachable personalty. Minett v. Durnherr, (1929) 135 Misc. 259, 238 N. Y. S. 448.

Refrigerators installed in apartments, because of their character remain personal property after their annexation and the rights of claimants must be determined in the light of the provisions of § 5 of the Uniform Act, rather than this section which affects only that class of chattels which, after annexation to the real estate, continue to be personal property, or become real estate, in accordance with the agreement between the owner of the chattels and the owner of the real estate. Chasnov v. Marlane Holding Co., Inc., (1930) 137 Misc. 332, 244 N. Y. S. 455.

Frigidaire unit sold under conditional sales contract remained personal property, notwithstanding a portion of machine was on first floor and part in basement connected by copper tubing running through hole bored in floor. Stallknecht v. Gilbert Appliance Corp., (1932) 144 Misc. 626, 259 N.Y.S. 189.

—Sprinkler System.

A sprinkler system may be removed from a building without material injury thereto and a reservation of title to the same is enforcible. Prudence-Bonds Corp. v. 1000 Island House Co., (1930) 141 Misc. 39, 252 N. Y. S. 60.

Right to remove sprinkler system by conditional seller absolute if system was personalty, regardless of provisions of recorded lease. Independent Ætna Sprinkler Corporation v. Morris, (1934) 114 N.J.Law, 23, 175 A. 102.

Chattels Unseverable.

To become realty so as to render unrecorded conditional sale void against subsequent purchaser, property must be kind which, after annexation, would become realty. Madfes v. Beverly Development Corp., (1929) 251 N.Y. 12, 166 N.E. 787, (distinguishing Kohler Co. v. Brasun, 249 N.Y. 224, 164 N.E. 31).

—Boiler.

Boiler necessary for operation of cleaning and dyeing plant, in which placed for permanent use, and not removable without tearing down part of building, became fixture. In re Famous Cleaning & Dyeing Co., (1934) 7 F.Supp. 280 (construing Pennsylvania Act).

—Bowling Alleys.

Bowling alleys held affixed to the realty within this section. Brunswick-Balke-Collender Co. v. Franzke-Shiffman Realty Co., (1933) 211 Wis. 659, 248 N. W. 178.

—Furnaces.

A furnace conditionally sold under unrecorded agreement could be considered so intimately connected with freehold as to become essentially part thereof, so as to preclude seller's recovery of furnace in replevin, where freehold was sold to purchaser without notice after furnace was installed, notwithstanding statement in conditional sale agreement that furnace should remain personal property. Holland Furnace Co. v. Suzik, (1935) 118 Pa. Super. 405, 180 A. 38.

—Machinery.

Candy machinery connected with steam and electrical systems of plant, and fastened on floor and on ceiling with three-inch bolts, was held covered by mortgage on plant as against conditional seller. Central Lithograph Co. v. Eatmore Chocolate Co., (1934) 316 Pa. 310, 175 A. 702.

—Pipes.

Pipes buried under ground were held to be affixed to the realty, within the terms of this section. Lifschitz v. Vorclone Corp., (1930) 8 N.J.Misc.R. 83, 148 A. 899.

—Refrigerators.

Under a conditional sales agreement, where a portion of the installation of electric refrigerators in an apartment house consisted of pipes and other attachments in the wall, all parts of the refrigerators attached thereto became part of the realty. MacLeod v. W. J. Satterthwait, Inc., (1932) 109 N. J. Eq. 414, 157 Atl. 670.

Electric refrigerating system held so annexed to the realty as to become a part thereof within the meaning of this section. Frigidaire Sales Corp. v. Syracuse Inv. Corp., (1933) 239 App. Div. 880, 265 N. Y. S. 566.

An electric refrigeration system was held to be affixed to realty where pipes were placed running through the walls of the building with compressors in the cellar and ice boxes in individual apartments, and where, while portions of the system could be removed without physical damage to the property, this could not be done without wholly destroying the system considered as part of the building as an apartment house. Domestic Electric Co. v. Mezzaluna, (1932) 109 N. J. L. 574, 162 Atl. 722; Russ Distributing Corp. v. Lichtman, (1933) 111 N.J.L. 21, 166 A. 513.

—Tanks.

Tanks buried under ground were held to be affixed to the realty, within the terms of this section. Lifschitz v. Vorclone Corp., (1930) 8 N. J. Misc. R. 83, 148 Atl. 899.

—Theatre Chairs.

Theatre chairs affixed directly to a concrete floor by means of expanding screws are so affixed to the realty as to become a part thereof within the meaning of this section. In re Albanese, (1930) 44 F. (2d) 602 (construing New York Act).

—Well System.

A well system was held affixed to realty, so as to prevent a recovery thereof by the conditional seller thereof, the conditional sales contract not being recorded. Layne New York Hotel Co. v. President Hotel Co., (1933) 11 N. J. Misc. 155, 165 Atl. 89, affirmed (1933) 111 N. J. L. 338, 168 Atl. 442.

Test of Severability.

Whether conditionally sold goods affixed to realty are removable within this section is to be decided by whether there is a "material injury to the freehold," not whether the goods are essential to the functioning of the building. People's Sav., etc., Co. v. Munsert, (1933) 212 Wis. 449, 249 N. W. 527, 88 A. L. R. 1306, rehearing denied (1933) 212 Wis. 449, 250 N. W. 385, 88 A. L. R. 1306.

The controlling question is, not whether removal would cause material injury to article or building, but whether removal would materially injure operating plant, which, in case of dwelling, includes lighting, heating, plumbing, and sewage disposal systems. Holland Furnace Co. v. Suzik, (1935) 118 Pa.Super. 405, 180 A. 38.

The test to determine whether seller's reservation of title to sprinkler system was valid as for personal property under Conditional Sales Act was not whether system was installed at time of construction of building as on integral and vital part thereof but whether system was severable without material injury to freehold. Independent Ætna Sprinkler Corp. v. Morris, (1934) 114 N.J.Law, 23, 175 A. 102.

Where there was no proof that the removal of mill machinery sold under a conditional sales contract would result in material injury to the premises on which it was installed, the sellers were entitled to such machinery as against receivers of the mill property. Buss Mach. Works v. Watsontown Door, etc., Co., (1933) 2 F. Supp. 758 (construing Pennsylvania act).

Sole question in determining whether conditionally sold chattels are personalty is whether they can be severed from realty without materially injuring freehold. Metropolitan Stone Works, Inc. v. Probel Holding Corp., (1928) 131 Misc. 519, 227 N.Y.S. 414.

Prior Mortgage.

A real estate mortgage providing that it covered fixtures attached or to be attached to building was held not to include electrical fixtures which were not in existence at the time the mortgage was executed, but were later acquired by the owner of the building and attached thereto under a conditional sales contract. Perfect Lighting Fixtures Co., Inc. v. Grubar Realty Corp., (1930) 228 App.Div. 141, 239 N.Y.S. 286. To same effect see Icahn v. Kestlinger, (1930) 231 App.Div. 841, 246 N.Y.S. 829; Prisco & Soverio, Inc. v. Bifulco Bros., Inc., (1931) 234 App.Div. 122, 254 N.Y.S. 459.

Conditional seller's attempt to reserve title to furnace system substituted for heating system that was in dwelling house at time of antecedent mortgage held void as against nonassenting mortgagee, where substituted furnace could not be removed without material physical damage to building, and heating system was essential, and substituted system could not be removed without material injury to freehold. Lumpkin v. Holland Furnace Co., (1935) 118 N.J.Eq. 313, 178 A. 788.

Reservation of title to gas ranges affixed to realty held valid as against subsequently executed, but prior recorded, realty mortgage. Madfes v. Beverly Development Corp., 1929, 251 N.Y. 12, 166 N.E. 787.

Where refrigeration machinery conditionally sold was added to old equipment covered by mortgage, the mortgagee having no knowledge of the seller's reservation of title, such machinery was covered by the mortgage as against conditional seller. Central Lithograph Co. v. Eatmor Chocolate Co., (1934) 316 Pa. 312, 175 A. 701.

Question for Jury.

Where a sprinkler system, sold under a conditional sales contract, was installed in a building, the owner of which did not assent to the reservation of title by the conditional seller, it was held that the trial court erred in not allowing a determination of the question whether the apparatus was "severable wholly or in any portion without material injury to the freehold." Independent Aetna Sprinkler Corp. v. Morris, (1933) 111 N. J. L. 457, 168 Atl. 576.

Pleading.

Action for replevin to recover fire extinguishing apparatus sold under conditional sales agreement to another than defendant must be remanded after judgment for plaintiff, where there was no determination of issue raised by pleadings as to whether apparatus became affixed to realty. Independent Ætna Sprinkler Corporation v. Morris, (1933) 111 N.J.Law, 457, 168 A. 576.

IV. Priority Between Claimants.

Generally.

Rights of parties under this section are fixed by the Act irrespective of whether there is privity of contract between them. Independent Ætna Sprinkler Corporation v. Morris, (1934) 114 N.J.Law, 23, 175 A. 102.

Mortgagee.

The failure to file a contract for the conditional sale of an elevator installed in a building defeats the claim of the conditional vendor as against a mortgagee, and the fact that the contract was filed before the sale of the property in foreclosure proceedings is insufficient. Greene v. Elkins, (1929) 134 Misc. 118, 235 N. Y. S. 438.

Where a mortgage by its terms includes all fixtures and articles, the failure to file a conditional contract of sale of gas ranges installed in an apartment house defeats the seller's rights as against the mortgagee, in view of the provisions of section 5 (N. Y. Personal Property Law, § 65). Cohen v. 1165 Fulton Ave. Corp., 1929, 251 N.Y. 24, 166 N.E. 792. To same effect, see Lloyds, First Mortg. Corp. v. Lombardo, 1929, 227 App.Div. 400, 237 N.Y.S. 456.

Where mortgage on premises antedated conditional sales contract covering heating unit installed in mortgaged premises, provision of this section for recordation to provide notice as against subsequent purchasers of realty for value and without notice of conditional seller's title had no application so that as between mortgagee and conditional seller recording of original conditional sales agreement or of refinancing agreement was unnecessary. Keil Motor Co. v. Home Owners' Loan Corp., 1941, 4 Terry 322, 47 A.2d 164.

Where old heating plant in mortgaged house was not worth cost of removal, mortgagee did not lose security by removal thereof, and hence acquired no preference over rights of conditional seller of new heating plant which was installed in premises in place of the old plant. Id

Where mortgagor agrees that a chattel purchased under a conditional sale contract shall retain its character as personalty when attached to freehold and chattel can be removed without material physical damage to freehold, prior mortgagee does not lose any security by removal of chattel and is not entitled to gain additional security entirely at expense of conditional seller. Id.

Conditional sale contract, executed after buyer executed second mortgage on realty to which chattels sold were attached, held valid as against mortgagee, though not filed with county register of deeds as provided by Wis.Stat.1933, § 122.07. Vorclone Corp. v. Larson, (1934) 217 Wis. 214, 257 N.W. 611.

The subordination of a conditional sales contract covering fixtures to a real estate mortgage was held to subject the fixtures to the lien of the mortgage. Future Bldg., etc., Ass'n v. Mazzochi, (1931) 107 N. J. Eq. 422, 152 Atl. 776.

Conditional seller's attempt to reserve title to furnace system substituted for heating system that was in dwelling house at time of antecedent mortgage held void as against nonassenting mortgagee, where substituted furnace could not be removed without material, physical damage to building, and heating system was essential, and substituted system could not be removed without material injury to freehold. Lumpkin v. Holland Furnace Co., Inc., (1935) 115 N.J.Law, 204, 178 A. 788.

Mortgagee was not subsequent purchaser of apartment house as against reserved title of vendors to refrigerators, kitchenettes, gas ranges, and lighting fixtures. Crown v Regna Constr., (1929) 104 N.J.Eq. 469, 146 A. 346.

Seller who removed sprinkler system held liable to mortgagee foreclosing mortgage for damage to freehold occasioned by negligence in removing system. Prudence-Bonds Corp. v. 1000 Island House Co., (1930) 141 Misc. 39, 252 N.Y.S. 60.

Rights of conditional vendor of chattels, attached to mortgaged realty, are superior to those of prior mortgagee's grantee. National Theatre Supply Co. v. Mishler Theatre Co., (1933) 312 Pa. 250, 167 A. 324

Purchaser From Vendee.

Gas ranges are not fixtures within this section and title thereto is not obtained as an incident annexed by law to the ownership of land. To overcome the title of a conditional vendor, the landowner must be able to show itself a purchaser of the chattels from the conditional vendee by a title independent of title to the land. If such a purchase has been made, the reservation of ownership will not aid the conditional vendor unless the contract has been filed in accordance with the statute. Alf Holding Corp. v. American Stove Co., 1930, 253 N.Y. 450, 171 N.E. 703.

Seller's reservation of property in goods affixed to realty so as to become part thereof but severable without material injury is valid as against subsequent purchasers, including mortgagees. Harvard Financial Corp. v. Greenblatt Constr. Co., Inc., (1933) 261 N.Y. 169, 184 N.E. 748, reversing (1932) 236 App.Div. 742, 258 N.Y.S. 993.

Purchaser at Foreclosure.

Where a purchaser of personal property, on a conditional sales contract, attaches it to real property, of which he is in possession under a land contract, in such a manner as to be severable without material injury to the freehold, and, having defaulted in his payments on both, the land contract is foreclosed and the real property with the personal property thereon is sold and conveyed by a sheriff's deed to a third party, the rights of the parties must be determined in accordance with the provisions of this section, and, where the seller of the personal property had failed to file the conditional sale contract or a copy thereof as required by that statute, and the purchaser at the foreclosure sale had no knowledge of the conditional seller's

title, its reservation of property in the personalty sold is void. Kohler Co., Inc. v. Brasun, 1928, 249 N.Y. 224, 164 N.E. 31.

The conditional seller of bowling alleys could not recover from a purchaser at a mortgage foreclosure sale, where he failed to file the contract and statement as required by this section, the mortgage having been executed by the conditional buyer subsequent to the installation of the alleys. Brunswick-Balke-Collender Co. v. Franzke-Schiffman Realty Co., (1933) 211 Wis. 659, 248 N. W. 178.

Where a boiler was installed in basement of building, but no conditional bill of sale was filed as provided by this section, one purchasing the property on a mortgage foreclosure sale had good title to the boiler. Curry v. Geier Constr. Co., Inc., (1929) 225 App. Div. 498, 234 N. Y. S. 59.

The purchaser at a mortgage foreclosure sale purchases only such right and title as the mortgagee has in the premises, and where chattels are affixed to the premises under a conditional sales contract after the mortgage is executed, the purchaser takes subject to that agreement. Horowitz v. Welt, (1928) 224 App. Div. 37, 229 N. Y. S. 519 (no reference to Uniform Act); Prudence-Bonds Corp. v. 1000 Island House Co., (1930) 141 Misc. 39, 252 N. Y. S. 60.

In action by conditional seller to recover gas ranges claimed by mortgagees thereof as buyers under foreclosure sale, mortgagees had burden to establish themselves as bona fide purchasers of gas ranges. Orborn Stove Co. v. Schroeder, (1934) 241 App.Div. 832, 271 N.Y.S. 242.

Mortgagee, purchasing mortgaged realty at sale under foreclosure, begun without actual or implied notice of subsequently recorded contract of conditional sale to mortgagor's vendee of furnace, affixed to freehold, but severable without material injury thereto, took title free of seller's lien. Pflieger v. Holland Furnace Co., (1934) 114 N.J.Law, 43, 174 A. 720.

Purchaser of Land.

Where a conditional sales contract covering pumping machinery was properly recorded, such machinery being severable from the realty without material injury, the contract constituted a valid lien as against purchasers of the land, in view of this section. Treat v. Nowell, (1930) 37 Ariz. 290, 294 Pac. 273.

Tenant by Entirety.

Nonassenting wife of buyer of heating plant affixed to realty owned by them as tenants by entirety held to take title subject to unrecorded conditional sale contract. Dryja v. Twarozynski, 1933, 239 App.Div. 509, 267 N.Y.S. 578.

Trust Deed Creditor.

A furnace, sold conditionally, was annexed to a building on which there was a deed of trust. It could be removed without damage to the building. The sales contract was not filed and the secured creditor had no notice of the seller's reservation of title. The property was sold to the secured creditor. It was held that the seller's rights in the furnace were not extinguished by the sale to the secured creditor. Industrial Bank v. Holland Furnace Co., (1930) 109 W. Va. 176, 153 S. E. 309 (no reference to Uniform Act).

Trustee in Bankruptcy.

Failure to file a conditional sales contract covering a pipe organ built into a building does not render it void as against a trustee in bankruptcy of the buyer, who was also the owner of the building, such trustee not being an innocent purchaser for value within this section. In re St. Mark's Hospital, (1932) 59 F. (2d) 1001 (construing New York act).

Seller held to retain title to unattached lighting fixtures under unfiled conditional bill of sale notwithstanding realty mortgage, and was entitled, as against buyer's bankruptcy trustee, to recover thereof or their value. Central Chandelier Co. v. Irving Trust Co., (1932) 259 N.Y. 343, 182 N.E. 10.

Reservation of title to pneumatic tubing system held void as against buyer's trustee in bankruptcy where conditional sales contract was not recorded. In re Imber Bros., Inc., (1933) 5 F.Supp. 513, affirmed in Lawson Co., Inc. v Bland, (1933) 68 F.(2d) 369 (construing Pennsylvania Act).

Receiver.

A conditional seller of gas ranges, which were attached to realty in the usual manner, cannot recover from a receiver in a mortgage foreclosure, where the mortgage on the realty was made and recorded before the bill of sale was filed, although after the sale was made. Cohen v. 1165 Fulton Ave.

Corp., (1928) 222 App. Div. 378, 226 N. Y. S. 209, affirmed in (1929) 251 N. Y. 24, 166 N. E. 792.

Vendee as Owner.

Failure to file conditional sales contract in office prescribed by this section can not defeat vendor's right to repossess goods, where owner of realty is the vendee. American Laundry Machinery Co. v. Larson, (1934) 217 Wis. 208, 257 N.W. 608.

§ 8. Railroad Equipment or Rolling Stock.

Statutory Notes

The Indiana act substitutes for the words "and creditors described in Section 5" in line 4 of the original text the words "of the goods for value and without notice of the conditional seller's title." It also designates the office of the secretary of state as the place for filing or recording.—See Laws 1935, ch. 182.

The New York act supplies the omission in this section by designating "the Secretary of State" as the filing or recording officer.—See McKinney's Personal Property Law, § 68.

Panama Canal Zone. Omits this section.

The West Virginia act supplies the omission in this section by designating "the Secretary of State" as the filing or recording officer.—See Laws 1925, ch. 64, amending and reenacting Laws 1921, ch. 75. It was again amended in 1929 by inserting the words "or of commercial watercraft or barges or any equipment thereon" after the words "rolling stock" in the second line of this section. Laws 1929, ch. 79.

§ 9. Conditional Sale of Goods for Resale.

Statutory Notes

The Indiana act omits all the words following the last comma.—See Laws 1935, ch. 182.

The New York act amended section in 1941 to conform to Uniform Act by omitting provisions which protected only purchasers without notice and substituting therefor provisions which protect all customers in ordinary course of business. McKinney's Personal Property Law, § 69.

Panama Canal Zone. Revises section generally. Canal Zone Civil Code, § 1067.

Case Notes

Applicability of section 13 to this section.

The provision of section 13 of the act that the buyer may sell his interest in the goods "unless the contract otherwise provides," has no application to section 9 which contemplates a case where both seller and buyer intend that the latter shall sell the goods as stock in trade and receive the proceeds. Hence a provision in a conditional sale contract requiring written consent by the seller to a resale is ineffective as against a purchaser for value under section 9 which makes any "express or implied" consent sufficient. Finance Corp. v. Jones, (1922) 98 N. J. L. 165, 119 Atl. 171.

Filing, Effect of.

Where, although finance company held title to used automobiles under unrecorded conditional sales contracts, the automobiles were in hands of dealer, and dealer held proof of purchase, finance company was equitably estopped to assert title as against a subsequent chattel mortgagee, even though McKinney's Personal Property Law, § 65, excepted conditional sales of goods for resale from its general provisions. Rand's Discount Co. v. Universal C. I. T. Credit Corp., 1960, 10 A.D.2d 240, 198 N.Y.S.2d 341, appeal granted, reargument denied 203 N.Y.S.2d 1010, 11 A.D.2d 648, affirmed 9 N.Y.2d 454, 214 N.Y.S.2d 721, 174 N.E.2d 599.

The mere filing of a conditional sales contract for the sale of goods for resale is ineffective as against one purchasing from the conditional buyer for value and in the ordinary course of business. Flynn v. Colonial Discount Co., (1933) 149 Misc. 607, 269 N. Y. S. 394 (construing New Jersey act).

"Ordinary Course of Business."

Partnership's purported second sale of trailer, which had already been sold, under assigned conditional sales contract, to partner and his wife, who lived

in trailer on sales lot, was not one in ordinary course of business, within McKinney's Personal Property Law, § 69, relating to conditional seller's consent to resale. Albany Discount Corp. v. State of N. Y. Nat. Bank, 1962, 15 A.D.2d 623, 222 N.Y.S.2d 518.

A bank, paying valuable consideration, in ordinary course of business, for interest in phonograph of conditional seller thereof, after conditional sale thereof to him by wholesaler, was purchaser from buyer under resale in ordinary course of business, and hence entitled to recover damages from wholesaler for conversion of phonograph by replevy thereof from last purchaser after second seller's default on contract with wholesaler. First Nat. Bank of Binghamton, N. Y. v. Arthur Hermann Co., 1949, 275 App.Div. 415, 90 N.Y.S.2d 249.

Where an automobile, sold to a dealer under a conditional sales contract for resale was resold from the warehouse of the dealer, there was a sale "in ordinary course of business" within this section, and the buyer was not affected by the reservation of title by the conditional seller. Flynn v. Colonial Discount Co., Inc., (1933) 149 Misc. 607, 269 N. Y. S. 394 (construing New Jersey act).

The vendee in a contract of conditional sale of a motor vehicle is a "purchaser for value in the ordinary course of business" in the intendment of section 9 of the New Jersey Conditional Sales Act of 1919 (P.L. at pages 463, 464 [Comp. St.Supp. 1924, § 182-95]). De Cozen Motor Co. v. Kaufman, (1934) 113 N.J. Law, 343, 174 A. 893.

Creditors of Buyer.

The fact that the buyer of a stock of goods under a conditional sales contract was expressly permitted by the seller to resell the goods at retail does not render the contract void, as against creditors, in view of the fact that this section provides that "reservation of property shall be void against purchasers from the buyer for value," etc., and does not mention creditors. Thorne v. Webster, (1927) 193 Wis. 97, 213 N. W. 646.

Seller of store fixtures and merchandise under conditional sales contract contemplating resale could recover value of property from sheriff who sold it under judgment recovered by third person against buyer subsequent to filing of sales contract. White v. E. C. McKallor Drug Co., (1933) 239 App.Div. 210, 268 N.Y.S. 371.

Conditional sales agreement in contract for manufacturer's transfer to distributor of refrigerating equipment held inapplicable where equipment was sold on credit and distributor was granted right to resell at retail, and manufacturer was therefore not entitled to recover equipment from distributor's receiver. Frick Co. v. Walter Cox Co., (1936) 101 Ind.App. 402, 199 N.E. 462.

Purchaser From Vendee.

Where secondhand machinery dealer was a conditional vendee under agreement by which plaintiff, as seller, consented to resale prior to performance of condition, defendants, who took a mortgage on machinery from dealer without actual knowledge of the condition in good faith and for value became "purchasers" within meaning of this section against whom plaintiff's reservation of property was void. Tchlenoff v. Jacobs, 1944, 267 App.Div. 908, 46 N.Y.S.2d 875, appeal denied 267 App.Div. 987, 48 N.Y.S.2d 451, affirmed 293 N.Y. 904, 60 N.E.2d 32.

Where a conditional seller knew that the purchaser was a contractor and was purchasing goods for resale to another, who was a bona fide purchaser for value without notice, it could retain no lien against the latter. Russ Soda Fountain Co. v. Desind, (1934) 150 Misc. 568, 268 N. Y. S. 452.

Where distributor conditionally sold automobile to dealer with intent that dealer should resell, and dealer resold by further contract of conditional sale which was assigned to finance company having no knowledge that dealer was only conditional purchaser, finance company was entitled to protection of this section. De Cozen Motor Co. v. Kaufman, (1934) 113 N.J.Law, 343, 174 A. 893.

In action to replevy automobile, where there was evidence tending to show that assignee of duly filed conditional sale contract covering such automobile had impliedly consented to resale of automobile in ordinary course of business, refusal of instruction that upon default assignee was entitled to repossess automobile, no matter in whose hands it might be, held correct. Pallitt v. General Credit Corporation, (1935) 114 N.J.Law, 432, 176 A. 607.

Evidence.

A bill of sale given by a conditional vendee of goods is admissible in evidence as relevant and material to the issue whether the one receiving the

bill of sale was one who purchased for value in the ordinary course of business and so entitled to the protection of this section. Finance Corp. v. Jones, (1922) 97 N. J. L. 106, 116 Atl. 277, affirmed (1922) 98 N. J. L. 165, 119 Atl. 171.

Evidence in action by assignee of second conditional sales contract on trailer would support findings that assignee of first contract, whereunder partnership sold to partner and wife who lived in trailer on sales lot, had not expressly or impliedly consented to resale, and that partnership had not continued in possession of trailer. Albany Discount Corp. v. State of N. Y. Nat. Bank, 1962, 15 A.D.2d 623, 222 N.Y.S.2d 518.

Evidence was sufficient to take to jury questions whether conditional sale of phonograph by wholesaler was made with implied consent thereof to resale by buyer and whether such resale under conditional contract, assigned by seller to bank, which regarded such seller as dealer, was in ordinary course of business, so as to entitle bank to recover damages from wholesaler for conversion of phonograph by replevy thereof from last purchaser after second seller's default on contract with wholesaler. First Nat. Bank of Binghamton, N. Y. v. Arthur Hermann Co., 1949, 275 App.Div. 415, 90 N.Y.S.2d 249.

In action by conditional seller to replevy juke box which was in hands of buyer's subvendee, evidence did not support finding that seller, who sold to buyer at time when buyer had a juke box route, had impliedly consented that buyer, who subsequently opened appliance store, could resell. Savage v. Pratt, 1956, 272 Wis. 170, 74 N.W.2d 635.

Evidence held to show a conditional sale of an automobile to a dealer to be resold and the reservation of title in the seller therefore void under this section against a purchaser for value in the ordinary course of business. Dransfield v. Boone-Armstrong Motor Co., (1926) 102 W. Va. 370, 135 S. E. 286.

Questions for Jury.

Whether a conditional vendor expressly or impliedly consented to the resale of the goods thereby protecting a buyer for value in the ordinary course of business under this section has been held to be a question for the jury. Finance Corp. v. Jones, (1922) 97 N. J. L. 106, 116 Atl. 277, affirmed (1922) 98 N. J. L. 165, 119 Atl. 171.

In determining whether purchaser of personalty from conditional buyer thereof should be protected against conditional seller, fact questions triable under McKinney's Personal Property Law, § 69, are (1) whether conditional seller expressly or impliedly consented to conditional buyer's resale of personalty, and (2) whether resale was for value in ordinary course of business, and it is immaterial whether purchaser on resale knew of conditional seller's reservation of title. Troy Sav. Bank v. Carobene Apartments, 1956, 1 Misc.2d 359, 146 N.Y.S.2d 268.

In determining whether purchaser of personalty from dealer who was conditional buyer thereof should be protected against original seller, fact questions triable under this section are whether such seller expressly or impliedly consented to dealer's resale of personalty and whether resale was for value in ordinary course of business, and last purchaser's good faith and knowledge of original seller's reservation of title in sale contract are immaterial. Personal Property Law, § 69. First Nat. Bank of Binghamton, N. Y. v. Arthur Hermann Co., 1949, 275 App.Div. 415, 90 N.Y.S.2d 249.

Dealer as Buyer

A seller's reservation of title to automobile in conditional sale contract, under which it was sold to corporation which was not an automobile dealer, was not void under this section as against automobile dealer purchasing automobile from corporation's president, to whom corporation sold it, or one subsequently purchasing it from such dealer, though such dealer purchased automobile for value and resold it in ordinary course of business for value, where original seller never regarded or had reason to regard such dealer as buyer or legal successor in interest to buyer under conditional sale contract. Effron v. Haile, Sup.1951, 103 N.Y.S.2d 561.

Knowledge of buyer's intent

Where conditional seller's implied consent to buyer's resale is relied on to defeat seller's reservation of title, it must be made to appear either that seller had actual knowledge of buyer's intent to resell or that he had constructive knowledge of such intent. Savage v. Pratt, 1956, 272 Wis. 170, 74 N.W.2d 635.

A conditional seller may assert his reserved title against a purchaser from the buyer in absence of evidence that seller knew or should have known that buyer was a dealer in such property and bought to resell, especially where contract provides that purchase price should instantly fall due upon resale. Id.

Burden of proof

In action by conditional seller of juke box against buyer's subvendee, wherein subvendee alleged that seller had given implied consent to resale, subvendee had burden of proving that buyer had authority to resell. Savage v. Pratt, 1956, 272 Wis. 170, 74 N.W.2d 635.

§ 10. Filing.

Statutory Notes

This section of the Indiana act differs so widely from the Uniform Act that reference is made to the adopting act.—See Laws 1935, ch. 182.

New York. Act as last amended by L.1963, c. 308, § 4, provides for a card index system in lieu of a book and in addition, the following: "In the city of New York and in the county of Nassau, in case there is no statement filed signed by the seller stating that the goods are or are to be affixed to realty as provided by section sixty-seven of this article, such entries shall not be kept in a separate book but shall be kept in the chattel mortgage index and the name of the buyer shall be entered in the column of 'mortgagors' and the name of the seller in the column of 'mortgagees.' In all cases where a statement is filed signed by the seller stating that the goods are or are to be affixed to realty as provided by section sixty-seven of this article, the filing officer, except in the city of New York and in the county of Nassau, shall also enter in such separate book or card index system, in addition to the facts required to be entered as above, the name of the owner of the realty and under a column headed 'property' he shall enter a brief description sufficient for the identification of the realty or its location by street and number and if in a city or county, other than the city of New York and the county of Nassau, where the block system of recording or registering and indexing conveyances is in use, the section and block in which such realty is situated. The filing officer, except in the city of New York and in the county of Nassau, shall also keep an index or card index system, alphabetically arranged under the names of the owners of the realty. A filing officer in the city of New York and in the county of Nassau, in all cases where a statement is filed signed by the seller stating that the goods are or are to be affixed to realty as provided by section sixty-seven of this article, shall enter in a separate book or card index system the date of filing, filing number, name of buyer and seller and a brief description sufficient for the identification of the realty or its location by street and number and the block in which such realty is situated. Such contract shall have endorsed thereon a designation of the number of the block within which such realty is situated. In all cities and counties where such block system is in use, the index must be arranged according to the block numbers. For filing, entering and indexing such contract or copy thereof, or any assignment or satisfaction of such contract, or its discharge by payment of money into court, or its vacation by order of the court, the filing officer shall be entitled to a fee of one dollar and fifty cents except in the city of New York, and except that for filing and entering a contract described in section sixty-eight of this article the secretary of state shall be entitled to a fee of one dollar and to a fee of fifty cents for filing and entering a statement of the satisfaction of such a contract.

"Except in the city of New York, a filing officer at the time of filing such instruments, except those contracts mentioned in sections sixty-five-a, sixty-seven and sixty-eight of this article, shall, upon request, either issue to the person filing the same a receipt in writing, signed by him, which shall contain the names of the parties to the contract, its date, amount and the date and time of filing thereof, or endorse such a receipt on a copy of the instrument and also state that said copy is a true copy of such instrument so filed." The filing officer shall be entitled to a fee of fifty cents for issuing a receipt for such a contract or other instrument affecting such a contract. See McKinney's Personal Property Law, § 70.

Panama Canal Zone. Among other changes, designates the registrar of property as the filing officer, and provides for a $1 filing fee. 4 C.Z.C. § 1578.

West Virginia. Section as amended by L.1925, c. 64; L.1949, c. 16, inserts "for record" following "with him" in first sentence; inserts "the secretary of state" preceding "shall record" in second sentence; substitutes "seventy-five cents" for "fifty-cents" in last sentence, and omits the exception clause therein. Code, 40–3–10.

The Wisconsin act was amended in 1923 by adding to the last sentence of this section the provision that "in cities of the first class the filing officer shall be entitled to a fee of one dollar."—See Laws 1925, ch. 115.

It was again amended in 1925 by changing the last sentence relating to filing fees. As amended, the sentence read as follows: "For filing and entering such contract or copy the filing officer shall be entitled to a fee of twenty-five cents, except that in cities of the first class the filing officer shall be entitled to a fee of thirty-five cents and except that for filing and entering a contract described in section 122.08 the secretary of state shall be entitled to a fee of one dollar."—See Laws 1925, ch. 115.

In 1931 it was amended to read as follows: "122.10 The * * * register of deeds shall mark upon the contracts or copies filed with him the document number, and day and hour of filing and shall file * * * the contracts or copies in his office for public inspection. He shall * * * enter alphabetically the names of the grantor or buyer in indices of which each page shall be divided into nine columns with heads to the respective columns as follows: Number of instrument, the date and time of filing, name of grantor or buyer, name of grantee or seller, name of instrument, date of instrument, amount or price named in the contract, a brief description of the property, and date of cancellation thereof; except that in entering the contracts mentioned in section 122.08 the secretary of state shall record either the sum remaining to be paid upon the contract or the price of the goods. * * * For filing and entering such contract or copy the * * * register of deeds shall be entitled to a fee of * * * fifty cents, except that * * * for filing and entering a contract described in section 122.08 the secretary of state shall be entitled to a fee of one dollar."—See Laws 1931, ch. 291.

Case Notes

Construction.

McKinney's N. Y. Personal Property Law, § 70, providing method of filing of conditional sales contract and containing direction as to entering and indexing of such a contract was required to be strictly construed, in determining whether it made a radical change in McKinney's N. Y. Lien Law, § 230 et seq., relating to filing of chattel mortgages. In re Labb, D.C.N.Y.1942, 42 F. Supp. 542.

Although change in title of McKinney's N. Y. Personal Property Law, § 70, providing method of filing conditional sales contract could be considered in construing it, the mere changing of the title, which originally contained only the word "filing", to the words "filing, entering and indexing", did not change its effect. Id.

Purpose.

The purpose of provision of Smith-Hurd Ann.St. c. 121½, § 20, requiring some form of public recordation of conditional sale contracts is to protect those dealing with possessor of personal property against secret trusts or claims of those having no connection with possession and no apparent connection with title. In re Halferty, C.C.A.Ill.1943, 136 F.2d 640.

Purpose of filing is to give subsequent purchasers constructive notice of reservation of title. Delco Ice Mfg. Co. v. Frick Co., (1935) 318 Pa. 337, 178 A. 135.

Equity Jurisdiction.

Equity is not exclusive in enforcing rights of parties affected by conditional sales contract which has been filed without compliance with requirements of Conditional Sales Act. Delco Ice Mfg. Co. v. Frick Co., (1935) 318 Pa. 337, 178 A. 135.

Index.

The Uniform Act does not make the index an essential part of the record, notwithstanding the provision of the third sentence of this section. It is the filing by the seller of the contract, and not the indexing by the clerk, which is the seller's protection. Teweles v. Clearance Holding Corp., (1931) 108 N.J.Law 167, 156 A. 447.

Eligibility to Record.

McKinney's New York Personal Property Law, § 65, requiring a "contract of conditional sale or copy thereof" to be filed for record is not complied with if the part of the contract which gives notice of the price and terms of payment is not so filed. Hoffman v. Cream-O-Products, C.A.N.Y.1950, 180 F.2d 649, certiorari denied 71 S.Ct. 44, 340 U.S. 815, 95 L.Ed. 592.

A contract of conditional sale which does not include a stated price for the goods but which does contain a statement of means by which the price shall be determined, is properly receivable for record under the Wisconsin statute. In re Jaeger, (1921) 284 Fed. 130, affirmed (1922) 284 Fed. 136 (construing Wisconsin act). In that case it appeared that while no price for the goods was specified therein, the contract contained a provision to the effect that the goods should be invoiced at the regular wholesale dealer's prices established by the seller for the spring trade.

The statutory requirements as to the contents of instruments by which a conditional sales contract is made must be strictly complied with, otherwise the instrument is not entitled to record and does not constitute constructive notice. Delco Ice Mfg. Co. v. Frick Co., (1935) 318 Pa. 337, 178 A. 135.

Abstract of contract should be entered in "conditional sales docket." Id.

Mistakes of Recorder.

Where a register, in filing a conditional sales contract, made a mistake of name in the index, the rights of the parties under the Conditional Sales Act would not be affected thereby. Pavlick v. Reginald Oliver Co., (1930) 106 N. J.Law, 292, 148 A. 624. To same effect see Teweles v. Clearance Holding Corp., (1931) 108 N.J.Law, 167, 156 A. 447.

Where a register recorded a conditional sales contract in the mortgage book rather than in the conditional sales book, the conditional seller was held not responsible for the error. Domestic Electric Co. v. Mezzaluna, (1932) 109 N. J. L. 574, 162 Atl. 722.

If a complete contract, entitled to be filed, is delivered to the filing officer, informalities or irregularities in indexing or recording the statutory information on his books by the filing officer will not affect the rights of the parties. In re Jaeger, (1921) 284 Fed. 130 (construing Wisconsin act), wherein it appeared that the filing officer indexed the contract in question in an index to chattel mortgages, instead of indexing it in a separate book as required by the statute; indexed the names of the buyers under the heading of mortgagor and the name of the seller under the heading of mortgagee, and failed to enter the hour of filing, a description of the goods, the price named in the contract, the amount due, or the date of cancellation

Removal From Record.

Where the contract violates the statute in not containing a description of the realty affected, a rule to show cause why the contract should not be stricken from the record is the proper proceeding to be taken by party affected by the contract. Delco Ice Mfg. Co., v. Frick Co., (1935) 318 Pa. 337, 178 A. 135.

Notice.

The filing of conditional sales contract constitutes "constructive notice" of the state of the title to subsequent purchaser from the conditional buyer. Duro Co. v. Wishnevsky, 1940, 126 N.J.Misc. 7, 16 A.2d 64.

Filing of conditional sales contract in accordance with statute operates as constructive notice. Teweles v. Clearance Holding Corp., (1931) 108 N.J.Law, 167, 156 A. 447.

Conditional sales contract, if valid when made and properly filed, constitutes constructive notice thereof to all others, and will preserve reservation of title in vendor or vendor's assignee regardless of how many subsequent successive transfers occur. General Motors Acceptance Corp. v. Reifsteck, 1962, 35 Misc.2d 913, 231 N.Y.S.2d 835.

Where, because of parolee's inability to purchase automobile because of his status and lack of credit, parolee's employer purchased automobile covered by a conditional sales contract in its corporate name under an arrangement with parolee by which parolee was to make the payments, corporate employer was properly listed as the buyer for purposes of the filing of the conditional sales contract, and subsequent purchaser who bought vehicle from parolee's transferee in good faith was charged with notice. Id.

When holder has properly and seasonably filed conditional sales contract, provision of contract reserving property in holder is valid as to all persons for reason that by so filing contract holder has given constructive notice to world of his rights in property. Commercial Credit Corp. v. Schneider, 1954, 265 Wis. 264, 61 N.W.2d 499.

Incomplete Filing.

Filing of only portion of conditional sales contract from which material part is omitted does not operate under this section to protect vendor's title. In re Mineral Lac Paint Co., D.C.Pa.1937, 17 F.Supp. 1, affirmed, Salkind v. Dubois, C.C.A.1939, 105 F.2d 640.

Conflict of Laws.

Generally, with respect to chattel sold pursuant to valid conditional sale and subsequently removed to another state with consent of vendor, the whole law including choice of law rules of second state determines extent to which dealings in that state affect the interest of conditional seller. Davis v. P. R. Sales Co., C.A.N.Y.1962, 304 F.2d 831.

Law of Connecticut was controlling in determining extent to which dealings in Connecticut affected interest of conditional seller in property, where property was removed to Connecticut from New York with consent of seller, and parties thereafter entered into new agreement materially altering terms of the original sale. Id.

Where goods are sold under conditional bill of sale in New York to Connecticut resident, and it is contemplated at time of sale that situs of property will be removed to Connecticut, substantive law of Connecticut determines validity of reservation with respect to third parties. Id

McKinney's N.Y.Personal Property Law, § 60 et seq., providing that provision of conditional sale contract, reserving property in seller after delivery of goods to buyer, shall be valid as to all persons, except as thereinafter otherwise provided, applies to contract, made in another state, but not filed for record therein as required by local law, for conditional sale of automobile subsequently brought into New Jersey as merely transitory matter without being "removed" to filing district therein in statutory sense, so that seller's assignee, after buyer's default, is entitled to possession thereof as against one recovering judgment against buyer before automobile was brought into state. Commercial Credit Corporation v. Colando, 1940, 125 N.J.L. 285, 15 A.2d 762.

McKinney's N.Y.Personal Property Law, § 60 et seq., requiring that conditional sale contract be filed for record to render reservation of property in seller good against buyer's lien creditors, does not follow property sold into New Jersey, wherein New Jersey law applies. Id.

Common Law.

At common law, ownership of conditional seller was paramount to rights of third party claimants against the conditional buyer, and it was not necessary to record the conditional sales agreement. Jersey Security Co. v. Lottimer, 1942, 20 N.J.Misc. 432, 28 A.2d 623.

Filing under Name of Fictitious Buyer

Where buyer obtained automobile under assumed or fictitious name, and conditional sales contract given as security was filed under name of fictitious person as buyer, and third party bought automobile from actual buyer after search of city hall records which revealed no conditional bills of sale or chattel mortgages filed against actual buyer, third party was innocent victim of fraud and obtained title good as against original conditional seller. Industrial Bank of Commerce v. Packard Yonkers Corp., 1950, 101 N.Y.S.2d 189, affirmed 279 App.Div. 125, 108 N.Y.S.2d 249.

Time of filing

Where a restaurant, as originally leased, was equipped with range and tenant purchased broiler and ranges to replace existing range under conditional sales contract, and new equipment was interconnected so that only one piece was physically connected to restaurant service gas pipe and all equipment could have been removed without injury to realty, but conditional sales contract was not filed until after equipment was installed, sales contract on all equipment was void as to landlord. Uttinger v. Koopman, 1958, 46 N.J.Super. 443, 134 A.2d 824.

Description of goods

While 6 Del.C. § 910, does not require a definite method of description or identification of goods or equipment, it is generally assumed that there must be some reasonable attempt to identify or describe the items the contract is intended to cover, and the requirement in the act that recording officer enter a brief description of goods in a separate book maintained by him for purposes of inspection by interested parties discloses a legislative intention that a brief description or identification of goods sold should be included as a

part of the conditional sales contract. Minneapolis-Moline Co. v. Capitol Plumbing, Inc., 1960, 3 Storey 95, Del.Super., 164 A.2d 868.

§ 11. Refiling.

Statutory Notes

The **Indiana act omits the reference to sections 5 and 6.**—See Laws 1935, ch. 182.

New York. Laws 1960, c. 1004, § 2, provides that validity of filing or refiling may be extended for successive additional periods of 3 years instead of 1 year from date of refiling, and that statement shall include date and place of last filing of contract or copy. McKinney's Personal Property Law, § 71.

South Dakota amended this section in 1933 by increasing the period of validity in the first sentence from three to six years.—See Laws 1933, ch. 201.

The West Virginia act of 1925 substitutes "county" for "filing district" in this section

The act of 1925 also contains an additional section (numbered § 30) providing as follows: "When any conditional sale contract or copy, which is filed under and in pursuance of this act shall cease to be valid for a period of five years, then and in such case the clerk of the county court may remove from the files and destroy the said contract or copies so filed."—See Laws 1925, ch. 64, amending and reenacting Laws 1921, ch. 75.

The West Virginia act amended this section in 1933 by increasing the period of validity from three to five years and the period of extension from one to two years.—See Laws 1933, ch. 58

The Wisconsin act was amended in 1931 by substituting for the words "in the proper filing district", in the third sentence, the words "with the register of deeds", and by substituting for the words "filing officer", in the last sentence, the words "register of deeds."

Section was again amended in 1941 in several minor respects, see W.S.A. 122.11.

Case Notes

Application to New York City Counties.

The provisions of this section were held applicable to the counties comprising the city of New York. Perfect Lighting Fixtures Co., Inc. v. Grubar Realty Corp., (1930) 228 App. Div. 141, 239 N. Y. S. 286.

Failure to Refile.

Under Wisconsin law, failure to refile conditional sales contract before expiration of three year period destroyed validity of contract as to purchasers and creditors who acquired rights subsequent to expiration of period. In re Rosenberg Iron & Metal Co., D.C.Wis.1964, 228 F.Supp. 12.

Under Wisconsin law, burden of proving actual knowledge, on part of subsequent creditors, of conditional sales contract which had not been refiled was upon conditional seller. Id.

Where receivers were appointed for the conditional buyer, the seller's rights became fixed at the time of such appointment, and were not defeated by failure to refile the conditional sales contracts thereafter. Buss Mach. Works v. Watsontown Door, etc., Co., (1932) 2 F. Supp. 758 (construing Pennsylvania Act).

Where conditional sale of cash registers was made on November 27, 1957, with a reservation of title, and contract was filed on January 20, 1958, and on March 10, 1961, the date of the assignment, the contract had not been duly refiled, the vendor's lien was not valid against the assignee for benefit of creditors. In re General Assignment for Benefit of Creditors of Brill's Hardware Co., N.J.Co.1961, 67 N.J.Super. 289, 170 A.2d 529.

It does not operate to invalidate the contract as to those whose rights during the three years following the filing were subordinate to the conditional sales contract. American Laundry Machinery Co. v. Larson, (1934) 217 Wis. 208, 257 N.W. 608.

"The sole effect of the failure to refile is to terminate, as to all persons who were not theretofore affected by it, the constructive notice accomplished by the filing." Id.

Failure to refile destroys validity only as to subsequent purchasers and creditors. Id.

Failure to refile forfeits all preferential rights of the seller. In re Press Printers, etc., Inc., (1924) 4 F.(2d) 159 (construing New Jersey Act).

Removal to New District.

This section requires the conditional seller to attach the required statement in each new filing district to which the property is removed, in order to extend the period of validity, unless the filing in the new district shows on its face that the period of validity has been extended in the original filing district. Osgood Co. v. Emblem Oil Co., (1933) 111 Pa. Super. Ct. 38, 168 Atl. 515.

Time of Refiling.

The fact that the last refiling of a conditional sales contract was not made within the 30 day period provided for by this section did not invalidate the contract as against a creditor of the conditional buyer, where the refiling was made three months before recovery of judgment by such creditor, and where the property was not levied on until several months later. Collingswood Trust Co. v. Brunswick-Balke-Collender Co., (1933) 112 N. J. Eq. 597, 164 Atl. 689.

Purpose

The purpose of provision of this section that filing of a contract shall be valid for a period of three years only, and that validity of filing may be extended for successive additional one year periods by refiling, is to protect subsequent purchasers for value and to obviate necessity of an examination of records for a period of more than three years by such person. Keil Motor Co. v. Home Owners Loan Corp., 1941, 4 Terry 322, 47 A.2d 164.

Three year period

Where mortgage covering premises was of record prior to conditional sale to mortgagor of a heating unit which was installed in the premises, so that mortgagee was not a subsequent purchaser for value, as between mortgagee and conditional seller, this section giving three years' validity to recordation of conditional sales contract had no application. Keil Motor Co. v. Home Owners Loan Corp., 1941, 4 Terry 322, 47 A.2d 164.

§ 12. Cancellation of Contract.

Statutory Notes

The **Arizona** act omits the last two sentences. A.R.S. § 52-609.

The **Indiana** act substitutes for the words "statement that" near the end of the first sentence the words "a written statement together with a copy thereof stating." It also adds a second sentence which reads as follows: "If such written statement is executed in connection with a contract described in section six or seven of this act [sections 7 and 8 of the Uniform Act] the seller shall also acknowledge the execution thereof." It names as the filing officer the "Secretary of State."—See Laws 1935, ch. 182.

The New York act was amended in 1942 by omitting last sentence. See McKinney's Personal Property Law, § 72.

Amendment of 1940 requires the statement be given without a demand by buyer, and provides specific recitals in the statement or certificate. See McKinney's Personal Property Law, § 72.

In 1930 four additional sections relating to (1) the discharge of the contract by payment of money into court (2) the vacating of the contract by order of the court (3) the filing of transcripts of discharge and (4) the vesting of title in the buyer by the discharge of the contract, were added. See McKinney's Personal Property Law, §§ 72-a to 72-d.

Panama Canal Zone. Provides for a twenty-five cent filing fee payable to the registrar of property. 4 C.Z.C. § 1580.

The **South Dakota** act was amended in 1927 by providing that "for filing and entering the statement of satisfaction, the filing officer shall be entitled to no fee or compensation therefor" except, etc.—See Laws 1927, ch. 75.

Laws 1943, c. 181 inserts "before an officer authorized to take acknowledgments or witnessed by two persons signing as witnesses thereto", after "acknowledge", in the first sentence. SDC 54.0212.

The **West Virginia** act, as amended by L.1925, c. 64, requires "fee of thirty-five cents except that secretary of state shall be entitled to a fee of fifty-cents". Code 4018.

The **Wisconsin** act was amended in 1923 by adding to the last sentence of this section the provision that "in cities of the first class the filing officer shall be entitled to a fee of thirty-five cents."—See Laws 1923, ch. 129.

It was again amended in 1931 to read as follows: "122.12 After the performance of the condition, upon written demand delivered person-

ally or by registered mail by the buyer or any other person having an interest in the goods, the seller, or his assignee if the contract be assigned, shall execute, acknowledge and deliver to the damandant a statement that the condition in the contract has been performed. If for ten days after such demand the seller, or his assignee as the case may be, fails to mail or deliver such a statement of satisfaction, he shall forfeit to the demandant five dollars and be liable for all damages suffered. Upon presentation of such statement of satisfaction the * * * register of deeds shall file the same * * * and enter on the same line in the last column where such mortgage or contract appears in the index, the document number and date of filing, of all assignments, foreclosure affidavits, extensions or releases thereof. For filing and entering the * * * satisfaction * * * the * * * register of deeds shall be entitled to a fee of * * * twenty-five cents and except that the secretary of state shall be entitled to a fee of fifty cents for filing and entering a statement of the satisfaction of a contract described in section 122 08."—See Laws 1931, ch. 291

This section was amended in 1940 to provide for the immediate execution of the certificate, to be filed in the place or places where the contract is then on file. Section also contains additional provisions relating to information to be contained in the certificate.—See Laws 1940, c. 741.

Case Notes

Scope of section.

The relief afforded by Personal Property Law, § 72, relating to cancellation of conditional sales agreements is available only in a plenary action, and relief thereunder cannot be granted unless action is brought in which all necessary parties are joined. Broadway Concessions v. Mullin, 1949, 88 N.Y.S. 2d 7.

Mortgagor, even though proving that amount due under terms of chattel mortgage had been paid, was not entitled to order compelling mortgagee to execute a satisfaction of the mortgage either under the Lien Law, § 238, or by applying by analogy provisions of Personal Property Law, § 72, relating to cancellation of conditional sales agreement. Id.

Non-performance of condition

Where transfer of automobile by buyer to another was on condition that buyer-transferor bring payments up to date, and condition was not complied with, transfer failed. Manufacturers Hanover Trust Co. v. Nascarella, 1963, 39 Misc.2d 971, 242 N.Y.S.2d 326.

§ 13. Prohibition of Removal or Sale Without Notice.

Statutory Notes

The Indiana act substitutes for the words "any filing district" near the beginning of the section the words "the county in which the goods are first kept for use by the buyer after the sale," and for the words "a filing district in which the contract or a copy thereof is filed" after the first semicolon it substitutes the same words.—See Laws 1935, ch. 182.

New York. Laws 1960, c. 1004, § 3, includes provisions relating to removal of residence by buyer, and provides for notice to seller of removal of goods of residence, by certified mail. McKinney's Personal Property Law, § 73.

Panama Canal Zone. Substitutes "Canal Zone" for filing district and provides for 30 day notice prior to temporary removal of property. 4 C.Z.C. § 1581.

The West Virginia act substitutes "county" for "filing district" in this section.—Code, 40–3–13.

The Wisconsin act was amended in 1931 by adding the words "or his assignee if any" after the word "seller" throughout the section. The word "not", coming immediately before the words "prior to the performance of the condition" was changed to "nor."—See Laws 1931, ch. 291.

Case Notes

Construction.

Under this section Act does not render retention of title by vendor invalid or lawful terms of conditional sales contract unenforceable by him, but merely

means that his title is not absolute in sense that he can convey it free from, or otherwise deal with it inconsistently with, conditional vendee's rights, in view of sections 4 and 16. Starr v. Govatos, (1925) 3 W.W.Harr.(Del.) 66, 130 A. 392.

This section represents a legislative expression of the existence of an interest in the vendee in the absence of restrictive terms in the contract; and disposition by conditional vendee of his "interest" does not disturb and is subordinated to "title" of conditional vendor, which does not pass to vendee until conditions of contract are fulfilled. E. L. Jones & Co. v. Unruh, (1935) 7 W.W.Harr. 241, 182 A. 211.

Purpose.

Code 1939, § 52–610 prohibiting one who has bought goods under a conditional sales contract and has not paid for them in full from removing or selling goods without notice to seller has for its purpose the giving to seller of an opportunity to protect himself. Dewar v. Hagans, 1944, 61 Ariz. 151, 146 P. 2d 208, 151 A.L.R. 673.

Law Governing.

Where automobile, purchased in California under conditional sales contract, was brought to New York in violation of contract and without vendor's consent, and sold by conditional vendee, law of California, which does not require such sales to be recorded to preserve title in vendor as against creditors of and purchasers from vendee, should govern, and vendor could maintain replevin against purchaser; reservation of title being effective against latter, even though an innocent purchaser. Goetschius v. Brightman, (1927) 245 N. Y. 186, 156 N.E. 660, affirming (1925) 214 App.Div. 158, 211 N.Y.S. 763 (cause of action arose, however, prior to adoption of Uniform Act).

Where automobile sold in New York under conditional sales contract which complied wth laws of that state was removed to Ohio without knowledge or consent of seller and sold to party having no knowledge of conditional sale, seller's action against buyer for conversion of automobile held maintainable in Ohio, notwithstanding sales contract did not comply with local law. Reising v. Universal Credit Co., (1935) 50 Ohio App. 289, 198 N.E. 52.

"Temporary Uses."

Conditionally sold property is not removed to a new filing district for temporary purposes, within this section, so as not to require refiling the contract therein, where the property is used therein for more than the thirty day period. Osgood Co. v. Emblem Oil Co., (1933) 111 Pa. Super. Ct. 38, 168 Atl. 515.

"The foregoing provisions indicate that the buyer is intended to have the right of removal of the goods 'for temporary uses for a period of not more than thirty days', that a transfer for a shorter period is not a removal within this section, and that the buyer is not required to give notice to the seller of removal for temporary uses in order to prevent a default, unless it is for a longer period. Maryland Credit Finance Corp. v. Campbell, 1937, 195 A. 277, 8 W.W.Harr. 575.

Thirty-day Period.

Where property conditionally sold is removed from a filing district and returned to it from time to time, each return will again start the 30-day period allowed by this section. Street v. Commercial Credit Co., (1929) 35 Ariz. 479, 281 Pac. 46, 67 A. L. R. 1549 (no reference to this particular section).

Failure to Notify, Effect of.

The failure of a conditional buyer to give proper notice to conditional seller of intention to mortgage, as required by McKinney's Personal Property Law, § 73, does not deprive the conditional buyer of his right of redemption upon retaking by the seller. Schnitzer v. Fruehauf Trailer Co., 1954, 283 App.Div. 421, 128 N.Y.S.2d 242, affirmed 307 N.Y. 876, 122 N.E.2d 754.

Failure to give notice entitles the seller to retake the goods but he must conform to statutory requirements as to redemption and public resales Rost v. Wm. Knabe & Co., (1935) 277 N.Y.S. 896, 154 Misc. 425

Notice.

Seller of trucks held not required to file conditional sales contract in district to which trucks were transferred because of no notice or knowledge of "removal." In re Bowman, (1928) 28 F.(2d) 620, affirmed in (1929) 36 F.(2d) 721, 68 A.L.R. 550 (construing New York Act).

In buyer's wife's action to recover value of vehicle repossessed by seller pursuant to conditional sale contract, evidence established that wife had had knowledge, if not actual notice, of conditional sale contract when she purchased vehicle from her husband. Stibinger v. Van Wormer, 1957, 8 Misc.2d 1038, 168 N.Y.S.2d 482.

Evidence.

A waiver of a provision in a conditional sale contract that the seller may retake the goods if taken out of the state without the seller's written consent cannot be shown by proof of oral consent. Jenkins v. Blackstone Motor Co., Inc., (1926) 216 App. Div. 583, 215 N. Y. S. 694

Replevin.

The assignee of the seller of an automobile under a conditional sale agreement providing that the buyer will not remove, assign, or sublet the automobile, may replevy it on the buyer's unauthorized sale thereof in another state. A. B. C. Credit Corporation v. Big Bear Used Car Co. (1937) 118 N. J.Law. 400, 192 A. 845.

Assignment

An assignment by a conditional buyer in violation of a clause in the conditional sales contract requiring the seller's consent constitutes at most a default entitling the seller to resort to available remedies as in the case of nonpayment of the purchase price. Schnitzer v. Fruehauf Trailer Co., 1954, 283 App.Div. 421, 128 N.Y.S.2d 242, affirmed 307 N.Y. 876, 122 N.E.2d 754.

A restriction against assignment by a conditional buyer will not be implied in a conditional sales contract. Id.

Chattel mortgage

In proceeding to have sale set aside, wherein it was contended that defendant had not complied with McKinney's Personal Property Law, § 79, requiring resale of chattel repossessed under conditional sales contract where more than 50% of purchase price has been paid, evidence established that plaintiffs had, in violation of conditional sales agreement and McKinney's Personal Property Law, § 73, conveyed their interest in chattel to third party which had in turn given a mortgage on said property to a fourth party, prior to retaking of chattel by defendant. Ferguson v. Franklyn Nat. Bank, 1957, 4 Misc.2d 1018, 163 N.Y.S.2d 152.

The giving by the conditional buyer of a chattel mortgage without the consent of the conditional seller required by the conditional sales contract, constitutes a breach of contract which, if the contract contains an acceleration clause, will entitle the seller to accelerate payment of the price and then proceed as in case of default in payment, but the execution of the chattel mortgage does not also operate further to penalize the buyer by depriving him of his right of redemption. Schnitzer v. Fruehauf Trailer Co., 1954, 283 App.Div. 421, 128 N.Y.S.2d 242, affirmed 307 N.Y. 876, 122 N.E.2d 754.

§ 14. Refiling on Removal.

Statutory Notes

New York. Laws 1960, c. 1004, § 4, inserts provisions relating to removal of residence by buyer. McKinney's Personal Property Law, § 74.

Panama Canal Zone. Omits this section.

The West Virginia act substitutes "county" for "filing district" in this section.—Code, 40–3–14.

Case Notes

Purpose

This section relating to property removed from one county to another or from another state was designed to protect a vendor who, having complied with filing provisions of Act, is protected thereby even though goods are removed by buyer to another county or to another state, but the provision presupposes that vendor has acquired his initial protection by compliance with sections 5 and 6 relating to filing. Joy Mfg. Co. v. Brooks, D.C.W.Va.1963, 224 F.Supp. 537, affirmed 325 F.2d 721.

The purpose of McKinney's Personal Property Law, § 74, providing for refiling of a conditional sales contract when goods are removed by buyer from a filing district to another filing district is to make ascertainment of state of title easier. In re Lederman, D.C.N.Y., 1955, 128 F.Supp. 303.

Applicability to Lien Statute.

Where statute provided that garage keeper's lien should be prior to conditional sales contract, unless latter was "properly filed," but provided no criterion for determining matter, filing as required by Uniform Conditional Sales Act controlled. C. I. T. Corporation v. Jorgensen, (1932) 60 S.D. 7, 242 N.W. 594.

Law Governing.

Where goods are sold conditionally in one state and subsequently removed to another whose public policy is evidenced by the adoption of the Uniform Conditional Sales Act, that statute is paramount as to the rights of resident creditors of the conditional vendee as against the conditional vendor. Thayer Mercantile Co. v. Milltown First Nat. Bank, (1922) 98 N. J. L. 29, 119 Atl. 94, wherein the court said: "As a general rule, a transfer of property, valid where made, is effectual everywhere; but a universal recognized exception to this rule is that, where it is opposed to some statutory policy of the state of the rei sitae, and where it is sought to be enforced, the statute is paramount, and the rule is nullified thereby. Varnum v. Camp, (1833) 13 N. J. L. 326, 25 Am. Dec. 476; Moore v. Bonnell, (1864) 31 N. J. L. 90; Bentley v. Whittemore (1868) 19 N. J. Eq. 462, 97 Am. Dec. 671. And so, where a state, in the exercise of its sovereign power, regulates by positive law the disposition of personal property found within its borders, and prefers its own attaching creditors to a foreign assignee of a chattel, or the conditional vendor thereof, the statutory right conferred upon the resident creditor overrides the rights of such assignee or conditional vendor vested in him by the law of the forum where the contract was made."

It has been held in New York that the law of the place of contract controls so that property conditionally sold in a state where filing is not necessary cannot be seized by creditors in New York. Goetschius v. Brightman, (1925) 214 App. Div. 158, 211 N. Y. S. 763, affirmed in (1927) 245 N. Y. 186, 156 N. E. 660.

Whether conditional sales contract between nonresidents was "properly filed" so as to defeat local garage keeper's statutory lien must be determined by local law. C. I. T. Corporation v. Jorgensen, (1932) 60 S.D. 7, 242 N.W. 594.

In action upon conditional sales contract formed in Vermont involving this section, where neither party pleaded Vermont law, the common law of that state governed. Universal Credit Co. v. Knights, (1932) 145 Misc. 876, 261 N.Y.S. 252.

"Creditor."

The plaintiffs in a negligence action against a conditional seller of a motor car later sold to satisfy a judgment therein not being either "purchasers from or creditors of the buyer," are not within the class of persons protected by this section. The word "creditor," as used in this section, imports the existence of a debt at the time of acquisition of a lien by levy under legal process. Universal Credit Co. v. Knights, (1932) 145 Misc. 876, 261 N. Y. S. 252.

"Removal."

The word "removed" in Code, 40-3-11 relating to filing of contract involving property removed from one county to another or from another state means that property has had a contractual situs in one place and then is removed in a manner that re-establishes the situs of property in another state or county. Joy Mfg. Co. v. Brooks, D.C.W.Va.1963, 224 F.Supp. 537, affirmed 325 F.2d 721.

The mere fact that truck sold in Pennsylvania was used in New Jersey or bore a New Jersey license tag did not show "removal" within meaning of N.J.S.A. 46:32-20, requiring refiling of conditional sales contract after "removal" of the goods, and judgment creditor attaching the sale still had burden of proving change of situs. Hare & Chase v. Tomkinson, 1925, 102 N.J.L. 499, 129 A. 396.

Where a person residing in New Jersey and doing business in Pennsylvania buys on condition an automobile truck in the latter state, the contract reciting his business address, the use of the truck in transportation between Pennsylvania and New Jersey, it being kept in Pennsylvania when not in use, is not a removal thereof into New Jersey within this section. Hare & Chase, Inc., v. Tompkins, (1925) 102 N. J. L. 499, 129 Atl. 396. And to same effect, see Endler v. Commercial Credit Corp., (1929) 105 N. J. L. 474, 144 Atl. 582.

The original removal of an automobile to New York from a foreign state without intent to change the situs of the property, and subsequent detention as the result of legal constraint, growing out of an accident did not constitute a "removal" contemplated by this section. Universal Credit Co. v. Knights, (1932) 145 Misc. 876, 261 N. Y. S. 252.

Where the conditional buyer of an automobile took it from Illinois to Wisconsin while on a vacation trip and removed it to a garage for repairs, there was no "removal" within this section. Forgan v. Smedal, (1931) 203 Wis. 564, 234 N. W. 896.

Where buyer of trucks under conditional sales contract told seller that the trucks were in another filing district, where he had a contract to do trucking at an hourly rate, and that if the contract did not prove profitable, he would bring the trucks back, the seller was under no duty to the buyer's creditors to file the contract in the other district, for the reason that there was no "removal" within this section and section 73, and that, even if there were such removal, the seller did not have the required notice or knowledge. In re Bowman, (1928) 28 F. (2d) 620, affirmed in (1929) 36 F. (2d) 721, 68 A.L.R. 550 (construing New York Act).

This section is applicable only when the goods are removed from another state by the buyer under a conditional sales contract, hence it would not apply when the goods are removed by a purchaser from the buyer. Riccardi Motor Car, Inc. v. Weinstein, (1929) 98 Pa. Super. Ct. 41.

"Removal" of automobile from New York to New Jersey, within statute requiring rerecording after "removal," is not accomplished unless buyer, or his legal successor in interest, has intent to remove automobile to New Jersey and actually removes automobile to some place in New Jersey which buyer fixes as New Jersey situs of automobile. General Motors Acceptance Corporation v. Schwartz, 1937, 118 N.J.Law, 563, 194 A. 183.

In action by conditional seller's assignee to replevin automobile sold in New York and found in defendant's possession in New Jersey, court properly directed verdict for plaintiff, where conditional buyer sold automobile in New York county, where conditional sales contract had been previously recorded, to one through whom defendant subsequently acquired automobile notwithstanding conditional sales contract was never filed in New Jersey, since there was no "removal" of automobile, within meaning of this section, and plaintiff's title as proved was uncontroverted. Id.

Notice.

Where a conditional seller gives actual notice of the reservation of property to creditors (or parties affected by the recordation mentioned in this section) within 10 days after receiving notice of the removal of the goods, recordation is unnecessary as to them. Banks-Miller Supply Co. v. Marlinton Bank, (1929) 106 W. Va. 583, 146 S. E. 521.

Where a conditional sales contract was not filed in a state to which the property had been removed within ten days after the seller received notice of the removal, it was void as to a creditor who, without notice of the contract, acquired an attachment lien on the property, although such creditor acquired actual notice before the expiration of the ten day period. Universal Credit Co. v. Finn, (1933) 212 Wis. 601, 250 N. W. 391.

"Notice" of removal of goods which requires refiling of conditional sales contract means actual notice, oral or written. In re Bowman, (1929) 36 F. 2d 721, 68 A.L.R. 550 (construing New York Act).

An oral statement by a conditional buyer to a representative of a conditional seller that certain trucks, the subject matter of the sale, had been removed to another filing district, but not indicating they had been removed for more than a period of 30 days (section 73), was held not to constitute "notice to the seller", within the meaning of this section, such as would require refiling in the new district. Id.

A corporation selling and delivering automobile in Oklahoma under conditional sale contract was not required to comply strictly with A.C.A.1939, § 52–611, requiring recordation of contract in filing district, to which automobile was removed from another state, within ten days after receiving notice of such removal, in order to recover in replevin action against corporation purchasing automobile from another than original buyer in Arizona, where plaintiff gave defendant actual notice of contract by exhibiting copy thereof to of-

ficer of defendant and demanding surrender of possession of automobile on day after receiving notice of its whereabouts in defendant's possession. Frontier Motors v. Chick Norton Buick Co., 1955, 78 Ariz. 341, 279 P.2d 1032.

Notice not imputed to seller of buyer's removal of truck conditionally sold from length of time it was absent from state; registration being sufficient to protect his title. Bradshaw v. Kleiber Motor Truck Co., (1925) 29 Ariz. 293, 241 P. 305.

In action by conditional seller's assignee to replevin automobile, defendant held to have failed to establish himself as "legal" successor in interest of conditional buyer, entitled to invoke protection of this section, where evidence showed that conditional buyer's assignee, through whom defendant derived title, bought automobile in New York after contract, forbidding transfer of interest or removal, was recorded in New York. General Motors Acceptance Corporation v. Schwartz, 1937, 118 N.J.Law, 563, 194 A. 183.

Agreement between buyer and assignee of conditional sale contract, whereby contract was modified with respect to place where property was to be kept, was sufficient "notice" to assignee of removal of property to another filing district within this section providing that reservation of property in seller is void as to buyers and creditors without notice, where property is removed to another filing district, unless contract is refiled in district to which goods are removed. Maryland Credit Finance Corporation v. Campbell, 1938, 195 A. 277, 8 W.W.Harr. 575.

Even if mother of buyer of truck under conditional sale contract knew of contract when she bought truck at execution sale at which truck was sold as property of buyer, such knowledge would not affect her title where property had been removed to a new filing district and assignee of contract did not refile contract and buyer's judgment creditor levied on property without notice of conditional sale contract, either actual or constructive. Id.

"Notice" as used in this section, means actual notice, oral or written, and is not the written notice which is required of buyer under statute authorizing buyer to remove goods from one filing district to another upon giving written notice. Id.

Filing in District to Which Goods Removed

McKinney's Personal Property Law, § 74, requires filing in two districts instead of one where seller has notice of removal of goods, and imposes a requirement in addition to, rather than in substitution for, filing in district of buyer's residence. In re Lederman, D.C.N.Y.1955, 128 F.Supp. 303.

Commencement of Period.

The ten-day period mentioned in this section does not commence to run until the seller receives notice as to the county to which the goods have been removed. Banks-Miller Supply Co. v. Marlinton Bank, (1929) 106 W. Va. 583, 146 S. E. 521.

Conditional vendor has 10 days after notice of removal to file contract in filing district to which goods were removed from foreign state. Goetschius v. Brightman, (1925) 214 App.Div. 158, 211 N.Y.S. 763, affirmed in (1927) 245 N.Y. 186, 156 N.E. 660; Bradshaw v. Kleiber Motor Truck Co., (1925) 29 Ariz. 293, 241 P. 305.

Extension of Validity.

In view of section 11 and the last sentence of this section, it was held, in Osgood v. Emblem Oil Co., (1933) 111 Pa. Super. Ct. 38, 168 Atl. 515, that the filing of a conditional sales contract in the filing district to which the property sold had been removed did not extend the period of validity of the original filing.

Attachment Creditors.

The rule laid down in this section was applied in Thayer Mercantile Co. v. Milltown First Nat. Bank, (1922) 98 N. J. L. 29, 119 Atl. 94, to goods sold conditionally in the state of New York and subsequently removed to New Jersey, it being held that the reservation of title was void as to an attaching creditor without notice in New Jersey where the seller did not file the conditional sale contract or a copy thereof in the county to which the goods were removed within ten days after he acquired knowledge of the removal.

Attachment Before Expiration of Period.

Attachment and sale made before expiration of 10 days after seller's knowledge of removal of property to foreign state not validated because seller left property in county to which it was removed 30 days after knowledge of its removal. Bradshaw v. Kleiber Motor Truck Co., (1925) 29 Ariz. 293, 241 P. 305.

Lienor.

A garage keeper's lien for repairs on an automobile conditionally sold in another state and brought to the garage by the conditional buyer is inferior to the rights of the conditional seller, where the contract is filed in the filing district to which the car is removed within ten days after notice to such seller or his assignee. Cherry's, Inc. v. Sharpensteen, (1928) 33 Ariz. 342, 265 Pac. 90; C. I. T. Corporation v. Jorgensen, (1932) 60 S.D. 72, 242 N.W. 594.

Intention.

This section necessitates an intention on the part of the party to change the permanent status of property. Forgan v. Smedal, (1931) 203 Wis. 564, 234 N.W. 896.

"Removal" of automobile from New York to New Jersey, within this section, is not accomplished unless buyer, or his legal successor in interest, has intent to remove automobile to New Jersey and actually removes automobile to some place in New Jersey which buyer fixes as New Jersey situs of automobile. General Motors Acceptance Corporation v. Schwartz (1937) 118 N.J.Law, 25, 190 A. 625, affirmed (1937) 118 N.J.Law, 563, 194 A. 183.

Seizure In Foreign County.

Conditional sales contract seasonably filed in county where truck was delivered for buyer's use protected seller's rights against third persons without refiling thereof in another county where truck was seized for overloading. General Motors Acceptance Corp. v. Hayes Motor Co., (1934) 12 N.J.Misc. 384, 172 A. 343.

Burden of Proof.

Trustee in bankruptcy of conditional buyer of automobile had burden of proving that seller's lien was invalid on ground that buyer notified seller of buyer's change of residence in manner required by McKinney's Personal Property Law, § 73 and seller then failed to refile contract at buyer's new place of residence to preserve seller's lien In re La Press, C.A.N.Y.1962, 310 F.2d 895.

Plaintiff was held not entitled to recover for the wrongful seizure of an automobile by the assignee of the conditional seller failing to file contract within ten days after notice of removal of automobile into state, in absence of proof that the plaintiff was the legal successor of the conditional buyer. Vevilli v. General Motors Acceptance Corporation, (1934) 243 App.Div. 581, 276 N.Y.S. 308.

In seller's action to replevin conditionally sold automobile, defendant must establish himself as legal successor in interest of conditional buyer in order to invoke protection of this section. General Motors Acceptance Corporation v. Schwartz (1937) 118 N.J.Law, 563, 194 A. 183, affirming 118 N.J.Law, 25, 190 A. 625.

In action in detinet for truck by assignee of conditional sale contract, under which truck had been sold, burden was on assignee to show that buyer at execution sale, at which truck was sold as property of buyer of truck, had actual notice of conditional sale contract, where truck had been removed to another filing district and assignee did not refile conditional sale contract. Maryland Credit Finance Corporation v. Campbell, 1938, 8 W.W.Harr. 575, 195 A. 277.

Evidence.

In action in detinet for truck by assignee of conditional sale contract, under which truck had been sold, to recover truck which had been sold at execution sale as property of buyer and bought by buyer's mother, who then assigned truck to buyer, the proceeds being paid to buyer's judgment creditor and buyer's mother, who was also a judgment creditor of buyer, evidence was insufficient to show that mother at any time prior to execution sale had knowledge of conditional sale contract. Maryland Credit Finance Corporation v. Campbell, 1938, 195 A. 277, 8 W.W.Harr. 575.

In action in detinet for truck by assignee of conditional sale contract, under which truck had been sold, to recover truck after truck had been removed to another filing district and sold on execution as property of buyer, evidence established that judgment creditor of buyer acquired a lien on truck by levy and without notice of fact that buyer held it under a conditional sale contract, and that conditional sale contract or a copy thereof was not filed in county to which property had been removed after assignee had notice of

the removal thereto, thereby giving judgment creditor's lien precedence over reservation of property under the contract. Id.

In action in detinet for truck by assignee of conditional sale contract, under which truck had been sold, to recover truck which had been sold at execution sale as property of buyer, having been bought by buyer's mother and then turned over by her to buyer, the proceeds being paid to buyer's judgment creditor and to mother, who was also a judgment creditor of buyer, evidence established that judgment creditor of buyer and constable levying writ had no notice, either actual or constructive, of conditional sale contract. Id.

Failure to File

Failure to file copy of conditional sales agreement in filing district to which chattels sold thereunder had been removed with knowledge of seller did not void condition reserving title in seller except as against creditors of buyer who by attachment or levy acquired a lien against chattels sold before agreement or copy thereof was filed. In re Assignment for the Benefit of Creditors of Randy's Super Foods, Inc., 1957, 6 Misc.2d 585, 167 N.Y.S.2d 103.

Reservation of title to automobile in seller thereof under conditional sale contract, copy of which was filed in office of clerk of town wherein corporate purchaser had its principal place of business, was not void under this section because of seller's failure to file copy of contract in office of clerk of town wherein subsequent purported purchasers of automobile resided after removal of automobile to such town either by corporation's president, to whom corporation sold automobile, or by his vendee, neither of whom was buyer or legal successor in interest to buyer under conditional sale contract. Effron v. Haile, Sup.1951, 103 N.Y.S.2d 561.

§ 15. Fraudulent Injury, Concealment, Removal or Sale.

Statutory Notes

The Indiana act substitutes for the words "to a filing district where the contract or a copy thereof is not filed" the words "from the county in which the goods are first kept for use by the buyer after the sale."—See Laws 1935, ch. 182.

New York. Laws 1960, c. 1004, § 5, inserts "or his residence" following "remove them". McKinney's Personal Property Law, § 75.

The **West Virginia** act provides: "When prior to the performance of the condition, the buyer, maliciously or with intent to defraud, shall injure, destroy or conceal the goods, or shall sell, mortgage or otherwise dispose of them under claim of full ownership, or maliciously or with intent to defraud shall remove them to another state or to a county in this State where the contract or a copy thereof is not filed, he shall be guilty of a misdemeanor, if the amount due on the goods so injured, destroyed, concealed, removed, mortgaged, sold or otherwise disposed of is less than fifty dollars, and, upon conviction thereof, shall be confined in the county jail for not more than one year, or be fined not more than five hundred dollars, or both. Where the amount due on the goods thus injured, destroyed, concealed, removed, mortgaged, sold or otherwise disposed of is fifty dollars or more, the buyer shall be guilty of a felony and, upon conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars, or be imprisoned in the penitentiary for not less than one year nor more than five years, or both, in the discretion of the court. When, prior to the performance of the condition, the buyer, without having given the notice required by section thirteen (§ 4019) of this article, but without malice and without intent to defraud, shall remove such goods to another state or to a county in this State where the contract or a copy thereof is not filed, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail for not more than one year, or be fined not more than five hundred dollars, or both. Any such removal without such notice having been given shall be deemed prima facie fraudulent." Code 40–3–15.

Case Notes

Concealment.

Though a conditional buyer's concealment of an automobile is criminal under this section, it is not a theft thereof, so as to allow the conditional seller's assignee to recover on a theft insurance policy. La Porte Motor Co. v. Firemen's Ins. Co., (1932) 209 Wis. 397, 245 N. W. 105.

Consent.

In order to render penal sale or encumbrance by conditional buyer, of property which is subject of conditional sale, the sale or encumbrance must be made without consent or approval of conditional seller, and a sale or encumbrance made by conditional buyer by virtue of a conditional permission to sell given by conditional seller is not criminal even though the condition attached to the permission is violated. **Sheets v. State, 1940, 217 Ind. 676, 30 N.E.2d 309.**

Notice

Conditional seller's reservation of automobile title perfected in accordance with law of California, where automobile was sold, was valid in New Hampshire, even though seller did not record its contract in New Hampshire after it obtained knowledge that automobile had been removed to New Hampshire, where seller had no knowledge of its removal to New Hampshire until it received letter from buyer's transferee and transferee acquired actual knowledge of existence of contract within 20 days after seller received letter. J. R. Townsend Co. v. New Hampshire Auto Co., 1962, 104 N.H. 81, 178 A.2d 688.

Conditional seller of automobile was under no obligation to record contract in New Hampshire until it had knowledge of removal of automobile to New Hampshire and its title, valid under California law where contract was made and where automobile was delivered, was valid in New Hampshire and unimpeachable as against rights of all others, regardless of how innocently and in what good faith those rights may have arisen. Id.

Under RSA 361.15, invalidiating provisions in conditional sales contracts reserving property in seller as to purchaser or the buyer without notice of such provision who purchases goods for value, legislature distinguished from certain other goods automobiles which might be expected to be moved about and even to be out of their home district for periods of time, and notice intended by Legislature is one sufficient to make it reasonably clear to seller that automobile itself as distinguished from vendee was not merely temporarily in another state but that its removal was the sort contemplated by RSA 361.15 and the notice contemplated need not be written but actual notice, however conveyed, is sufficient. Bay State Merchants Nat. Bank v. Collins, 1958, 101 N.H. 232, 139 A.2d 71.

§ 16. Retaking Possession

Statutory Notes

The Delaware act amended this section in 1925 by adding, as a limitation of the right of the seller to retake possession, that he may do so "upon paying any rent or storage due thereon." 6 Del.C. § 916.

Case Notes

Law Governing.

The parties to a conditional sales contract may elect to have a controversy arising under said contract determined under the Uniform Act, although such act did not become effective until after the execution of the contract Dickson v. Niles, (1924) 122 Misc. 818, 204 N.Y.S. 15, affirmed in (1924) 210 App. Div. 801, 205 N. Y. S. 921.

"Retaking."

In action for conversion of automobile, evidence that plaintiff left automobile with motor company for repairs, from which plaintiff had purchased automobile on installment plan, and that company without knowledge or consent of plaintiff delivered automobile to plaintiff's father on his payment of the balance due on purchase price of automobile, sustained verdict for plaintiff. Sullivan & O'Brien v. Kennedy, 1940, 107 Ind.App. 457, 25 N.E.2d 267.

Where the assignee of a conditional seller of an automobile moved the car a short distance, parked it in the street near his garage, and locked it, there was no retaking within the meaning of this section, though the conditional buyer was in default. Hence, the conditional buyer's retaking of the car was not a theft thereof, so as to allow a recovery by the assignee on a theft insurance policy. La Porte Motor Co. v. Firemen's Ins. Co., (1932) 209 Wis. 397, 245 N. W. 105.

The retaking of an automobile sold under a conditional sales contract occurs on replevy by the sheriff with delivery to the seller. Montgomery Acceptance Corp. v. Coon, 1933, 263 N.Y. 561, 189 N.E. 697.

Where a conditional vendor of a sign purchased it from the trustee in bankruptcy of one of the vendees, there was no "retaking" under this section, the trustee acquiring no title to the sign. Claude Neon Lights, Inc. v. Kingsberg, (1931) 142 Misc. 608, 254 N. Y. S. 467.

A requisition of automobile in replevin by seller thereof after its removal to state by buyer from another state, in which it was sold under conditional sales contract, was retaking of possession thereof by seller. Hartford Acceptance Corporation v. Kirchheimer, 1938, 166 Misc. 219, 2 N.Y.S.2d 224.

Where buyer of automobile under conditional sales contract, on August 16, 1939, executed installment note payable to seller or order on like date of each month, the repossession of automobile by seller's transferee on Saturday, September 16, 1939, after 5 o'clock p. m., for alleged default in payment of installment, was premature, and hence transferee could not recover balance owing under contract, since note did not become due until September 18, 1939. Schenectady Discount Corporation v. Dziedzic, 1941, 31 N.Y.S.2d 636.

Retaking as Rescission.

Under A.C.L.A.1949, § 29-2-16, a retaking is an enforcement rather than a recission of the contract. Daughley v. Peterson, D.C.Alaska, 1953, 110 F. Supp. 885.

Retaking the goods by conditional seller is not rescission, but the exercise of security rights. Randall v. Pingree, 1956, 100 N.H. 322, 125 A.2d 658.

A retaking of property by a conditional seller is not a rescission of the contract. In re White Allom & Charles Roberson of London, 1938, 253 App. Div. 220, 1 N.Y.S.2d 715.

"Seller."

The assignee of a conditional sales contract is the "seller" within the meaning of this section. Kaufman v. Simons Motor Sales Co., (1933) 261 N. Y. 146, 184 N.E. 739.

Right of Vendor's Assignee.

An assignee of an insolvent conditional seller was entitled to retake possession of the property upon the buyer's default in payment. It was said, further, that the assignability of the contract was not impaired by a provision therein requiring the seller to repair defects in the property developing within five years. Robinson v. Pipe Organ Maintenance Co., (1927) 102 N.J.Eq. 79, 139 A. 438 (no reference to Uniform Act).

Where conditional seller of automobile assigned conditional sale contract to finance company, finance company, generally, had right to retake automobile on default by buyer. Snyder v. Guider, 1959, 17 Misc.2d 558, 185 N.Y.S.2d 110.

Where the conditional buyer of an automobile, while in default, delivered possession thereof to the seller for the purpose of having repairs made, he could not recover from the seller for conversion where the seller delivered the car to the assignee of the conditional sales contract, the assignee being the "seller" within this section. Kaufman v. Simons Motor Sales Co., (1933) 261 N.Y. 146, 184 N.E. 739.

The transfer of an automobile by a conditional buyer thereof to his employer was not sufficient to prevent recovery thereof by an assignee of the seller. General Motors Acceptance Corp. v. Stock, (1928) 197 Wis. 224, 221 N.W. 736 (no reference to Uniform Act).

Assignee from seller of conditional sales contract held to have special property interest authorizing assignee to bring replevin action on breach of contract. General Motors Acceptance Corporation v. Schwartz (1937) 118 N.J. Law, 563, 194 A. 183.

In action by conditional seller's assignee to replevin automobile sold in New York to nonexistent person, whose name was signed by another, and which was found in defendant's possession in New Jersey, court properly directed verdict for plaintiff, although defendant purchased automobile in good faith and introduced evidence of conspiracy to defraud seller in which its agent participated, since Conditional Sales Act was not applicable and title to automobile did not pass out of conditional seller, to whose rights in automobile assignee succeeded. General Motors Acceptance Corporation v. Burger (1937) 15 N.J.Misc. 489, 192 A. 364.

In action by conditional seller's assignee to replevin automobile sold in New York to nonexistent person, whose name was signed by another, and found in defendant's possession in New Jersey, court properly directed verdict for plaintiff, even if title passed under conditional sales contract, since defendant's rights were subject to reservation of title contained in conditional sales contract. Id.

Where buyer was in lawful possession of automobile under conditional sales contract, unconditional demand by assignee of contract for immediate possession of automobile, and refusal by buyer, were necessary before assignee could maintain replevin for automobile because of buyer's default under contract. Universal Credit Co. v. Lowell, 1938, 166 Misc. 15, 2 N.Y.S.2d 743.

Where buyer of automobile had defaulted in terms of contract by removing automobile from state, without consent of seller's assignee, and, in addition thereto buyer was in default in payments due under contract, seller's assignee was entitled to immediate possession of property and verdict should have been directed for seller's assignee. Acceptance Corp. of Fla v. Snider, 1958, 128 Ind.App. 447, 149 N.E.2d 698.

Breach of Peace.

Where a conditional seller struck the buyer during the retaking of an automobile, the question whether a "breach of the peace" had occurred requiring the retaking to be done by legal process, under this section, was for the jury. People v. Halliday, (1932) 237 App. Div. 302, 261 N. Y. S. 342.

Unless goods, sold under a conditional sales contract, can be retaken without a breach of the peace, they must be retaken by legal process. La Porte Motor Co. v. Firemen's Ins. Co., (1932) 209 Wis. 397, 245 N. W. 105.

Legal Process.

A conditional vendor has a conditional title in chattels, not a lien, and, if unable to retake chattels peaceably, he should bring an action in replevin. McManus Laboratories v. Madelon Condon Aesthetics Salon, 1940, 21 N.Y.S.2d 826.

Personal property, sold under conditional sales contract, may be retaken by seller on buyer's default without legal process. Triple Cities Const. Corporation v. Byers Machine Co., 1939, 172 Misc. 519, 15 N.Y.S.2d 89, reversed on other grounds, 1940, 259 App.Div. 451, 19 N.Y.S.2d 709, appeal denied, 1940, 259 App.Div. 955, 20 N.Y.S.2d 844.

The remedy of replevin constitutes the legal process contemplated by this section and is thus available when the goods cannot be retaken without breach of the peace. Grossman v. Weiss, (1927) 129 Misc. 234, 221 N. Y. S. 266. And see Marcus v. Sherr, (1928) 132 Misc. 734, 230 N. Y. S. 425.

Writ of seizure to obtain possession of chattels on default under a conditional sales contract is, in New York City, appropriate only in the Municipal Court, and such a writ issued out of the City Court is void. Grossman v. Weiss. (1927) 129 Misc. 234, 221 N. Y. S. 266.

In taking possession of property under obviously void process, the officer may be said to have done so as the agent of the seller and the seller may be regarded as having peacefully retaken the property within the provisions of this section. After such retaking it is incumbent on the seller to follow strictly the provisions of this and the succeeding sections of the Conditional Sales Act. Id.

Where the assignee of a conditional seller of an automobile was entitled, on the buyer's default, to retake the car without legal process, but recovered it by an action in detinue, the buyer was not entitled to maintain an action for conversion against the assignee, though the detinue action was finally dismissed on appeal. Kisner v. Commercial Credit Co., (1934) 114 W.Va. 811, 174 S. E. 330 (citing Uniform Act generally).

Unpaid conditional seller held to have had sufficient ownership to recover tractor in claim and delivery action from buyer who was in default, where conditional sales contract provided that title should not pass to purchaser until all indebtedness thereunder was fully paid in cash and in event of default seller might take immediate possession. Allis-Chalmers Mfg. Co. v. Nein, (1935) 63 S.D. 635, 262 N.W. 235.

Property in sheriff's possession under attachment held not in custodia legis, barring replevin by seller under conditional bill of sale. Morey v. Schaad, (1923) 98 N.J.L. 799, 121 A. 622.

Contractual Provision for Retaking.

Where conditional buyer of automobile with full knowledge of seller's breach of sales contract elected to continue performance thereunder, the subsequent repossession of automobile by finance company, to which contract had been assigned, in accordance with terms of contract for default in payments thereunder, did not constitute a "wrongful taking" for which company would be liable in conversion, even if company was responsible for seller's breach of contract. Gray v. Maryland Credit Finance Corporation, 1942, 148 Pa.Super. 71, 25 A.2d 104.

Conditional sales contract provision authorizing seller to retake property on buyer's default without legal process or demand bound conditional buyer. People v. Halliday, (1932) 237 App.Div. 302, 261 N.Y.S. 342.

Conditional seller was entitled to replevin merchandise where buyer was in default, despite fact that invalid provision of sales contract, which seller had not sought to enforce, gave seller right without demand or notice to enter buyer's premises and by force, with or without due process of law, to seize merchandise without liability therefor. Sturman v. Polito (1937) 161 Misc. 536, 291 N.Y.S. 621.

Provision of conditional sales agreement that seller might, without demand or notice, enter buyer's premises and by force, with or without due process of law, seize merchandise without civil or criminal liability therefor was void as against public policy. Id.

Default of Conditions.

Vendor held entitled to repossess automobile by replevin immediately on attachment thereof by vendee's creditors, where vendee failed to keep car free from incumbrance as required by contract. Starr v. Govatos, (1925) 8 W.W.Harr.(Del.) 66, 130 A. 392.

Where an old automobile was given by the buyer in part payment for a new one a conditional sale agreement being executed for the balance, the fact that the old car was taken from the seller under a paramount lien was held not to warrant the seller in retaking the new one, the title to the old car not being a "condition" of the sale. Imbesi v. Eastern Motor Co., (1925) 102 N. J. L. 193, 130 Atl. 611.

Generally, where buyer under conditional sales contract is in default in payment of any sum due under contract, seller may take repossession of property sold. Snyder v. Guider, 1959, 17 Misc.2d 558, 185 N.Y.S.2d 110.

Deterioration, Prevention of.

In Waukesha Finance Corp. v. Southard, (1930) 202 Wis. 570, 232 N. W. 534, it was contended by a conditional buyer of an automobile, sued for the purchase price, that since the seller had repossessed the car without offering it for sale, the buyer, in view of § 23, was discharged of all obligation. It was held that since the seller repossessed the car merely to prevent its deterioration and loss, he was not precluded from recovering the balance due on the purchase price.

Conversion.

Where valid conditional sales contract covering automobile had been assigned to finance company prior to placing of the automobile with service station operator for repairs, but, when bills for repairs and storage were not paid, operator had automobile sold by an auctioneer and subsequent purchaser, who claimed under operator's foreclosure of garageman's lien, sold automobile to plaintiff, finance company had right to repossess the automobile, subsequent purchaser breached its warranty of title in sale to plaintiff, purchaser at foreclosure sale breached its warranty of title in selling automobile to subsequent purchaser, and subsequent purchaser was guilty of converting automobile from finance company, but finance company was not damaged thereby. De La Uz v. Car Val Motors Co., 1960, 24 Misc.2d 168, 198 N.Y.S.2d 476.

A buyer of personalty under conditional sales contract who is not in default in payment may sue seller in conversion for appropriation of the property. Schenectady Discount Corporation v. Dziedzic, 1941, 31 N.Y.S.2d 636.

A purchaser of personal property under a conditional sale contract who is not in default in payment may sue the vendor in conversion for appropriation of the property. Becker v. Gardner, (1932) 235 App. Div. 91, 256 N.Y.S. 217; Schenectady Discount Corporation v. Dziedzic, 1941, 31 N.Y.S. 2d 636.

In action against chattel mortgagee for conversion of mortgaged property by foreclosure of chattel mortgage and resale of property, whether mortgagor held under conditional sales contract so as to impose liability on mortgagee was for jury. Veenema & Wiegers v. White Co. (1937) 14 N.J.Misc. 798, 187 A. 529.

Demand, Sufficiency of.

It was held that where sheriff went to conditional buyer of tractor in default and told him that sheriff had come for tractor and in reply buyer said that he did not think he would give up tractor, there was sufficient demand to entitle seller to commence claim and delivery action. Allis-Chalmers Mfg. Co. v. Nein, (1935) 63 S.D. 635, 262 N.W. 235.

In replevin for automobile by assignee of conditional sales contract against buyer, evidence as to whether unconditional demand for immediate possession of automobile was made on buyer, and as to whether refusal was made, required dismissal of complaint. Universal Credit Co. v. Lowell, 1938, 166 Misc. 15, 2 N.Y.S.2d 743.

Option of Vendor on Default.

In case of default in payment the seller is given the option of regaining possession and retaining payments as liquidated damages, or of declaring as due the whole amount of unpaid installments. Kennedy-Van Saun Mfg. & Engineering Corp. v. Kinsella, 1934, 72 F.2d 338 (construing Pennsylvania Act).

Seller, when conditional buyer defaulted, did not have to repossess, but could sue for purchase price. Brown v. Music, Inc., 1960, —— Alaska ——, 359 P.2d 295.

Reformation of Contract.

Where a conditional sales contract contained the wrong motor and body numbers of an automobile but there was no doubt as to the identity of the machine, it was not necessary to have the contract reformed in equity in order to retake possession of the car. Seaman v. Consolidated Finance Corp., (1927) 219 App. Div. 410, 219 N. Y. S. 163 (no reference to Uniform Act).

Time for Retaking.

The right to retake the goods on default in the payment of an installment does not exist until the last day for the payment has elapsed, as the buyer has all of that day to make the payment, and an earlier seizure does not deprive the buyer of his right to the property during the last day payment may be made. Brown v. Christian, (1922) 97 N. J. L. 56, 117 Atl. 294.

Measure of Damages.

Under New Hampshire law, buyer was entitled to recover from conditional seller, who repossessed without prior notice in writing to buyer and immediately removed repossessed property from state, fair market value of property at time it was taken, or amount for which it was resold less expense seller incurred in repairing it, whichever amount was greater, less unpaid balance of purchase price and less all reasonable expenses incurred, within 30 days after retaking, for retaking, storing and selling property. Shanahan v. George B. Landers Const. Co., C.A.Mass.1959, 266 F.2d 400.

Where, upon discovery of buyer's breach of contract as to selling or encumbering of chattel without notice to, or permission of, seller, seller exercised right, given by contract, to declare all amounts or installments due, it was necessary that conditional buyer tender all amounts due, plus expense of retaking, keeping and storage of chattel. Ferguson v. Franklyn Nat. Bank, 1957, 4 Misc.2d 1018, 163 N.Y.S.2d 152.

Where a conditional buyer of a truck defaulted in payment and the seller, after assigning the contract, obtained the truck under a replevin writ, it was held that the buyer's right of possession was subject, after default, to a duty to deliver to the assignee on demand, and that the buyer's damages were to be measured by the right of temporary possession, rather than the value of the truck. Netter v. Quick, (1931) 302 Pa. 200, 153 Atl. 148 (no reference to Uniform Act).

Measure of automobile dealer's damages for inability to repossess automobile because of assignee's failure to file conditional sale contract is value of automobile when found. Finance Co. of America v. Bailey, (1929) 106 W. Va. 651, 146 S.E. 723.

In replevin action, where judgment was against plaintiff for return of chattels or their value, and chattels were subject to conditional bills of sale,

chattels could be seized only for plaintiff's interest over and above the amount due on the conditional bills of sale. National Surety Corporation v. Chelsea Fireproof Storage Warehouses, 1938, 252 App.Div. 554, 300 N.Y.S. 216.

In assignees' replevin action for chattels covered by conditional sales agreement wherein chattels were not replevied, judgment should have provided for return of chattels with alternative damages, under Civil Practice Act, §§ 1120, 1124. Garfinkel & Steinberg Corporation v. Bandlers Sutphin, Inc., 1938, 252 App.Div. 858, 299 N.Y.S. 536.

In assignees' replevin action for chattels covered by conditional sales agreement, judgment awarding assignees damages for conversion was erroneous in absence of proof of value of chattels as of date of trial and of evidence relating to damages of assignees for detention of the chattels or otherwise. Id.

Where conditional seller on buyer's default sought to recover possession of machine sold and sued out a writ of replevin and then sold machine to itself, in action for balance of purchase price where buyer's cross-complaint alleged fraud, if seller was entitled to recover, the amount of its recovery should be the full unpaid balance of purchase price, but, if buyer's evidence was clear and convincing that seller had committed the fraud alleged, then verdict should be for buyer. California Steel Products Co. v. Wadlow, 1942, 58 Ariz. 69, 118 P.2d 67.

Estoppel.

Buyer of automobile from dealer under conditional sales contract, who had notice that contract was to be assigned to another and acquiesced in assignment but failed to notify assignee of an existing contract between dealer and buyer in which dealer agreed to make the payments due held estopped to set off claim against dealer on obligation due assignee on conditional sales contract when automobile was repossessed. Norman F. Thiex, Inc., v. General Motors Acceptance Corp., 1935, 218 Wis. 14, 259 N.W. 855.

Waiver.

Where breaches under which conditional seller retook cabin which was subject of contract had been waived or were not of sufficient materiality to justify a retaking, buyers were entitled to the property upon paying amount due on purchase price, and also to damages of $90 per month from the time of retaking to their reinvestment with possession, less ground rent and charges for services in effect at time of retaking. Daughley v. Peterson, D.C.Alaska 1953, 110 F.Supp. 885.

An oral agreement by a conditional seller that the buyer may keep an automobile so long as she makes the payments and that in case of failure to pay on time, an extension of time for payment will be given, does not waive other provisions of the contract giving the seller the right to retake the car for certain specified reasons. Jenkins v. Blackstone Motor Co., Inc., (1926) 216 App. Div. 583, 215 N. Y. S. 694, wherein it was held that the seller was justified in retaking the car because it deemed "itself unsafe or insecure."

Where conditional buyer of automobile was deprived of the use thereof by seller's failure to forward to department of revenue the papers for transfer of title, buyer's retention of possession of automobiles and operation thereof after receipt of registration plates, and payment on sales contract, evidenced by bailment lease and note which had been assigned to finance company, after company's refusal to reform contract so that payments made should date from the time registration plates were received, constituted an "election" by buyer to continue performance, thereby continuing in force the sales contract notwithstanding breach thereof by seller. Gray v. Maryland Credit Finance Corporation, 1942, 148 Pa.Super. 71, 25 A.2d 104.

Where seller had right upon buyer's default to sue for unpaid balance or to repossess refrigerator, mere statement of intention of agent of seller's assignee to retake refrigerator did not deprive assignee of its right to sue for unpaid balance, where no steps were taken to repossess refrigerator. General Electric Contracts Corporation v. Band, (1936) 14 N.J.Misc. 702, 186 A. 684.

Where seller had right, upon buyer's default, to sue for unpaid balance or to repossess refrigerator, alleged subsequent promise of agent of seller's as-

signee to retake refrigerator and waive its rights under contract to enforce payment held unsupported by consideration, and hence not binding on assignee. Id.

Question for Jury.

Question of how and under what circumstances the property was retaken and sold by seller held for jury. Van Deveer v. Canzano, (1923) 206 App. Div. 103, 200 N.Y.S. 563.

In action by buyer of truck against seller for repossession of truck and retention of amount collected therefor because of buyer's failure to make cash payment for which he gave order on third person, whether order on third person was accepted as money payment or as conditional payment was for jury. See v. Hardy Motor Co., 1937, 118 W.Va. 676, 191 S.E. 580.

In suit in trover for value of trucks seized and sold by seller under color of conditional sales contracts with plaintiff's husband and another who allegedly transferred their interest to plaintiff upon execution of a new contract between seller and plaintiff, whether new contract was valid and whether sum collected for one truck described was applicable to that contract so that plaintiff had not defaulted *held* for jury. Spatuzzi v. Star Auto Truck Exchange, 1938, 119 N.J.Law, 377, 196 A. 723.

In suit in trover for value of trucks seized and sold by seller under conditional sales contracts with plaintiff's husband and another who allegedly transferred their interest as buyers to plaintiff upon execution of a new contract between seller and plaintiff, whether buyers' failure to pay storage company which claimed a lien was a default for which new contract could be forfeited by seller was for jury. Id.

Necessity of retaking.

A purchaser at constable's sale foreclosing interest of vendee or its assignee under conditional sales contract could not maintain replevin suit against assignee to obtain possession of goods, where conditional vendor had never retaken goods, since retaking by vendor was necessary, under this section, before vendor could resell upon default. Glickfeld v. Venokur (1937) 15 N.J.Misc. 524, 192 A. 582.

Evidence.

Assignees of conditional sales agreement were not entitled to recover damages for conversion of chattels covered by agreement as of a date prior to trial of replevin action, under Civil Practice Act, § 1120, and hence evidence of damages as of a date prior to trial would not be admissible. Civil Practice Act, § 1120. Garfinkel & Steinberg Corporation v. Bandlers Sutphin, Inc., 1938, 252 App.Div. 858, 299 N.Y.S. 536.

In claimed conditional seller's replevin action to recover possession of a dining room suite, evidence warranted jury's finding for defendant. Manlove v. Maggart, 1942, 111 Ind.App. 398, 41 N.E.2d 633.

Burden of Proof.

In replevin by conditional vendor of truck to recover possession thereof from one who purchased it from vendee's creditor, who attached it after its removal by vendee to Pennsylvania from New York, in which contract was executed, burden was on defendant to show that recording statutes, 69 P.S. §§ 402, 431, 432 and McKinney's N. Y. Personal Property Law, § 66, were not complied with by plaintiff in order to defeat his superior title. Carroll v. Godding, 1944, 155 Pa.Super. 490, 38 A.2d 720.

In suit in trover for value of trucks seized and sold by conditional seller who contended that plaintiff had failed to pay storage company certain charges for which company had a lien and thereby violated contract so as to entitle seller to seize and sell trucks, trial court properly charged that seller had burden to prove that contention as a defense. Spatuzzi v. Star Auto Truck Exchange, 1938, 119 N.J.Law 377, 196 A. 723.

Proceeding under Municipal Court Code.

Provision of N.Y.Municipal Court Code § 70 relating to foreclosure of a conditional sales contract provides a method of procedure for Municipal Court only and creates no substantive rights enforceable in any other court. McManus Laboratories v. Madelon Condon Aesthetics Salon, 1940, 21 N.Y.S.2d 826.

A seller's possession of automobile requisitioned by him in replevin after defaulting buyer's removal thereof to state from state in which conditional sale contract, authorizing seller to take possession of automobile peaceably

on buyer's default, would not be affected, even if seller should have proceeded under Municipal Court Code. Hartford Acceptance Corporation v. Kirchheimer, 1938, 166 Misc. 219, 2 N.Y.S.2d 224.

Attachment Creditors.

Sheriff, who was notified of claimant's rights under conditional sales contract covering automobile, had discretion not to sell automobile under execution, and could deliver it to claimant unless judgment creditors supplied indemnity. General Motors Acceptance Corp. v. Combs, 1962, 223 N.Y.S.2d 289, 33 Misc.2d 659.

A seller, legally retaking possession of automobile, sold under conditional sales contract, by requisition in replevin after buyer's removal thereof to state from another state, in which contract was made, was not required to file conditional bill of sale in county wherein buyer registered vehicle to be entitled to possession thereof as against buyer's attachment creditor. Hartford Acceptance Corporation v. Kirchheimer, 1938, 166 Misc. 219, 2 N.Y.S.2d 224.

Dismissal of seller's action for replevin of automobile, removed to state by defaulting buyer thereof from state in which conditional sale contract was made, on motion of city marshal, who received it under writ of attachment for failure to proceed under Municipal Court Code, would not entitle attachment creditor to possession thereof; such creditor being remitted at best to action for damages or assessment thereof, in view of seller's superior right to possession of automobile. Id.

Alteration of Contract.

In action to recover possession of automobile bought by defendant on a conditional sale contract which had been assigned to plaintiff, where jury found that contract had been altered by sellers without defendant's consent, and trial court held that note and contract became void upon alteration and denied any further recovery thereon against defendant, payments made by defendant after alteration did not unjustly enrich plaintiff or sellers, and defendant could not retain automobile and recover on his cross-complaint for money paid by mistake. Federal Corporation v. Radtke, 1938, 229 Wis. 231, 281 N.W. 921.

Exclusiveness of Remedy.

Remedies of conditional vendor on conditional sales contract, provided by this section, are intended to be exclusive and the procedure therein set forth is comprehensive and should be followed everywhere except in Municipal Court. McManus Laboratories v Madelon Condon Aesthetics Salon, 1940, 21 N.Y.S.2d 826.

Court of Equity in exercise of its inherent powers should not accord a conditional vendor a remedy by action to foreclose right of redemption since his legal remedies are entirely adequate. Id.

Rescission by buyer.

Where conditional seller of sawmill repudiated conditional sales contract by taking possession of the sawmill, buyer was entitled to rescind for breach of contract and ask that he be placed in status quo by return of amount of purchase price paid and payment of damages occasioned by reason of the breach. Carl v. McDonald, 1943, 60 Ariz. 170, 133 P.2d 1013.

Repossession of sawmill by conditional seller before conditional buyer was in default amounted to a "repudiation" of the contract by the seller. Id.

Even if conditional buyer of sawmill was in default, seller's failure to comply with provisions of conditional sales act respecting repossession, notice, and resale amounted to a "repudiation" of the contract by seller. Id.

Buyer not in default.

In conditional sales, the title is held only for security and when a vendor gets the whole amount due him, together with interest, costs and attorney's fees, he has recovered all he is equitably entitled to under his contract and should not be permitted to resume possession of the property sold and retain the initial payment and recover in addition damages for detention. U. S. Machinery Co. v. International Metals Development Inc., 1946, 74 Cal.App.2d 5, 168 P.2d 37.

Repossession of sawmill by conditional seller before conditional buyer was in default amounted to a "repudiation" of the contract by the seller. Carl v. McDonald, 1943, 60 Ariz. 170, 133 P.2d 1013.

Common Law.

At common law, conditional seller cannot, on default, repossess property and sell or appropriate it to his own use and recover balance due under con-

tract, in absence of deficiency clause. Igleheart Bros. v. John Deere Plow Co., 1943, 114 Ind.App. 182, 51 N.E.2d 498.

Degree of proof.

A conditional vendor makes out prima facie case in replevin for possession of articles sold merely by proving title thereto and superior right of possession as against vendee and need not set up title good against the whole world. Carroll v. Godding, 1944, 155 Pa.Super. 490, 38 A.2d 720.

Election of Remedies

Party who furnished equipment to government subcontractor on conditional sales contract had, upon default of subcontractor, an election of remedies to either rescind and bring action for purchase price or to declare contract and subcontractor's rights thereunder forfeited and retake possession. U. S. for Use and Benefit of Miller & Bentley Equipment Co. v. Kelly, D.C.Alaska 1961, 192 F.Supp. 274.

An automobile seller's receipt of payments under conditional sale contract after learning of automobile's delivery by corporate buyer's president to another purported buyer was not election to exercise right to collect money due under contract, instead of right to seize automobile for breach of contract provision prohibiting buyer from transferring interest in contract or automobile before full payment of price. Effron v. Haile, Sup.1951, 103 N.Y.S.2d 561.

Sale after retaking.

Where finance company, to which contract for conditional sale of automobile had been assigned, repossessed automobile on default in payment by conditional buyer, without notifying buyer of intention to retake the automobile, and finance company did not hold automobile for ten days to allow buyer to redeem on payment of balance due plus charges, and no sale, private or public, was made by finance company, buyer was discharged of all obligations. Snyder v. Guider, 1959, 17 Misc.2d 558, 185 N.Y.S.2d 110.

Failure of holder of conditional sales contract to comply with St.1953, § 122.19 in holding sale of vehicle after buyer's default rendered such sale void, and holder thereafter stood in same position as it would have if it had repossessed vehicle and had not conducted any resale proceedings. Kolehouse v. Connecticut Fire Ins. Co., 1954, 65 N.W.2d 28, 267 Wis. 120, 46 A.L.R.2d 983.

Possession pending litigation

Where holder of a conditional sales contract brought action in replevin and posted bond pursuant to A.C.A.1939, § 27—1604, it had a right to possession of property and to retain the same pending litigation, if buyer gave no redelivery bond. Valley Drive-In-Theatre Corp. v. Superior Court In and For Pima County, 1956, 79 Ariz. 396, 291 P.2d 213.

Possession in good faith purchaser.

Even though Oklahoma conditional sales vendor of automobile did all it could reasonably do to rescind sale when buyer's check for the down payment was dishonored, rescission was not effective as against good faith purchaser from buyer who had removed the automobile from the state to avoid seller's attempts to repossess. Hudiburg Chevrolet, Inc. v. Ponce, 1963, 17 Misc.2d 281, 116 N.W.2d 252.

Wrongful retaking.

Where buyer of machine under conditional sales contract defaulted in payments, and machine was sold by sheriff to third party, and seller brought replevin action against third party and another, and thereafter seller obtained physical possession of machine pursuant to stipulation between parties to replevin action, pending determination of action, seller did not retake possession wrongfully and could maintain action to recover balance due under contract, though seller might later obtain noncontingent and permanent possession of machine, and seller was not liable to buyer in damages on ground that seller wrongfully retook and failed to resell machine. Hoffman Machinery Distributors of New York, Inc. v. Double Dee Cleaners, Inc., 1962, 35 Misc.2d 1023, 231 N.Y.S.2d 401.

§ 17. Notice of Intention to Retake.

Statutory Notes

Delaware amended this section in 1925 to conform to its amendment of section 16 (see supra), by providing in the last sentence that the seller may retake the goods "upon paying any rent or storage due thereon." 6 Del.C. § 917.

The Indiana act substitutes for the words "Not more than forty nor less than twenty days" the words "Not less than ten days." Also for the words following the word "goods" near the end of the section it substitutes the words "without complying with the provisions of sections 17, 18, 19, 20 and 21 [§§ 19-23 of the Uniform Act] regarding resale, and without any right of redemption: except that in the event the seller shall after the giving of any such notice accept any sum of money from the buyer on account of delinquent payments due under any such instalment contract the said seller may not thereafter exercise any rights under this section without the giving of a new notice for the same period of time as hereinabove stated prior to the retaking of the said goods."—See Laws 1935, ch. 182.

CASE NOTES

Purpose.

The purpose of this section with respect to the buyer is to provide a reasonable period during which he may meet the requirements of the statute with respect to default, and retain possession. Harlee v. Federal Finance Corp. (1930) 4 W.W.Harr.(Del.) 345, 152 A. 596.

Evidence.

In absence of evidence that conditional seller did not comply with RSA 361:18-26, providing for notice of intention to retake, or notice of the retaking notice of sale and opportunity for redemption, seller was not required to credit buyer with the full purchase price of the goods retaken on buyer's default. Randall v. Pingree, 1956, 100 N.H. 322, 125 A.2d 658

Evidence held to show that a provision of a conditional sales contract, stipulating that the seller give notice to the buyer before retaking the property on default of payment, was not complied with by the seller. Eggle v. Money, (N. J. 1927) 139 Atl. 386 (no reference to Uniform Act).

Evidence, on issue as to conditional sellers' right to recover deficiency, established that retaking had complied with requirements of McKinney's Personal Property Law, § 77, permitting goods to be retaken without prior notice of intention to retake and that resale of chattels at public auction had complied with requirements of law, notwithstanding defendants' contention that description of goods to be sold had been inadequate and that posting of notice of sale had been improper. Shenkin v. Grant, 1957, 3 Misc.2d 333, 152 N.Y.S.2d 996.

Notice, necessity of

Conditional seller seeking to repossess upon conditional buyer's default has option to use either 6 Del.C. § 917 providing for retaking after notice of intention to retake or 6 Del.C. § 918 providing for retention of goods for ten days following retaking when notice of intention is not given, and conditional seller complying with latter section was not required to give notice of intention to retake provided for in the former section. Bowden v. Sussex Studebaker, Inc., 1960, 3 Storey 66, — — Del.Super. —, 164 A.2d 595.

Even if conditional buyer of sawmill was in default, seller's failure to comply with provisions of conditional sales act respecting repossession, notice, and resale amounted to a "repudiation" of the contract by seller. Carl v. McDonald, 1943, 60 Ariz. 170, 133 P.2d 1013.

Where buyer of truck and trailer on conditional sales contract with right of acceleration on failure to pay installments due transferred truck and trailer to a creditor to whom buyer had given a mortgage on truck and trailer, no declaration or notice to buyer was necessary to permit seller to maintain replevin on default. Valley Chevrolet Co. v. O. S. Stapley Co., 1938, 50 Ariz. 417, 72 P.2d 945.

On default in payments due under conditional sales contract by which seller had right of acceleration on failure to pay any installments due, the filing of suit in replevin to recover property from buyer's transferee was sufficient as a declaration that seller intended to take advantage of acceleration clause. Id.

§ 18. Redemption.

STATUTORY NOTES

The **Indiana act inserts after the word "injury" in next to the last sentence the words "or if the seller or his assignee feels insecure for any reason in having the goods in the possession of the buyer."—See Laws 1935, ch. 182**

The New York act amended section in 1941 by adding proviso to first sentence requiring seller to mail buyer a notice of default at least five days be-

fore retaking, to entitle seller to the expenses involved. See McKinney's Personal Property Law, § 78.

The New York act amended in 1956 by requiring that expenses of seller be reasonable, and that itemized statement be given to buyer in default.—See McKinney's Personal Property Law, § 78.

The Wisconsin act was amended to conform to this section. W.S.A. 122.18.

CASE NOTES

Construction.

This section is essentially remedial. Clark v. Tri-State Discount Co., Inc., (1934) 151 Misc. 679, 271 N.Y.S. 779.

Provisions of section are applicable to seller retaking goods because of removal or sale thereof without statutory written notice. Rost v. Wm. Knobe & Co., (1935) 154 Misc. 425, 277 N.Y.S. 896.

Purpose.

Purpose of section was to assure a more equitable protection to conditional vendee by avoiding forfeiture of the amount paid by him, and to prevent unjust enrichment of seller. Clark v. Tri-State Discount Co., Inc., (1934) 151 Misc. 679, 271 N.Y.S. 779.

The purpose of this section with respect to the buyer is to provide a reasonable period during which he may meet the requirements of the statute with respect to default, and again possess the article purchased. Harlee v. Federal Finance Corp., (1930) 4 W.W.Harr.(Del.) 345, 152 A. 596.

Law governing

Where truck was sold and delivered in California pursuant to conditional sales contract to effect that, in event buyer defaulted, seller might take immediate possession without demand and that such possession should terminate buyer's rights, and buyer, with seller's consent, drove truck to Alaska and sold it to third party, who was given actual notice of the conditional sales contract, California law governed the transaction and, upon default, seller was entitled to go to third party's property in Alaska, remove truck and return it to California and third party had no right to redeem, notwithstanding A.C.L.A.1949, § 29–2–18, providing for redemption. Cook & Sons Equipment, Inc. v. Killen, C.A Alaska 1960, 277 F.2d 607

"Amount Due Under the Contract."

Where breach for which chattel is retaken is failure to pay installments, "amount due under the contract" within this section relating to redemption is only amount of unpaid installment, notwithstanding acceleration clause. Manufacturers Hanover Trust Co. v Nascarella, 1963, 39 Misc.2d 971, 242 N.Y.S.2d 326.

Where seller retook automobile for failure to pay installments and not for breach of promise not to transfer automobile, it was necessary for buyer to make tender only of unpaid installments and not with respect to other breach. Manufacturers Hanover Trust Co. v. Nascarella, 1963, 39 Misc.2d 971, 242 N.Y.S.2d 326.

"Amount due under the contract" refers to the installment in default and not to the balance of the purchase price. Clark v. Tri-State Discount Co., Inc., (1934) 151 Misc. 679, 271 N.Y.S. 779.

"Buyer."

In Rost v. Wm. Knabe & Co., (1935) 154 Misc. 425, 277 N.Y.S. 896, it was held that plaintiff who had orally notified seller's assignee of conditional sales contract for piano that plaintiff had acquired interest of buyer in the piano was "buyer."

Acceleration clause.

The giving by the conditional buyer of a chattel mortgage without the consent of the conditional seller required by the conditional sales contract, constitutes a breach of contract which, if the contract contains an acceleration clause will entitle the seller to accelerate payment of the price and then proceed as in case of default in payment, but the execution of the chattel mortgage does not also operate further to penalize the buyer by depriving him of his right of redemption. Schnitzer v. Fruehauf Trailer Co., 1954, 283 App.Div. 421, 128 N.Y.S.2d 242, affirmed 307 N.Y. 876, 122 N.E.2d 754.

In Street v. Commercial Credit Co., (1929) 35 Ariz. 479, 281 Pac. 46, 67 A. L. R. 1549, it was held that the words, "amount due under the contract at

the time of retaking," as used in this section, refer to the amount due thereunder in the absence of an acceleration clause. Thus, in this case, the conditional seller of an automobile retook the car upon default in the payment of a single installment. The contract provided that on default in payment, the entire balance of the purchase price would become due. The purchaser tendered payment of the delinquent installment, with interest and expenses, but the seller insisted that the entire amount was due. It was held that such tender was sufficient to reinstate the contract, in spite of the acceleration clause contained therein. And see also Commercial Credit Co. v. Street, (1930) 37 Ariz. 204, 291 Pac. 1003, holding that the conditional seller had failed to comply with the provisions of the Uniform Act with regard to redemption and resale after retaking the automobile.

A similar holding to that of Street v. Commercial Credit Corp., supra, is that of Harlee v. Federal Finance Corp., (1930) 4 W. W. Harr. (Del.) 345, 152 Atl. 596, wherein it was held that the conditional buyer of an automobile, after it has been repossessed by the seller on default, may, notwithstanding an acceleration clause in the contract, redeem the car by tendering the amount of the installments in default, together with expenses. And to the same effect see Cox v. General Motors Acceptance Corp., (1932) 59 S. D. 585, 241 N. W. 609, holding further that the evidence showed that the conditional buyer's tender of balance due on installment within ten days was refused by the seller who had repossessed the goods, thus warranting a recovery by the buyer.

In replevin, conditional buyer of automobile retaken by conditional seller because of default in payment of installment held entitled to possession of automobile upon tender of installment due, plus interest and expenses of taking, keeping, and storage, notwithstanding acceleration clause in conditional sale contract. Clark v. Tri-State Discount Co., Inc., (1934) 151 Misc. 679, 271 N.Y.S. 779.

Assignability of Right.

The right of a conditional buyer to reclaim goods following his default or the retaking by the seller is assignable. Schnitzer v. Fruehauf Trailer Co., 1954, 283 App.Div. 421, 128 N.Y.S.2d 242, affirmed 307 N.Y. 876, 122 N.E.2d 754.

Right to redeem is a special property right assignable and capable of being sold and transferred. Smith Motor Car Corporation v. Universal Credit Co., (1934) 154 Misc. 100, 275 N.Y.S. 538, aff., (1934) 154 Misc. 105, 275 N.Y.S. 544.

Foreclosure of Redemptive Right.

Conditional buyer's statutory right of redemption after default may be foreclosed as in cases of chattel mortgages. Zises v. Goldring Constr. Co., Inc., (1930) 231 App.Div. 852, 246 N.Y.S. 489.

Indemnity.

Seller's demand for indemnification from buyers must be reasonable, legal, certain, and definite. Robins v. Mack International Motor Truck Corp., (1934) 113 N.J.Law 377, 174 A. 551.

Liens.

Where airplane was repossessed under conditional sales contract and proper tender made by buyer, buyer was entitled to possession and chattel mortgage lien good against buyer attached to plane. Piscelli v. Bellanca Aircraft Corp., (1930) 17 Del.Ch. 151, 150 A. 81, reversing (1929) 17 Del.Ch. 73, 149 A. 418, and affirmed in (1931) 18 Del.Ch. 427, 156 A. 508 (construing New York Act).

Lien conditional seller had on airplane for storage was discharged when seller repossessed airplane under conditional sale contract. Id.

Expense of Retaking.

In action to recover amount of attorney's fees paid by buyer under protest to redeem steam shovel taken by seller for default in payment of purchase price under conditional sales contract, whether under the pleadings and evidence employment of counsel was in good faith and reasonably necessary to repossession, and whether fee charged was fair and reasonable, were questions for determination upon trial. Triple Cities Const. Corporation v. Byers Mach. Co., 1940, 259 App.Div. 451, 19 N.Y.S.2d 709, appeal denied 259 App.Div. 955, 20 N.Y.S.2d 844.

Under Personal Property Law, § 78, requiring buyer in case of default, and in order to redeem, to pay balance due on the contract, and the expenses of retaking, keeping and storage, a reasonable fee for services of

counsel may under certain circumstances be included as an "expense", but whether such may be done depends in each situation on the peculiar facts. Id.

The determining factor in deciding whether word "expenses" in McKinney's N.Y.Personal Property Law, § 78, requiring buyer to pay expenses of retaking, keeping and storage of personalty by seller after buyer's default in order to redeem it includes counsel fees is whether legislature may fairly be said to have anticipated that legal proceedings requiring attorney's services would be necessary. Id.

The purpose of McKinney's N.Y.Personal Property Law § 78, requiring buyer to pay "expenses" of retaking, keeping and storage of personalty by seller after buyer's default in order to redeem it, was to reimburse seller for all expenses usually and customarily incurred in retaking, keeping and storing property and no more. Id.

The conditional buyer of an automobile, which was repossessed by the seller on default, must pay, in addition to the amount in default, a reasonable sum for the expense incurred in retaking. Where an anticipatory charge of $52.50 for retaking was made by the contract, a demand for an additional $25 was held unreasonable. Guentner v. Discount Co. of America, (1934) 12 N. J. Misc. 294, 171 Atl. 792 (no reference to Uniform Act).

Buyer of airplane under conditional sales contract was entitled to redeem airplane upon paying or tendering to seller amount due under contract, interest, and expenses of retaking, keeping, and storage. Pisculli v. Bellanca Aircraft Corp., (1930) 17 Del.Ch. 151, 150 A. 81, reversing (1929) 17 Del. Ch. 73, 149 A. 418, and affirmed in (1931) 18 Del.Ch. 427, 156 A. 508 (construing New York Act).

Removal.

That plaintiff, who succeeded to buyer's interest in piano under conditional sales contract, removed the piano in violation of such contract from the address specified therein without first obtaining conditional seller's written consent, held not to relieve seller's assignee from provisions of this section. Rost v. Wm. Knobe & Co., (1935) 154 Misc. 425, 277 N.Y.S. 896.

Payment by Third Person.

In Smith Motor Car Corporation v. Universal Credit Co., (1934) 154 Misc. 100, 275 N.Y.S. 538, aff., (1934) 154 Misc. 105, 275 N.Y.S. 544, it was held that an automobile dealer, who took from the conditional buyer of a used car a bill of sale and letter authorizing delivery thereof from a finance company which had repossessed the car, acquired title thereto on paying the finance company the balance due it and receiving letter from the finance company directing third person to deliver over car. In the above case it was held that the automobile dealer could maintain replevin action against the finance company to recover the car when such company, after receiving payment, disposed of the automobile to another.

Transferee of automobile subject to conditional sales contract acquired absolute title upon paying balance due after its repossession following transferor's default. Huit Corp. v. Siskind, 1961, 30 Misc.2d 598, 219 N.Y.S.2d 982.

Termination of Ten-day Period.

Where conditional seller retakes goods, buyer has until midnight of tenth day following retaking in which to redeem. Plainfield Motor Co. v. Salamon, (1935) 13 N.J.Misc. 570, 180 Atl. 428.

Tender.

The buyer's tender, to be effectual must be without conditions to which seller can have a valid objection or which will prejudice his rights. Robins v. Mack International Motor Truck Corp., (1934) 113 N.J.Law 377, 174 A. 551

Thus, where the seller repossessed trucks for nonpayment of installments, buyers were held not entitled to redeem by tender which carried obligation not imposed on the seller under the contracts. Id.

Seller who repossessed airplane under conditional sales contract had duty to disclose amount due when buyer made tender, though request was not in writing. Pisculli v. Bellanca Aircraft Corp., (1930) 17 Del.Ch. 151, 150 A. 81, reversing (1929) 17 Del.Ch. 73, 149 A. 418, and affirmed in (1931) 18 Del.Ch. 427, 156 A. 508 (construing New York Act).

Where seller retook automobile for failure to pay installments and not for breach of promise not to transfer automobile, it was necessary for buyer

to make tender only of unpaid installments and not with respect to other breach. Manufacturers Hanover Trust Co v Nascarella, 1963, 39 Misc 2d 971, 242 N.Y.S.2d 326.

Where buyer's transfer of automobile to third party failed because of breach of condition, buyer had sufficient beneficial interest to make tender to seller to redeem. Id.

Principles of equity and reason, as well as law, preclude a conditional seller from rejecting a tender by conditional buyer or his assignee, proper in amount constituting full payment of purchase price, the day before an advertised foreclosure sale, for purpose of enabling the seller to acquire the goods on resale by bidding them in at a price far above the balance due and then appropriating such balance for alleged indebtedness having nothing to do with the contract in question. Schnitzer v. Fruehauf Trailer Co., 1954, 283 App. Div. 421, 128 N.Y.S.2d 242.

Where conditional seller of truck refused tender by check of payment of monthly installment after due date, without mailing buyer a notice stating buyer's default at least five days before seller retook the truck as required by McKinney's N.Y. Personal Property Law, § 78, buyer's tender was not required to include an amount covering the expense of retaking, keeping and storage of the truck. Myers v. Associates Discount Corp., 1946, 60 N.Y.S.2d 691.

Voluntary return of automobile conditionally sold, and tender of delinquent installment, interest, and expenses, would reinstate contract, notwithstanding absence from county exceeded 30 days. Street v. Commercial Credit Co., (1929) 35 Ariz. 479, 281 Pac. 46, 67 A.L.R. 1549.

Remedy for Vendee.

On conditional seller's retaking of automobile because it deemed itself insecure, buyer's only remedy was to redeem by paying balance of purchase price. Jenkins v. Blackstone Motor Co., Inc., (1926) 216 App.Div. 583, 215 N.Y.S. 694.

Waiver.

A conditional buyer can, by agreement with conditional seller, surrender his right under McKinney's Personal Property Law §§ 78 and 80, to redeem within 10 days after conditional seller takes possession of article sold for failure of conditional buyer to make required payment, and his right to insist on a public auction. Newfield v. National Cash Register Co., C.A.N.Y.1951, 186 F.2d 883.

The legislative purpose of McKinney's Personal Property Law N.Y., § 78, requiring buyer to pay seller only expenses of retaking, keeping and storing property after buyer's default in addition to balance due on contract in order to redeem it, cannot be frustrated by buyer's agreement to pay attorneys' fees also, as such enlargement of obligation is in effect attempted waiver of protection afforded buyer by said section, though contract provides for only reasonable attorneys' fees. Triple Cities Const. Corporation v. Byers Machine Co., 1939, 172 Misc. 519, 15 N.Y.S.2d 89, reversed on other grounds, 1940, 259 App.Div. 451, 19 N.Y.S.2d 709, appeal denied, 1940, 259 App.Div. 955, 20 N.Y.S.2d 844.

Conditional buyer powerless to waive protective provisions of this section. Clark v. Tri-State Discount Co., Inc., (1934) 151 Misc. 679, 271 N.Y.S. 779.

Measure of Damages.

Where conditional buyer defaulted, holder of security had right to repossess and sell the property and pay himself in full and fact that sale was not pursuant to statutory notice did not render it invalid as against conditional buyer and did not deprive holder of security of his right to recover all that was due him less any damage done conditional buyer because of loss of right of redemption. Caraway v. Jean, 1953, 97 N.H. 506, 92 A.2d 660.

Where conditional seller did not comply with statute, seller's failure to accept redemption money and surrender possession entitled buyer to recover actual damages. Commercial Credit Co. v. Street, (1930) 37 Ariz. 204, 291 P. 1003.

Where defendant purchased automobile at execution sale under judgment against a conditional vendee and plaintiff claimed title as assignee of conditional bill of sale from conditional vendor, plaintiff's damages were limited to balance due on conditional bill of sale. Automobile Banking Corporation v. Klein, 1938, 16 N.J.Misc. 127, 197 A. 422.

Question for Jury.

Reasonableness of demand is question for jury. Robins v. Mack International Motor Truck Corp., (1934) 113 N.J.Law, 377, 174 A. 551.

Whether reasonable tender refused entitling buyer to damages is question for jury. Id.

Redemption by Payment.

McKinney's Personal Property Law, § 78, pertaining to redemption, declaring that seller shall retain the goods for ten days after the retaking, during which period the buyer, upon payment or tender of amount due, and interest, may redeem the goods and become entitled to take possession of them and to continue in performance of contract as if no default had occurred, merely gives the buyer a statutory grace period during which seller must retain the goods within the buyer's reach, and failure of buyer, or his assignee, to redeem within the ten-day period does not bar a redemption thereafter while goods are yet in possession of the seller. Schnitzer v. Fruehauf Trailer Co., 1954, 283 App.Div. 421, 128 N.Y.S.2d 242, affirmed 307 N.Y. 876, 122 N.E.2d 754.

A conditional buyer's right of redemption may be exercised at any time up to sale by the conditional seller who has retaken because of buyer's default. Id.

Where conditional sales contract provided that in case of default conditional seller would be entitled to reasonable attorney's fee and other expenses, and mortgagee, to whom conditional buyer mortgaged the machinery, had knowledge that buyer had admitted an indebtedness to seller which included attorney's fees and costs, after conditional seller brought foreclosure suit, mortgagee's deposit with custodian of court funds, of an amount which did not include attorney's fee and costs, was not deposit of "amount claimed" under conditional sales contract, within McKinney's Personal Property Law N.Y., § 72a, relating to discharge of contract by making such deposit. Falick v. Alma Holding Corporation, 1939, 257 App.Div. 320, 12 N.Y.S.2d 841, reargument denied Application of Falick, 1939, 258 App.Div. 709, 14 N.Y.S.2d 1016.

Where conditional buyer of machinery mortgaged the machinery, which mortgagee sold subject to prior lien of conditional seller, and conditional seller instituted foreclosure action against conditional buyer, an action based on conditional sales contract was "commenced" within McKinney's Personal Property Law N.Y., § 72-a, authorizing contract to be discharged by deposit with custodian of court funds, of an amount claimed in contract with interest at any time before action is "commenced" to enforce contract, and chattel mortgagee was not entitled to certificate of satisfaction on payment of amount claimed in contract plus interest, after commencement of foreclosure action, without depositing amount claimed by conditional seller for attorney's fees and costs. Id.

Attorney's Fees.

While agreements to pay counsel fees on default in performance of contracts are not inherently wrong or illegal, McKinney's Personal Property Law N.Y. § 80-f, providing that no act or agreement of buyer before or at time of making sale contract shall constitute valid waiver of provisions that buyer must pay only balance due on contract and expenses of retaking, keeping and storing property after buyer's default in order to redeem it, covers all agreements, not simply those in contravention of public policy generally. Triple Cities Const. Corporation v. Byers Machine Co., 1939, 172 Misc. 519, 15 N.Y.S.2d 89, reversed on other grounds, 1940, 259 App.Div. 451, 19 N.Y.S.2d 709, appeal denied, 1940, 259 App.Div. 955, 20 N.Y.S.2d 844.

A provision of conditional sale contract that buyer agreed to pay all expenses, including reasonable attorneys' fees incurred by seller because of buyer's default, whether seller took possession of personalty sold without notice or demand or proceeded to collect entire amount unpaid, did not obligate buyer to pay such fees in any event on retaking of property by seller, but imposed such obligation only if seller found it necessary to proceed by action to collect amount due or recover possession of property, especially as opposite construction would be contrary to state's definitely expressed public policy of protecting buyer against agreements inconsistent with his statutory rights. Id.

Where seller's complaint in replevin did not make the sale contract a part thereof but buyer filed cross-complaint for breach of warranty and rescission, buyer thus recognized the contract and contract provision for attorney

fees in action for possession of property would control despite general rule that prevailing party in replevin is not entitled to attorney fees. Reimer v. Sheets, 1958, 128 Ind.App. 400, 149 N.E.2d 554.

Protection of Redemptive Right.

Where finance company, to which contract for conditional sale of automobile had been assigned, repossessed automobile on default in payment by conditional buyer, without notifying buyer of intention to retake the automobile, and finance company did not hold automobile for ten days to allow buyer to redeem on payment of balance due plus charges, and no sale, private or public, was made by finance company, buyer was discharged of all obligations. Snyder v. Guider, 1959, 17 Misc.2d 558, 185 N.Y.S.2d 110.

Buyer's redemption of personalty, taken by seller on buyer's default after part payment of purchase price, is sedulously guarded by law. Triple Cities Const. Corporation v. Byers Machine Co., 1939, 172 Misc. 519, 15 N.Y.S.2d 89, reversed on other grounds, 1940, 259 App.Div. 451, 19 N.Y.S.2d 709, appeal denied, 1940, 259 App.Div. 955, 20 N.Y.S.2d 844.

Retaking, Definition of

"Retaking" within this section requiring conditional seller to retain goods for ten days after "retaking" is not accomplished on the day that the sheriff takes possession under a writ of replevin, but occurs only when the seller legally obtains the goods from the sheriff. Fisk Discount Corp. v. Brooklyn Taxicab Trans. Co., 1946, 270 App.Div. 491, 60 N.Y.S.2d 453.

Nature of redemptive right

Alaska act providing for redemption with respect to conditional sales contract does not regulate manner in which property is to be retaken but creates a substantive right in the buyer. Cook & Sons Equipment, Inc. v. Killen, C.A. Alaska, 1960, 277 F.2d 607.

Notice of retaking

Conditional seller seeking to repossess upon conditional buyer's default has option to use either 6 Del.C. § 917, providing for retaking after notice of intention to retake or 6 Del.C. § 918, providing for retention of goods for ten days following retaking when notice of intention is not given, and conditional seller complying with latter section was not required to give notice of intention to retake provided for in the former section. Bowden v. Sussex Studebaker, Inc., 1960, 3 Storey 66, -- Del.Super. --, 164 A.2d 595.

§ 19. Compulsory Resale by Seller.

Statutory Notes

Arizona. Laws 1963, c. 28, inserts "or in the state of Arizona" in sentence beginning "If the buyer" and provides for remitting notice by certified mail A.R.S. § 44-319.

The Indiana act substitutes for the words "such sale to be held not more than thirty days after the retaking" at the end of the first sentence the words "or at the place where the goods were sold; such sale may be held not less than ten days or more than thirty days after the retaking: Provided, however, That when the seller retakes possession of the goods by legal process, the seller may hold such retaken goods for a period not to exceed thirty days after the entry of a judgment by a court of competent jurisdiction entitling the seller to possession of such goods before holding such resale." It also substitutes the word "county" for "filing district" in one place in this section but fails to do so in another. In every other instance in the act the change was made.—See Laws 1935, ch. 182.

The New York act was amended in 1934 by inserting after the first sentence the following sentence: "Provided, however, that when the seller retakes possession of the goods by legal process, and an answer is interposed the seller may hold such retaken goods for a period not to exceed thirty days after the entry of a judgment by a court of competent jurisdiction entitling the seller to possession of such goods before holding such resale."—See McKinney's Personal Property Law, § 79.

The West Virginia act substitutes "county" for "filing district" in this section.— See Laws 1925, ch. 64, amending and reenacting Laws 1921, ch. 75.

Case Notes

Construction.

Provisions of section are applicable to seller retaking goods because of removal or sale thereof without statutory written notice. Rost v. Wm. Knabe & Co., (1935) 154 Misc. 425, 277 N.Y.S. 896.

Amendment to this section allowing seller to wait 30 days after judgment before reselling goods retaken under conditional sales contract held not retroactive, where prior to amendment buyer's administrators had paid over one-half of price and had acquired vested right under original statute to recover one-fourth of amount paid. Autocar Sales & Service Co. v. Hansen, (1936) 270 N.Y. 414, 1 N.E.(2d) 830, modifying 245 App.Div. 474, 283 N.Y.S. 669.

New York amendment, L.1934, c. 728, held not retroactive where, prior to amendment, buyer's administrators had paid over one-half of price and had acquired vested right under original statute to recover one-fourth of amount paid. Autocar Sales & Service Co. v. Hansen, (1936) 245 App.Div. 474, 283 N.Y.S. 669, modified (1936) 270 N.Y. 414, 1 N.E.(2d) 830.

"The possession of the plaintiff would not be affected even where the plaintiff, in retaining possession of the chattel, violated provisions of the Conditional Sales Act, such as failing to retain the chattel in his possession for a period of ten days or in failing to sell the same within thirty days after retaking possession. The failure of the plaintiff to comply with the statute would, at best, only give defendant an action for damages." Hartford Acceptance Corp. v. Kirchheimer, 1938, 166 Misc. 219, 2 N.Y.S.2d 224.

Construction with Other Laws

Indiana statute, Burns' Ann.St.Ind. §§ 49–710 to 49–713, providing that it is unlawful for any public official or other person to make newspaper publication in any manner except by publication in either a daily, weekly, semiweekly or triweekly newspaper does not apply to sale of repossessed goods under uniform conditional sales act which takes place in Illinois. Bulldog Concrete Form Sales Corp. v. Taylor, D.C.Ind.1950, 94 F.Supp. 328, 195 F.2d 417.

Applicability of section 18 to this section.

The ten day periods required by this section and section 18 of the Uniform Act run consecutively and not concurrently. The minimum period at which property may be resold after retaking is, therefore, twenty days. Uptown Transp. Corp. v. Fisk Discount Corp., (1934) 150 Misc. 829, 270 N. Y. S. 273.

The seller of an automobile under a conditional sales contract was not required to wait until the expiration of the ten day redemption period provided for in section 18 of the Uniform Act, before giving the ten days' notice of sale required by this section. Commercial Credit Corp. v. Goldberg, (1927) 130 Misc. 597, 224 N.Y.S. 177.

Purpose.

The protection of buyer from imposition is the primary purpose to be achieved by N.J.S.A 46:32–25, requiring different species of notice of sale upon default. Frantz Equipment Co. v. Anderson, 1962, 37 N.J.Super. 420, 181 A.2d 499.

McKinney's Personal Property Law, § 79 specifically authorizing conditional seller to bid in at sale of repossessed article was designed to remove any disqualification of seller or his assignee as against original buyer. Drew v. John Deere Co. of Syracuse, Inc., 1963, 19 A.D.2d 308, 241 N.Y.S.2d 267.

Primary purpose of McKinney's Personal Property Law, § 79, providing that if buyer does not redeem goods within ten days after seller has retaken possession, and buyer has paid at least 50% of purchase price at time of retaking, seller shall sell goods at public auction and give written notice of sale to buyer, is to protect the buyer. Snyder v. Guider, 1959, 17 Misc.2d 558, 185 N.Y.S.2d 110.

The primary purpose of this section was to protect the purchaser, the section not being penal in its nature. Fisher v. Stewart Motor Corp., (1928) 228 N.Y.S. 549. See, also Snyder v. Guider, 1959, 17 Misc.2d 558, 185 N.Y. S.2d 110.

Notice as required by N.J.S.A 46:32–25 providing for public sale by conditional seller of automobile after default of conditional buyer who has paid at least 50 per cent of purchase price is for purpose of informing prospective bidders of the sale in order to secure a good price for the automobile and to apprise conditional buyer of such sale in order to enable him to pro-

tect his interest by buying in the automobile or by working up interest in the sale, or otherwise, as may seem best to him. Commercial Credit Corp. v. Lawley, 1957, 47 N.J.Super. 207, 135 A.2d 546.

The object of a resale by conditional seller after a retaking of property upon buyer defaulting in the payment is to open the door to a personal suit against buyer for any deficiency, and such a suit should not be indefinitely delayed. Stark & Son v. Licastro, 1942, 127 N.J.L. 380, 22 A.2d 768.

Under this section, Legislature intended, in cases of conditional sales where more than 50 per cent. of purchase price has been paid, to limit conditional vendor to an amount which will make him whole and not permit him to be unjustly enriched by having both the goods and a major portion of the sales price. Automobile Banking Corporation v. Klein, 1938, 16 N.J.Misc. 127, 197 A. 422.

"Seller."

Under Burns' Ann.St. § 58–817, providing that seller of repossessed goods shall give written notice of sale to buyer, notice signed by attorney for assignee of seller was by the "seller". Bulldog Concrete Forms Sales Corp. v. Taylor, C.A.Ind.1952, 195 F.2d 417, 49 A.L.R.2d 1

A judgment imposing liability not only on a credit corporation but also upon its assignor, the original vendor, is erroneous. The statute imposes upon the "seller" the duty to resell at public auction and in default of such sale to return the statutory proportion of the payments theretofore received, and under section 1 "seller" means the legal successor in interest of the vendor. The fact that the vendor co-operated with the credit corporation or even acted on its own initiative in retaking the cabs is unimportant. Its interest under its guaranty of payment did not revest it with the title which it had assigned, and a judgment against it is erroneous. Manhattan Taxi Service Corp. v. Checker Cab Mfg. Corp., (1930) 253 N. Y. 455, 171 N. E. 705, 69 A.L.R. 1190.

Seller acts as trustee for the buyer, when upon retaking the property he causes it to be sold at public auction after due notice. Van Deveer v. Conzano, (1923) 206 App.Div. 103, 200 N.Y.S. 563.

Buyer

The word "buyer" in N.J.S.A. 46:32-25, requiring notice of prospective re sale of repossessed goods to be sent to conditional buyer includes 'buyers' and notice required must be mailed to each buyer. Frantz Equipment Co v Anderson, 1962, 37 N.J Super. 420, 181 A.2d 499

Conformity With Sectional Provisions.

Where buyers of steel concrete forms were in default under conditional sales contract and delivered forms to warehouse of seller's assignee in Chicago although forms had been originally sold in Indiana, sale on August 30th was within 30 days of August 3rd and 5th, the dates of delivery, as required by Burns' Ann.St. § 58–817. Bulldog Concrete Forms Sales Corp. v. Taylor, C.A. Ind.1952, 195 F.2d 417, 49 A.L.R.2d 1.

Under Burns' Ann.St. § 58–817, requiring seller of repossessed goods to give notice of sale within filing district where goods are to be sold, standards of proof in criminal prosecutions cannot serve as a guide in determining what constitutes compliance with this section. Id.

Time requirements of this section regarding notice of resale following re possession of items sold under conditional sales contract are mandatory. Commercial Credit Corp. v. Swiderski, 1963, — Del.Super. —, 195 A.2d 546, re-argument denied 196 A.2d 214

Conditional buyer of automobile was discharged from conditional sales contract by failure of conditional seller's assignee to conduct resale, after buyer became delinquent, in accordance with regulations prescribed by this section. Id.

Where actual price of boat, together with insurance and interest charges, was $5,921.80, and only $2,730.70 had been paid, McKinney's Personal Property Law, § 79, dealing with resale of chattels repossessed under conditional sales contracts after more than 50% of purchase price has been paid, was inapplicable. Ferguson v. Franklyn Nat. Bank, 1957, 4 Misc.2d 1018, 163 N.Y.S. 2d 152.

In order for buyer to recover damages from seller for seller's failure to comply with this section relating to resale of conditionally sold property upon default of buyer, the buyer must have paid at least one-half of the purchase price at time of the retaking of the property, or must have made written de-

mand for resale. Associates Discount Corporation v. Reiley, 1941, 31 N.Y.S. 2d 476.

Where less than 50 per cent. of purchase price of automobile was paid by conditional buyer and conditional seller repossessed the automobile upon repudiation of agreement by conditional buyer and claimed to have retained automobile for account of conditional buyer until voluntarily sold by conditional seller without compliance with statutory provision governing compulsory resale, the sale was a nullity and conditional buyer was discharged from any obligation under alleged agreement. Mott v. Moldenhauer, 1941, 261 App. Div. 724, 27 N.Y.S.2d 563, motion granted and appeal dismissed, 1942, 287 N.Y. 678, 39 N.E.2d 293.

Conditional seller electing to conduct foreclosure sale of buyer's interest was bound to conform to statute with respect to manner, place, and notice of sale. Carter v. Brockway Motor Co., (1935) 158 Misc. 558, 285 N.Y.S. 64.

To preserve and enforce his right to collect unpaid purchase money, covered by conditional sales agreement, after buyer's default, seller must comply with applicable, Code 40–3–19, 20, pertaining to repossessing and reselling of the property. West Virginia Mack Sales Co. v. Brown, 1954, 139 W.Va. 667, 81 S.E.2d 103.

Notice—Business Address.

Seller's notice of sale of machinery conditionally sold, upon retaking possession, was only required to be sent to the buyer's "last known place of business", and notice sent there was not rendered void merely because seller was in possession of buyer's place of business. Gerety v. Hiller, 1944, 36 A.2d 476, 349 Pa. 49.

Notice sent to correct last known business address of vendee held sufficient although not received by him. Manhattan Taxi Service Corp. v. Checker Cab Mfg. Corp., (1929) 226 App. Div. 624, 236 N. Y. S. 559, modified without mention of this point in (1930) 253 N. Y. 455, 171 N. E. 705, 69 A. L. R. 1190.

—Description of property

Under Burns' Ann.St. § 58–817, notice should give sufficient description of property to inform prospective bidders generally whether property is anything in which they might be interested. Bulldog Concrete Forms Sales Corp. v. Taylor, C.A.Ind.1952, 195 F.2d 417.

Under Burns' Ann.St. § 58–817 requiring seller of repossessed goods to give notice of sale within filing district where goods are to be sold, notices describing property as "steel concrete forms retaken under conditional sales agreement and used in the construction of houses" sufficiently described property. Id.

Under N.J.S.A. 46:32–25, requiring conditional seller of automobile to give notice of sale of such automobile, where buyer who has defaulted had paid at least 50 per cent of the purchase price, notice setting out that repossessed automobile, described by make, type and serial number, would be sold at described address of designated business firm on specified day and at specified time, adequately described property to be sold and time and place of sale. Commercial Credit Corp v. Lawley, 1957, 47 N.J.Super. 207, 135 A.2d 546.

—Posting.

Under Burns' Ann.St. § 58–817 requiring seller of repossessed goods to give notice of sale by at least three notices posted in "different" public places, notices posted at entrances of Chicago City Hall and at entrance of County building, which were separated by a full city block although the buildings were under one roof connected by corridors and other common facilities were in "different" locations. Bulldog Concrete Forms Sales Corp. v. Taylor, C.A.Ind. 1952, 195 F.2d 417, 49 A.L.R.2d 1.

Where notice of sale of goods repossessed from defendants under conditional sales contract was posted at two different doors of courthouse and city building and city and county building covered a block and a number of people entered and left by north and south doors of building, they were two different public places, and bulletin board at Daily Law Bulletin was also a public place for posting of notice. Bulldog Concrete Form Sales Corp. v. Taylor, D.C.Ind.1950, 94 F.Supp. 328.

The language of posted and published notices of proposed sale of repossessed goods was sufficiently clear, definite and explicit to comport with intent of this section. Frantz Equipment Co. v. Anderson, 1962, 37 N.J.Super. 420, 181 A.2d 499.

Where conditional buyers of automobile made no payments to holder of conditional sales contract on account of original indebtedness of $942.96, and

holder repossessed automobile and sold it at public auction for $100, but did not comply with requirement of McKinney's Personal Property Law, § 79 that three notices of sale be posted in different public places within filing district wherein sale was to take place at least five days before sale, buyers were discharged from any obligation under conditional sales agreement, and holder could not recover deficiency. Island Installment Corp. v. Panico, 1962, 37 Misc.2d 186, 233 N.Y.S.2d 812.

In action for deficiency judgment against conditional buyers of automobile, there was a substantial issue of fact as to whether seller had complied with McKinney's Personal Property Law, § 79, requiring seller to post public notice of sale, precluding summary judgment. Circle B Motors, Inc. v. Reilly, 1958, 7 Misc.2d 71, 169 N.Y.S.2d 582.

Where the assignee of a conditional sales contract repossessed the goods on the buyer's default and sold them at public auction, the sale was held void because the assignee failed to post notices of the sale in three public places within the filing district, as required by this section. Such requirement was said to be mandatory. Berge v. Yellow Mfg. Acceptance Corp., (1930) 57 S. D. 306, 232 N. W. 45.

The posting of notices in the "filing district" where the chattel is to be sold is sufficient; they need not be posted in the "filing district" where the contract was filed or where the buyer resides, there being no requirements that the sale must be had there. H. L. Braham & Co. v. Zittel, (1931) 232 App. Div. 406, 250 N. Y. S. 44.

—"Fifty Per Cent."

Conditional buyers having paid less than fifty per cent. of purchase price were not entitled to notice of resale after retaking, or to sale without demand. Ellner v. Commercial Credit Corp., (1930) 137 Misc. 251, 242 N.Y.S. 720.

Notice as required by N.J.S.A. 46:32–25, providing for public sale by conditional seller of automobile after default of conditional buyer who has paid at least 50 per cent of purchase price is for purpose of informing prospective bidders of the sale in order to secure a good price for the automobile and to apprise conditional buyer of such sale in order to enable him to protect his interest by buying in the automobile or by working up interest in the sale, or otherwise, as may seem best to him. Commercial Credit Corp. v. Lawley, 1958, —— N.J.Super. ——, 135 A.2d 546.

—Redemptive Period.

The ten days' written notice of sale which conditional seller who has retaken possession of goods is required by this section to give buyer may run concurrently with ten-day period of redemption allowed by section 18 requiring seller to retain goods for ten days after retaking. Fisk Discount Corp. v. Brooklyn Taxicab Trans. Co., 1946, 270 App.Div. 491, 60 N.Y.S.2d 453.

Under this section, the buyer is not entitled to 10 days' notice of sale after the 10 days' holding for redemption. Strickland v. Hare & Chase, Inc., (1926) 217 App. Div. 196, 216 N. Y. S. 506.

The sale of property surrendered under a conditional sales contract, if it takes place after the expiration of the ten day redemption period, is valid, and the ten day notice of sale may be given during such period of redemption. Alvin Transp. Corp. v. Fisk Discount Corp., (1934) 152 Misc. 401, 272 N. Y. S. 629.

Notice of sale may be given during the redemption period provided by the statute and may run concurrently with it. Plainfield Motor Co. v. Salamon, 1935, 13 N.J.Misc. 570, 180 A. 428; Eisenberg v. Commercial Credit Corporation, 267 N.Y. 80, 195 N.E. 691, 99 A.L.R. 1287; Commercial Credit Corporation v. Ornstein, 1935, 245 App.Div. 815, 281 N.Y.S. 321.

Giving of notice or advertising sale within redemption period will not deprive buyer of right to redeem. Plainfield Motor Co. v. Salamon, 1935, 13 N.J.Misc. 570, 180 A. 428.

Where conditional seller, after retaking, elects to resell for account of buyer, ten days' notice of sale may be served on buyer within ten day redemptive period, but sale can not be held in any event sooner than eleventh day after retaking. Id.

The seller of an automobile under a conditional sales contract was not required to wait until the expiration of the ten day redemption period provided for in section 18 of the Uniform Act, before giving the ten days' notice

of sale required by this section. Commercial Credit Corp. v. Goldberg, (1927) 130 Misc. 597, 224 N.Y.S. 177.

The ten day periods required by this section and section 18 of the Uniform Act run consecutively and not concurrently. The minimum period at which property may be resold after retaking is, therefore, twenty days. Uptown Transp. Corp. v. Fisk Discount Corp., (1934) 150 Misc. 829, 270 N.Y.S. 273.

—Registered Mail.

Notice of prospective resale of repossessed goods may be sent to conditional buyer by certified mail as well as by registered mail. Frantz Equipment Co. v. Anderson, 1962, 37 N.J.Super. 420, 181 A.2d 499

Notice of prospective resale of repossessed goods may be sent to conditional buyer by certified mail as well as by registered mail. Pacific Discount Co. v. Jackson, 1962, 37 N.J. 169, 179 A.2d 745.

Under McKinney's Personal Property Law, § 79, pertaining to obtaining of deficiency judgments following repossession and resale of conditionally sold personalty notice to buyer of such resale may not be made by certified mail, but must be made either personally or by registered mail. Oneida Nat. Bank & Trust Co. of Utica v. Manikas, 1958, 10 Misc.2d 671, 175 N.Y.S.2d 612.

The sending of a notice of sale by registered mail to a conditional vendee in an envelope bearing a return card and request for receipt, was compliance with this section though an adult at his address refused to sign the receipt in his absence, whereupon the letter was returned by the post office department as required by the postal regulations. Buffalo Cadillac Corp. v. Eisele, (1933) 148 Misc. 592, 266 N. Y. S. 165, wherein it was observed that if the five day return card had been the cause of the nondelivery, then apparently the use of such limited card of return would not have been a compliance with the section.

Where notice of sale is sent by registered mail directed to buyer at his last known place of business or residence, whether buyer actually receives the notice is not controlling. Commercial Credit Corporation v. Ornstein, (1935) 245 App.Div. 815, 281 N.Y.S. 321.

Notice by registered mail is sufficient. Id.

—Resident Address.

Under N.J.S.A. 46:32–25, the proper method of mailing notice of prospective resale of repossessed goods to two buyers residing at same address entails mailing two separate notices, one to each buyer, notwithstanding statute does not require receipt of notice since probability of actual receipt of notice is largely dependent upon form and correctness of address used. Frantz Equipment Co. v. Anderson, 1962, 37 N.J.Super 420, 181 A.2d 499.

Where notice of prospective resale of repossessed goods is jointly addressed to two or more buyers residing at same address, seller who seeks to hold all of buyers liable may obtain benefit of a practical compliance with statutory notice of intent by proving that each of them had received notice or had acquired either actual notice of existence and contents thereof from co-addressees or actual knowledge of availability of letter at post office, and failing such proof, service is binding only on such of vendees as had so received notice or knowledge. Id.

Where a conditional seller mailed notice of resale to the last known residence of the buyer, a traveling salesman, though having received from him mail bearing a different address and written while on a trip, it was held that the provisions of this section as to the place of notice had been sufficiently complied with, for the reason that the word "residence", as used in this section, means an abiding place or home, or a permanent address where the buyer will be most likely to receive his mail. Powell v. Credit Acceptance Corp., (1928) 131 Misc. 870, 228 N.Y.S. 427.

—Sufficiency.

Under Burns' Ann.St. § 58–817, requiring seller of repossessed goods to post notices of sale within district where goods are to be sold, notice which described place for resale as office of attorney and gave street address and room number as well as street address of place where property could be inspected without including city and state in address of the latter place was not fatally deficient. Bulldog Concrete Forms Sales Corp. v. Taylor, C.A.Ind.1952, 195 F.2d 417, 49 A.L.R.2d 1.

Under Burns' Ann.St. § 58–817, requiring that seller of repossessed goods give notice of sale within filing district where goods are to be sold, sufficient

notice would necessarily include such a description of the place as ordinary person would understand. Id.

In proceeding to obtain judgment against defendants for a deficiency after resale by seller's assignee under Indiana Conditional Sales Act, Burns' Ann. St., § 58–817, where first publication of notice of sale was made in Daily Law Bulletin in late afternoon on August 25, and sale was held at 2 p. m. on August 30, notice given was sufficient. Bulldog Concrete Form Sales Corp. v. Taylor, D.C.Ind.1950, 94 F.Supp. 328.

Under Indiana Conditional Sales Act, Burns' Ann.St., § 58–817, notice of sale of repossessed goods must be read to determine if it does actually give notice of time and place to reasonable man who might be interested in purchase of goods and also in light of fact as to whether there was any prejudice to the buyer. Id.

Under this section, the proper method of mailing notice of prospective resale of repossessed goods to two buyers residing at same address entails mailing two separate notices, one to each buyer, notwithstanding this section does not require receipt of notice since probability of actual receipt of notice is largely dependent upon form and correctness of address used. Frantz Equipment Co. v. Anderson, 1962, 37 N.J.Super. 420, 181 A.2d 499.

Where notice of prospective resale of repossessed goods was sent by certified mail in one letter to two conditional buyers residing at same address and delivery was not effected, if both buyers had been advised of existence of carrier's card notice of letter and refused to take advantage thereof, they could not be heard to complain since seller would, in effect, have accomplished all that this section envisioned as end result of its requirement of notice, and seller's misdirection of notice would thus be cured. Id.

Actual receipt by conditional buyer of notice of proposed sale of repossessed goods is not prerequisite to such sale Pacific Discount Co. v. Jackson, 1962, 37 N.J. 169, 179 A.2d 745.

Actual receipt by conditional buyer of notice of proposed sale of repossessed goods is not a prerequisite to such sale. Pacific Discount Co. v. Jackson, 1961, 68 N.J.Super. 331, 172 A.2d 440.

Prospective bidders on repossessed automobile to be sold at public sale were not prejudiced as result of fact that notice of sale set out terms of original conditional sales contract and did not state that automobile had been refinanced or give original amount due thereunder or date of such refinancing where notice properly set out balance due on refinanced contract. Commercial Credit Corp. v. Lawley, 1957, 47 N.J.Super. 207, 135 A.2d 546.

Conditional seller who had assigned original contract for purchase of automobile and conditional buyer who had defaulted after paying more than 50 per cent of purchase price were not misled by assignee's notice of sale of repossessed automobile by fact that notice set out terms of original contract but stated balance due under refinanced contract which had been executed between conditional seller and buyer and also assigned to assignee, and notice was not defective as to conditional seller and buyer. Id

Where conditional seller of an automobile failed to give notice to conditional buyer either personally, or by registered mail, of date of sale of automobile at public auction, following its repossession, as required by McKinney's Personal Property Law, § 79, seller could not recover any deficiency from buyer following the resale, notwithstanding fact notice of such sale was made upon buyer by certified mail. Oneida Nat. Bank & Trust Co. of Utica v. Manikas, 1958, 10 Misc.2d 671, 175 N.Y.S.2d 612.

In action for deficiency judgment against conditional buyers of automobile, buyers were not entitled to judgment on the pleadings on any theory that complaint did not contain sufficient general allegations under which could be proved compliance with McKinney's Personal Property Law, § 79, requiring seller to publish notice of sale. Circle B Motors, Inc v. Reilly, 1958, 7 Misc.2d 71, 169 N.Y.S.2d 582.

A notice of sale in the form of a letter which states definitely and positively that if payment is not made the sale will be had at a specified time and place is sufficient. It need not be labelled "Notice of sale." H. L. Braham & Co. v. Zittel, (1931) 232 App. Div. 406, 250 N. Y. S. 44.

Written notice required. Plainfield Motor Co. v. Salamon, (1935) 18 N.J. Misc. 570, 180 A. 428.

That notice of sale described the contract as a chattel mortgage not ground for dismissing complaint against buyer and guarantor. Lewis v. Esch, (1935) 155 Misc. 212, 279 N.Y.S. 77.

—Ten Day Period.

Where taxicabs which had been sold under conditional sales agreement were retaken by replevin, and assignee of seller did not become entitled to possession from sheriff until December 28, a notice given on December 27 of a sale to be held on January 6 was one day short of the ten days required by this section requiring conditional seller who has retaken possession of goods to give buyer ten days' written notice of sale at public auction. Fisk Discount Corp. v. Brooklyn Taxicab Trans. Co., 1946, 270 App.Div. 491, 60 N.Y.S.2d 453.

Under this section requiring conditional seller who has retaken possession of goods to give buyer not less than ten days' written notice of sale at public auction, either personally or by registered mail, the date of mailing is controlling in computing the ten-day period. Id.

Where the full 10 days' notice of sale required by this section was not given, the sale of a truck, repossessed by the conditional seller, was void, regardless of an attempted waiver by the conditional buyer. Mack International Motor Truck Corp. v. Thelen Trucking Co., (1931) 205 Wis. 434, 237 N. W. 75.

This section means that buyer may redeem property within 10 days after repossession, and that he shall have 10 days' notice of sale, and hence notice of sale of repossessed trucks within 8 days after repossession did not invalidate sale held 25 days after repossession, since time of sale, and not time of notice of sale, is controlling. International Harvester Co. of America v. Carey, (1936) 158 Misc. 553, 287 N.Y.S. 224.

Resale on January 2, 1934, at 10:30 a. m. after notice given on December 21, 1933, of repossessed automobile which had been originally sold under conditional sales contract, held valid so that seller was not liable for damages to conditional buyer and conditional buyer was liable for deficiency. Carter v. Brockway Motor Co., (1936) 248 App.Div. 734, 288 N.Y.S. 720, reversing (Sup.) 158 Misc. 558, 285 N.Y.S. 64.

Proper method of computation under this section held to be to exclude first, and include last, day of period. Id.

Notice received in mail by conditional buyer on December 22, 1933, of foreclosure sale held at 10:30 a. m. on January 2, 1934, held insufficient rendering sale void and precluding recovery of balance due. Id.

—Estoppel.

Conditional buyer, who refused to accept notice, sent by registered mail, of sale of goods retaken by seller, held estopped to deny due notice of sale. Plainfield Motor Co. v. Salamon, (1935) 13 N.J.Misc. 570, 180 A. 428.

—Proof.

Where notice of prospective resale of repossessed goods is jointly addressed to two or more buyers residing at same address, seller who seeks to hold all of buyers liable may obtain benefit of a practical compliance with statutory notice of intent by proving that each of them had received notice or had acquired either actual notice of existence and contents thereof from co-addressees or actual knowledge of availability of letter at post office, and failing such proof, service is binding only on such of vendees as had so received notice or knowledge. Frantz Equipment Co. v. Anderson, 1962, 37 N.J.Super. 420, 181 A.2d 499.

Actual knowledge of a sale is insufficient. Each step provided in the section must be taken. Proof as to the mailing of notice shows merely a return registered mail card signed by the defendant. It fails to show that such letter contained the proper notice to the buyer or what it contained. This falls short of the proof required of compliance with this section. Capital Dist. L. A. W. Corp. v. Blake, (1930) 136 Misc. 651, 241 N. Y. S. 476.

Public Auction.

Under Burns' Ann.St. § 58–817, permitting seller of repossessed goods to resell them at "public sale", quoted phrase requires that sale be held in a place accessible to those invited to attend and to which those members of the public who might be interested, might come to inform themselves about property to be sold and to bid thereon. Bulldog Concrete Forms Sales Corp. v. Taylor, C.A.Ind.1952, 195 F.2d 417, 49 A.L.R.2d 1.

Where notice was given that sale of goods repossessed under conditional sales contract would be held in office of attorney and stenographer in outer

office knew of sale being held and was told to send in anyone who wished to bid on goods, sale was held in a "public place", within Indiana Conditional Sales Act. Bulldog Concrete Form Sales Corp. v. Taylor, D.C.Ind.1950, 94 F.Supp. 328.

Under Indiana Conditional Sales Act, Burns' Ann.St., § 58–817, requiring that sale of repossessed goods take place at public auction, a public place is to be determined from facts in each case. Id.

Even though a conditional sales contract was entered into in Washington, D C., this Act applied to the transaction, in view of fact issue as to noncompliance therewith was raised in Delaware and especially in view of fact repossession and sale of automobile took place in Delaware, and therefore, conditional seller's assignee gave up his right to a judgment against buyer for the balance due when it sold the automobile without notice and public auction required by this Act United Securities Corporation v. Tomlin, 1964, — Del.Super. —, 198 A.2d 179.

Under the common law, which applies where the statute is silent on the subject, personal property sold at public auction under this section must be physically at the place of sale. Strickland v. Hare & Chase, Inc., (1926) 217 App. Div. 196, 216 N. Y. S. 500. And to same effect, see Commercial Invest. Trust v. Browning, (1930) 108 W. Va. 585, 152 S. E. 10.

Upon a sale of personal property at public auction the property must be at hand and within the view of those attending unless the thing to be sold be too bulky to be brought within the view of the bidders or an inspection would be useless. Whenever for some special reason the chattel to be sold is not to be present in the auction room, if its nature be such that inspection by a bidder can have any possible utility, the notice of sale must state the place where the chattel is located, and give opportunity to view it. Manhattan Taxi Service Corp. v. Checker Cab Mfg. Corp., (1930) 253 N. Y. 455, 171 N. E. 705, 69 A.L.R. 1190.

The fact that sales of vessels at public auction will be an inadequate test for value, for the buyer will take subject to maritime liens which may be secret and unknown, may supply a reason why the Legislature should have excepted vessels from the operation of the statute. It is not, however, a reason why the exception should be established by the courts. Rivara v. James Stewart & Co., Inc., 1925, 241 N.Y. 259, 149 N.E. 851.

General Business Law, § 23, requiring a "public auction" to be conducted by a licensed auctioneer refers to sales by persons engaged in the business of auctioneering, and does not include sales under conditional sales contracts which, by this section, are required to be at public auction, and such a sale need not be conducted by a licensed auctioneer. Spear v. Hoxsie, 1938, 164 Misc. 589, 299 N.Y.S. 218.

Retaking Possession.

Where buyers and seller's assignee agreed to return steel concrete forms purchased under conditional sales contract made in Indiana, and buyers returned forms to assignee's warehouse in Chicago, retaking took place at warehouse, and assignee properly resold them in Chicago. Bulldog Concrete Forms Sales Corp. v. Taylor, C.A.Ind.1952, 195 F.2d 417, 49 A.L.R.2d 1.

In seller's replevin action based on breach of alleged conditional sales contract, although buyer had paid at least 50 per cent. of purchase price, he could not assert right, if any, against seller, for failing to resell goods, where the sole question involved was the right to repossession. H. W. Roos Co. v. Brady, (1931) 103 Pa.Super.Ct. 579, 157 A. 490.

Where truck sold under conditional sales contract burned after buyer's administrators had paid more than 50 per cent. of purchase price, but while administrators were in default, and truck was redelivered to seller by insurance adjuster, seller's failure to sell truck within 30 days as required by replevin statute held not to entitle administrators to penalty, since this section was inapplicable to such a situation. Autocar Sales & Service Co. v. Hansen, (1936) 270 N.Y. 414, 1 N.E.(2d) 830, modifying 245 App.Div. 474, 283 N.Y.S. 669.

Where one of four trucks covered by conditional sales contract burned at time when buyer's administrators were in default, and seller, having accepted burned truck from insurance adjuster, retained it without offer to return, and subsequently replevied three remaining trucks, court properly held that seller retook burned truck within meaning of this section. Autocar Sales & Service Co. v. Hansen, (1936) 245 App.Div. 474, 283 N.Y.S. 669, modified (1936) 270 N.Y. 414, 1 N.E.(2d) 830.

Conditional seller's seizure of tractor sold by writ of replevin, and buyer's voluntary surrender of possession of harvester covered by same contract, did not constitute such a "retaking" as would compel resale within thirty days under A.R.S. § 44–319 et seq. Kahl v. Winfrey, 1956, 81 Ariz. 199, 303 P.2d 526.

Notice of resale

Actual receipt by conditional buyer of notice of proposed sale of repossessed goods is not prerequisite to such sale. Pacific Discount Co. v. Jackson, 1962, 37 N.J. 169, 179 A.2d 745.

Notice of prospective resale of repossessed goods may be sent to conditional buyer by certified mail as well as by registered mail. Id.

McKinney's Personal Property Law, § 79 prescribing method of advertising compulsory resale of personalty repossessed by conditional seller was designed to protect defaulting conditional buyer by issuing wide notice of proposed sale, so that best price may be obtained and any deficiency minimized. Bankers Trust Co. v. Terll, 1962, 35 Misc.2d 835, 231 N.Y.S.2d 374.

Definitions of publication for purposes of libel, or other purposes, are not applicable in determining whether conditional seller has complied with statutory requirement as to publication of notice of compulsory resale of repossessed personalty in newspaper published or having a general circulation in filing district in which property is to be sold. Id.

Time of Resale.

The voluntary resale provisions of N.J.S.A. 46:32–25, 26, 28, 29 do not fix a specific time within which such resale must be had; and in action for deficiency, ruling that 45 days would have been a reasonable time within which to hold resale and that defendant had been prejudiced by relatively long delay of 86 days amounted to determination that plaintiff had not resold in accordance with provisions of said sections. Bergen Auto Co. v. Mattarochio, 1959, 58 N.J.Super. 161, 155 A.2d 787.

Where there was a retaking of gas range by conditional seller upon buyer defaulting in payments at time when less than 50 per cent. had been paid thereon, a voluntary resale by seller within 40 days after the retaking was within a "reasonable time", so as to entitle seller to recover from buyer for any deficiency. Stark & Son v. Licastro, 1942, 127 N.J.L. 380, 22 A.2d 768.

Under amendment to Personal Property Law, § 79, by L.1934, c. 728, providing that when seller retakes possession of goods by legal process and an answer is interposed seller may hold retaken goods for period not to exceed 30 days after entry of judgment entitling seller to possession of such goods before holding resale at public auction, conditional seller may resell if an answer has been interposed in replevin action at any time during which goods may be held. Genauer v. Bac Corp., 1950, 276 App.Div. 589, 96 N.Y.S.2d 394, reargument and appeal denied 277 App.Div. 757, 97 N.Y.S.2d 373, reargument and appeal denied 277 App.Div. 844, 97 N.Y.S.2d 922.

Under Personal Property Law, § 79, as amended by L.1934, c. 728, goods retaken by seller by legal process may be resold at public auction if an answer has been interposed at any time prior to the entry of judgment as well as within 30 days thereafter. Id.

Where only sixteen days elapsed after seizure of goods, inclusive of day of sale, there was no resale in pursuance of statutory requirements. John W. Snyder, Inc. v. Aker, (1929) 134 Misc. 721, 236 N. Y. S. 28.

Vessels.

Section 18 and this section, as applied to a vessel documented as a vessel of the United States and enrolled for coastwise trade, do not interfere with the use of such vessel as an instrumentality of interstate commerce, nor do they conflict with the Federal recording and enrollment acts, and are therefore valid as applied to such a vessel in the absence of legislation of Congress in respect to the matter. Stewart v. Rivara, (1927) 274 U.S. 614, 47 S.Ct. 718, 71 U.S.(L.Ed.) 1234, affirming (1925) 241 N.Y. 259, 146 N.E. 851, which affirmed (1925) 214 App.Div. 737, 210 N.Y.S. 911, which affirmed (1922) 119 Misc. 73, 195 N.Y.S. 841. See also Rivara v. James Stewart Co., Inc., (1923) 236 N. Y. 601, 142 N. E. 300, affirming (1922) 204 App. Div. 890, 197 N. Y. S. 943.

A vessel is a chattel within the purview of section 1 and this section, and hence a conditional vendor is required either to put up for sale the retaken chattels and give credit for the proceeds, or restore the payments made to

him, and there is nothing in any act of Congress that preempts this field of regulation or even touches it remotely. Rivara v. James Stewart & Co., Inc., (1925) 241 N. Y. 259, 149 N. E. 851, affirming (1925) 214 App. Div. 737, 210 N. Y. S. 911, affirmed in (1927) 274 U. S. 614, 47 S. Ct. 718, 71 U. S. (L. ed.) 1234.

Voluntary Resale.

A voluntary resale must be made within a reasonable time, and a compulsory resale must be made within 30 days after property is retaken. Central Acceptance Corp. v. Massey, 1929, 107 W.Va. 503, 148 S.E. 864; Mott v. Moldenhauer, 1941, 27 N.Y.S.2d 563, 261 App.Div. 724.

A seller who retook goods sold on conditional sales contract when less than half of purchase price had been paid was not required to sell within 30 days after retaking or after written notice by buyer demanding a resale, to rebut inference that seller elected to keep chattels as its own, but seller could resell within a reasonable time. In re White Allom & Charles Roberson of London, 1938, 253 App.Div. 220, 1 N.Y.S.2d 715.

Violation of Section.

Even though a conditional sales contract was entered into in Washington, D C, the Uniform Conditional Sales Act of Delaware applied to the transaction, in view of fact issue as to noncompliance therewith was raised in Delaware and especially in view of fact repossession and sale of automobile took place in Delaware, and therefore, conditional seller's assignee gave up his right to a judgment against buyer for the balance due when it sold the automobile without notice and public auction required by this section and section 20. United Securities Corp. v. Tomlin, 1964, — Del.Super. —, 198 A.2d 179.

Where assignee of conditional sales contract had repossessed automobile but failed to comply with McKinney's Personal Property Law, § 79, with respect to selling automobile at public auction, buyer was entitled to be reimbursed for one-quarter of the sum of all payments which he had made under the contract. Universal C. I. T. Credit Corp. v. Owens, 1958, 8 Misc. 2d 1074, 171 N.Y.S.2d 686.

That plaintiff, who succeeded to buyer's interest in piano under conditional sales contract, removed the piano in violation of such contract from the address specified therein without first obtaining conditional seller's written consent, held not to relieve seller's assignee from provisions of this section. Rost v. Wm. Knabe & Co., (1935) 154 Misc. 425, 277 N.Y.S. 896.

Even if conditional buyer of sawmill was in default, seller's failure to comply with provisions of conditional sales act respecting repossession, notice, and resale amounted to a "repudiation" of the contract by seller. Carl v. McDonald, 1943, 60 Ariz. 170, 133 P.2d 1013.

Waiver.

In Fisher v. Stewart Motor Corp., (1928) 132 Misc. 225, 228 N.Y.S. 549, the facts appeared to be as follows: The buyer of a truck under a conditional sales contract defaulted in payment and the truck was retaken by the seller. The buyer, who had paid at least 50 per cent of the purchase price at the time of retaking, requested the seller to hold the truck, and agreed to pay for it if the seller would so hold it, this request being consented to by the seller. After the expiration of the 30 day period provided for in this section, the buyer brought an action to recover damages on the ground that the seller had failed to resell the property, as required by this section. It was held that the request that the seller hold the truck, and his consent thereto, did not constitute a new contract sufficient to remove the case from the operation of this section, but was at most an invalid waiver by the buyer of the statutory protection. It was pointed out that a new contract for a consideration might remove the case from the statute, but held that the above transaction did not fall into that category. It was further held that the burden was on the seller to show by a preponderance of the evidence that a new contract had been entered into.

The provisions of this section cannot be waived either in the contract, or in notes given for the purchase price, or after the buyer is in default. Laufer v. Burghard, (1932) 146 Misc. 39, 261 N. Y. S. 364.

Where the vendee has paid more than 50 per cent of the purchase price at the time of retaking, the provisions of this section as to compulsory resale must be complied with and cannot be waived either by agreement of the parties or by invoking the wrong remedy of law. Grossman v. Weiss, (1927) 129 Misc. 234, 221 N.Y.S. 266.

Under the New York Personal Property Law (Consol.Laws, c. 41) § 65, requiring a seller, retaking personal property under conditional contract of sale to retain it for thirty days during which it may be redeemed and to sell it at public auction within thirty days after expiration of such redemption period failing which the buyer may recover the amount paid on his contract, it was held, in Adler v. Weis & Fisher Co., 1916, 218 N.Y. 295, 112 N.E. 1049, that a waiver of these provisions by the buyer after default does not authorize a sale contrary to statute, nor bar a recovery by the buyer of the amount paid when resale is made by the seller contrary to the statute.

A waiver of such statutory conditions in the contract of sale is invalid, but a new agreement, founded on new consideration and made after default of the conditional contract, is valid. Adler v. Weis & Fisher Co., 1916, 218 N.Y. 295, 112 N.E. 1049.

Alleged agreement by representative of assignee of automobile conditional sales contract to cancel unpaid balance held unenforceable as voluntary waiver without consideration, where there was no evidence of agreement by conditional buyer, permitting assignee to dispense with statutory compliance on retaking automobile. C. I. T. Corporation v. Schettig, 1935, 244 App.Div. 820, 279 N.Y.S. 782.

Only guarantor and not conditional buyer could waive statutory requirement to sale within thirty days after retaking. Lewis v. Esch, 1935, 155 Misc. 212, 279 N.Y.S. 77.

Only guarantor and not conditional buyer can waive statutory requirement as to service of notice of sale on buyer. Id.

Oral agreement of conditional vendee, made after vendor repossessed automobile, that, if vendor would give car back, vendee would waive all contractual rights respecting repossession and sale if vendee defaulted again, held supported by consideration. Telford v. Iowa Guarantee Mortg Corp., 1931, 58 S.D. 261, 235 N.W. 663.

Second mortgagee of conditional vendee's automobile could not complain of vendor's failure to observe requirements in repossessing and selling car, where vendee had waived requirements. Id.

As respects seller's liability for failure to comply with statutes as to conditional sales requiring public sale within 30 days, where buyer of chattels under conditional sales contract agreed that seller could take back chattels in consideration of amount due and recommended purchaser to whom chattels were sold, change of position on part of buyer and seller was consideration for transaction. Carr v. Godfrey Keeler Co., 1937, 163 Misc. 378, 298 N.Y.S. 718.

Counterclaim.

Where counterclaim was filed by buyer of automobile sold under conditional sale contract, for relief under this section authorizing buyer's recovery of damages from seller who has failed to comply with provisions of this section relating to resale of conditionally sold property counterclaim which did not allege compliance with requirement that buyer had paid at least one-half of the purchase price at time of retaking of automobile or had made written demand for resale, was legally insufficient. Associates Discount Corporation v. Reiley, 1941, 31 N.Y.S.2d 476.

In an action to recover installments paid on the purchase price of a vessel, possession of which has been resumed by the seller for default in later payments, without compliance with the provisions of this section, the seller is entitled to recover on a counterclaim for the cost of insurance premiums and repairs which should have been paid for by the buyer under the terms of the contract. In providing for the recovery of payments on the subject of the sale, this section has in view the payments made by the buyer as installments of the purchase price. It has no bearing on payments unrelated to the price, though the obligation to make them is expressed in the same contract. Rivara v. James Stewart & Co., Inc., 1925, 241 N.Y. 259, 149 N.E. 851.

Deficiency.

In proceeding by seller's assignee against defaulting buyers to recover deficiency after retaking and resale of steel forms sold under Burns' Ann.St. § 58–817, buyers could not complain of alleged defects in notices or in conduct of sale in absence of showing of prejudice. Bulldog Concrete Forms Sales Corp. v. Taylor, C.A.Ind.1952, 195 F.2d 417, 49 A.L.R.2d 1.

In proceeding to obtain judgment against defendant for deficiency after resale by seller's assignee under Burns' Ann.St.Ind. § 58–817, evidence established that defendants did not rely on seller's skill or judgment before pur-

chasing goods and that there was no breach of implied warranty. Bulldog Concrete Form Sales Corp. v. Taylor, D.C.Ind.1950, 94 F.Supp. 328.

To recover a deficiency from purchaser, Indiana Conditional Sales Act Burns' Ann.St., § 58–817, must be strictly complied with in selling repossessed property, as to giving notice of sale and length of time of notice, but strict compliance is not required as to form of notice. Id.

Where conditional seller of an automobile failed to give notice to conditional buyer either personally, or by registered mail, of date of sale of automobile at public auction, following its repossession, as required by McKinney's Personal Property Law, § 79, seller could not recover any deficiency from buyer following the resale, notwithstanding fact notice of such sale was made upon buyer by certified mail. Oneida Nat Bank & Trust Co. of Utica v. Manikas, 1958, 10 Misc.2d 671, 175 N.Y.S.2d 612.

An agreement by defaulting conditional purchaser of taxicabs, repossessed by purchaser of sales contracts and purchase-money notes, that latter should sell them at private sale and apply net proceeds on defaulting purchaser's indebtedness, was not violative of statute, but constituted new contract, which rendered public sale unnecessary and did not relieve defaulting purchaser from liability for deficiency or vendor from liability as indorser of notes. C. I. T. Corporation v. Revoir Motors, 1939, 171 Misc. 464, 11 N.Y.S.2d 871.

The assignee of a conditional seller having a right to conduct a voluntary sale for the buyer's account must nevertheless comply with the provisions of this section. Failure to do so causes a loss of the right to surcharge the buyer with the deficiency. Ellner v. Commercial Credit Corp., (1930) 137 Misc. 251, 242 N. Y. S. 720 (citing also §§ 20, 22 and 24 of the Uniform Act).

Pleading.

Conditional seller, not complying with provisions of this section in selling chattels seized on buyer's default, held not entitled to amend complaint seeking foreclosure, to allege replevin action. Grossman v. Weiss, (1927) 129 Misc. 234, 221 N.Y.S. 266.

Burden of Proof.

A conditional seller, suing on a note given under a conditional sales contract, has the burden of proving that he has complied with this section and section 23, and in the absence of such proof can recover no deficiency from the buyer. Bogda v. Wilbur, (1929) 198 Wis. 510, 224 N. W. 716.

Burden of establishing conditional seller's failure to comply with this section with regard to notice to be given buyer, held on buyer. Powell v. Credit Acceptance Corp., (1928) 131 Misc. 870, 228 N.Y.S. 427.

The vendor, who sells a chattel under a judgment in an action in replevin without notice to the conditional vendee as prescribed by section 6 (N. Y. Personal Property Law, § 66), is liable, pursuant to this section, for damages to the vendee by reason of the sale, without proof of vendee's damages. Meyer v. Sherwood Automobile Corp., (1924) 123 Misc. 923, 206 N. Y. S. 645.

Failure to resell.

Where defendant purchasing new automobile on installment contract made down payment of $200 and was allowed $547 as tradein value of her old automobile and defendant made installment payments in amount of $297.60, aggregating $1,044.60, and time sale purchase price of automobile was $3,425.40, defendant had not paid in 50 per cent of purchase price of automobile, and consequently, when seller's assignee repossessed automobile, a compulsory resale was not required under McKinney's Personal Property Law, § 79. Universal C. I. T. Credit Corp. v. Bacon, 1959, 19 Misc.2d 773, 186 N.Y.S.2d 313.

Failure of holder of conditional sales contract to resell personalty within statutory time after retaking possession thereof discharged buyer from any obligation under conditional sales contract. Goldberg v. Aronowsky (1937) 248 App.Div. 915, 290 N.Y.S. 777.

Liability of Surety after Resale.

An indorser of notes given by conditional buyer of taxicabs in connection with conditional sale contract would be estopped from asserting that arrangement between conditional buyer and transferee of conditional sales contract for private sale of the taxicabs upon buyer's default released indorser from liability if indorser, which was the conditional seller, knew of and consented to the making of the new arrangement. C. I. T. Corporation v. Revoir Motors, 1939, 257 App.Div. 385, 13 N.Y.S.2d 221.

If arrangement between conditional buyer and transferee of conditional sales contract, for private sale of taxicabs which were subject of the con-

ditional sale, was made with consent of indorser of purchase-money notes, indorser's liability would be no greater than that of the conditional buyer, which was limited by the new contract to difference between amount due on indebtedness and amount received at private resale of the taxicabs, and hence indorser would have right of set-off in a sum representing net amount which might have been obtained on a resale if the transferee retained ownership of the taxicabs. Id.

Bond and Warrant, Foreclosure of.

A seller's assignee of conditional sale contract covering automobile could confess judgment on bond and warrant executed by buyer to assignee, notwithstanding assignee repossessed automobile and made no attempt to comply with conditional sale law, where bond and warrant contained no reference to contract. Ryba v. Atlas Automobile Finance Corporation, 1939, 121 N.J. L. 478, 3 A.2d 447.

Bankruptcy.

A creditors' committee appointed in an arrangement proceeding under Bankruptcy Act, 11 U.S.C.A. § 722, was not the legal successor in interest of debtor as buyer under a conditional sales contract, upon which notice of sale under 69 P.S. § 454, was required to be given by seller upon retaking possession of machinery conditionally sold, and notice of sale duly given to the buyer-debtor was sufficient. Gerety v. Hiller, 1944, 349 Pa. 49, 36 A.2d 476.

Neither the Bankruptcy Act, 11 U.S.C.A. § 722, nor 69 P.S. § 454, obligate the seller, under conditional sale contract with the buyer who had become a debtor in a proceeding for an arrangement, to apply to the district court for permission to sell machinery conditionally sold, after retaking possession, nor was seller required to withhold notice of sale until such time as debtor obtained new directors and officers to replace those who claimed to have resigned. Id.

Fifty-Per Cent of Purchase Price

Financing charge included in additional sales price was part of "purchase price" for purpose of determining whether compulsory resale was required under McKinney's Personal Property Law, § 79 requiring resale where buyer has paid at least 50% of "purchase price" at time of retaking. Associates Discount Corp. v. Commander, 1963, 40 Misc.2d 782, 244 N.Y.S.2d 103.

Where defendant purchasing new automobile on installment contract made down payment of $200 and was allowed $547 as tradein value of her old automobile and defendant made installment payments in amount of $297.60, aggregating $1,044.60, and time sale purchase price of automobile was $3,425.40, defendant had not paid in 50 per cent of purchase price of automobile, and consequently, when seller's assignee repossessed automobile, a compulsory resale was not required under McKinney's Personal Property Law, § 80. Universal C. I. T. Credit Corp. v. Bacon, 1959, 19 Misc.2d 773, 186 N.Y.S.2d 313.

Under this section requiring conditional seller who has retaken possession of goods to give buyer not less than ten days' written notice of sale at public auction, if the buyer has paid as least 50 per cent of the purchase price at time of retaking, a buyer who had paid by cash and trade-in allowances, upon original indebtedness, more than 50 per cent of total purchase price was entitled to notice though less than 50 per cent was paid under renewal note and conditional sales contract. Fisk Discount Corp. v. Brooklyn Taxicab Trans Co., 1946, 270 App.Div. 491, 60 N.Y.S.2d 453.

Public places

Under Burns' Ann.St. § 58–817, requiring seller of repossessed goods to post three notices in different "public places" within filing district, quoted phrase included bulletin board of legal newspaper visible to pedestrians using sidewalk on busy street in downtown Chicago and regularly used for posting other public notices. Bulldog Concrete Forms Sales Corp. v. Taylor, C.A.Ind.1952, 195 F.2d 417.

Bidding at resale

Under Burns' Ann.St. § 58–817, expressly giving seller of repossessed goods the right to bid on goods at resale, assignee of seller, who had given required notice of resale, could not be held responsible if no other bidder appeared. Bulldog Concrete Forms Sales Corp. v. Taylor, C.A.Ind.1952, 195 F.2d 417.

Public sale

Under Burns' Ann.St. § 58–817, permitting seller of repossessed goods to resell at "public sale", sale held at law office of attorney for seller's assignee was

within meaning of quoted phrase. Bulldog Concrete Forms Sales Corp. v. Taylor, C.A.Ind.1952, 195 F.2d 417.

Persons benefited

A.R.S. §§ 44–319 to 44–321, confer rights only on a buyer under a conditional sales contract and no rights or benefits are accorded a guarantor, endorser, or seller-assignor. Maestro Music, Inc. v. Rudolph Wurlitzer Co., 1960, 88 Ariz. 222, 354 P.2d 266

Purchase by seller on resale

Conditional seller could purchase goods at sale conducted on account of buyer. Bowden v. Sussex Studebaker, Inc., 1960, 3 Storey 66, —— Del.Super. ——, 164 A.2d 595.

Conditional seller could purchase goods at sale conducted on account of buyer. Id.

Buyer

The word "buyer" in N.J.S.A. 46:32–25 requiring notice of prospective resale of repossessed goods to be sent to conditional buyer includes "buyers" and notice required must be mailed to each buyer. Frantz Equipment Co. v. Anderson, 1962, 37 N.J.Super. 420, 181 A.2d 499.

§ 20. Resale at Option of Parties.

Case Notes

Purpose.

The object of a resale by conditional seller after a retaking of property upon buyer defaulting in the payment is to open the door to a personal suit against buyer for any deficiency, and such a suit should not be indefinitely delayed. Stark & Son v Licastro, 1941, 127 N.J.L. 880, 22 A.2d 768, See also, Bowden v. Sussex Studebaker, Inc., 1960, 3 Storey 66, —— Del.Super ——, 164 A.2d 595.

Compliance With section 19.

Strict compliance with resale provisions of N.J.S.A. 46:32–25, 28, is a prerequisite to maintaining a deficiency suit. Pacific Discount Co. v. Jackson, 1961, 68 N.J.Super. 331, 172 A.2d 440, 68 N.J.Super 331, reversed on other grounds 179 A.2d 745, 37 N.J. 169.

Conditional seller which volunteered to resell machinery and equipment although buyers made no demand therefor was bound to comply with same requirements as those imposed in case of compulsory resale. Vamco Corp v. Ragone, 1962, 36 Misc.2d 876, 232 N.Y.S.2d 811.

Seller electing to resell must comply with the provisions imposed by section 19. H. L. Braham & Co. v. Zittel, (1931) 232 App.Div. 406, 250 N.Y S. 44.

To preserve and enforce his right to collect unpaid purchase money, covered by conditional sales agreement, after buyer's default, seller must comply with applicable Code, 40–3–19, 20, pertaining to repossessing and reselling of the property. West Virginia Mack Sales Co. v. Brown, 1954, 139 W.Va. 667, 81 S.E.2d 103.

Assignees, Resale by.

When conditional sales contract was assigned, assignee acquired rights and assumed obligations of original seller including obligation to notify buyers of resale of repossessed property. Bulldog Concrete Forms Sales Corp. v. Taylor, C.A.Ind.1952, 195 F.2d 417, 49 A.L.R.2d 1.

An assignee of the contract may resell, though he has also taken the original seller's guaranty of the purchase money note. Van Marel v. Watson, (1925) 28 Ariz. 32, 235 Pac. 144.

Election by Seller.

Seller electing to resell must comply with the provisions imposed by section 19. H. L. Braham & Co. v. Zittel, (1931) 232 App.Div. 406, 250 N. Y. S. 283.

Conditional buyer having made no demand for sale of property retaken, seller had right to conduct voluntary sale for buyer's account. Ellner v. Commercial Credit Corp., (1930) 137 Misc. 251, 242 N.Y.S. 720.

Demand for resale.

Conditional buyers who had paid less than 50% of purchase price but more than $500 had right to require resale of purchased machinery and equipment, but seller was not bound to resell it where no such demand was made by buyer. Vamco Corp. v. Ragone, 1962, 36 Misc.2d 876, 232 N.Y.S.2d 811.

Time of Resale.

Where conditional buyer of automobile paid less than 50 percent of purchase price and did not demand resale of automobile following repossession, 57-day delay by seller in making voluntary resale of repossessed automobile was not unreasonable, and seller was not precluded from obtaining deficiency decree for balance of purchase price on ground that he failed to sell automobile within 30 days after repossession. Peterman v. Shore Motors, Inc., 1962, —— Del.Super. ——, 175 A.2d 739.

The voluntary resale provisions of N.J.S.A. 46:32–26 do not fix a specific time within which such resale must be had; and in action for deficiency, ruling that 45 days would have been a reasonable time within which to hold resale and that defendant had been prejudiced by relatively long delay of 86 days amounted to determination that plaintiff had not resold in accordance with provisions of N.J.S.A. 46:32–26. R.S. 46:32–25, 26, 28. Bergen Auto Co. v. Mattarochio, 1960, 58 N.J.Super 161, 155 A.2d 787.

Where there was a retaking by conditional seller of a gas range and less than 50 per cent. had been paid thereon, and seller thereafter voluntarily resold gas range, this section fixed no time limit for such resale, and rule of reasonable time applied. Stark & Son v. Licastro, 1941, 127 N.J.L. 380, 22 A.2d 768

Where there was a retaking of gas range by conditional seller upon buyer defaulting in payments at time when less than 50 per cent. had been paid thereon, a voluntary resale by seller within 40 days after the retaking was within a "reasonable time", so as to entitle seller to recover from buyer for any deficiency. Id.

Where there was a retaking by conditional seller of a gas range and less than 50 per cent. had been paid thereon, and seller thereafter voluntarily resold gas range, this title fixed no time limit for such resale, and rule of reasonable time applied. Id.

Voluntary resale must be made within reasonable time after property is retaken. Central Acceptance Corp. v. Massey, (1929) 107 W. Va. 503, 148 S. E. 864, holding also that an unreasonable delay on the part of the seller in making a resale of property retaken was not excused by the fact that such was the seller's policy.

Where the buyer has paid less than half the purchase price on a conditional sale contract, a resale by the seller retaking the goods is not required within a determinate time, without a written demand therefor by the buyer, to avoid the inference of election (under section 23) to keep the goods as his own. Interstate Ice, etc., Corp. v. U. S. F. Ins. Co., (1926) 243 N. Y. 95, 152 N. E. 476, affirming (1925) 215 App. Div. 768 mem., 213 N. Y. S. 826, holding that when machinery sold conditionally was retaken by the seller and damaged by fire within a fortnight, the court could not say as matter of law that the seller's delay was unreasonable.

"This section fixes no time within which the seller must make a voluntary resale hence it must be made within a reasonable time after the property is retaken. Resale is not a duty if at the time of the retaking less than fifty per centum of the purchase price has been paid under the contract unless written notice demanding a resale has been given. In re White Allom & Charles Roberson of London, 1938, 253 App.Div. 220, 1 N.Y.S.2d 715.

Recovery of Damages.

Where conditional buyers of automobile defaulted and seller retook the automobile and seller's notice to the buyers of resale was defective in that the notice contained the wrong address where the public sale of the automobile was to be held, seller was liable for damages to buyers in the minimum amount fixed by N.J.S.A. 46:32–31 of one-fourth of the sum of all the payments made under the contract, with interest, notwithstanding that under said section the resale by seller was not compulsory in that buyers had paid less than 50 per cent of purchase price and had not demanded the resale by notice. Bancredit, Inc. v. Meyers, 1960, 62 N.J.Super 77, 162 A.2d 109.

The inclusion in N.J.S.A. 46:32–31 of the minimum damage stipulation of one fourth of the buyer's payments in the event retaking seller fails to comply with the resale procedural requirements was to penalize the infraction of such requirements even where the particular buyer has sustained no actual damage, and thereby stimulate the adoption of habits in compliance with such requirements by sellers as a class. Id.

Conditional buyer can not recover damages for seller's noncompliance with statute requiring resale, unless buyer has right to have goods resold. Capitol

Dist. L. A. W. Corp. v. Blake, (1930) 136 Misc. 651, 241 N.Y.S. 476; Ryan v. General Motors Acceptance Corporation (1936) 248 App.Div. 668, 288 N.Y.S. 912.

Presumptions.

Resale of property under conditional sales contract presumed to be according to contract, in absence of pleadings questioning validity of such sale. Van Marel v. Watson, (1925) 28 Ariz. 32, 235 P. 144.

Adequacy of bid

In proceeding by seller's assignee against defaulting buyers to recover deficiency after retaking and resale of steel concrete forms sold under Indiana conditional sales contract, evidence sustained finding to effect that $4,800 was not an inadequate bid. Bulldog Concrete Forms Sales Corp. v. Taylor, C.A.Ind.1952, 195 F.2d 417.

Resale

Where bank purchased conditional sale contract and note, repossessed chattels sold after buyer's default, and resold chattels at private sale to original seller, the sale was not a "resale" within meaning of N.J.S.A. 46:32–26, giving bank alternative to retain chattels or resell for buyer's account. Veterans Loan Authority v. Rozella, 1952, 90 A.2d 505, 21 N.J.Super. 1.

§ 21. Proceeds of Resale.

Statutory Notes

The New York act amended in 1941 by adding "to which the seller may be entitled" to clause (2). See McKinney's Personal Property Law, § 80-a.

The West Virginia act as amended by L.1925, c. 64, omitted part of text of subd. 3 and last sentence, obviously in error, which has since been inserted to conform to this section. Code, 40–3–21.

Case Notes

Disposal of Excessive Proceeds.

Where automobile conditionally sold was repossessed subsequent to the suit for the buyer's default, the amount realized on the sale should be deducted from the amount otherwise found to be due. Bankers Commercial Corp. v. Murphy, 1960, 207 N.Y.S.2d 779, —— Misc.2d ——.

Where the proceeds of the seller's sale exceed the amount of his claims, he must restore the balance to the buyer or deposit same to the buyer's credit as stipulated by statute. Van Deveer v. Canzano, (1923) 206 App.Div. 103. 200 N.Y.S. 563.

Parties' rights to proceeds.

Though legal title remains in conditional seller, each party to sale has special interest or property in chattels, the seller's being limited to amount of purchase price unpaid and buyer's to chattel's value less unpaid purchase price. Sturman v. Polito (1937) 161 Misc. 536, 291 N.Y.S. 621.

Provisions of conditional sales contract that buyer obtained no title or interest in goods, and that on default he forfeits all that he paid, were void as violative of provisions of Uniform Conditional Sales Law. Id.

Credit

Under Burns' Ann.St. § 58–819, assignee of seller could give credit to defaulting buyers on assignee's books, and was not required to hand cash to attorney who conducted sale and then have cash returned to assignee before entry of credit was made. Bulldog Concrete Forms Sales Corp. v. Taylor, C.A.Ind. 1952, 195 F.2d 417, 49 A.L.R.2d 1.

Equity of redemption.

Where more than 50 per cent of the purchase price has been paid by a conditional buyer prior to default, the buyer's equity is not forfeited by default and retaking by the conditional seller, but his equity continues as a subsisting property right and remains subject to assignment or transfer the same as any equitable right or interest until extinguished on foreclosure. Schnitzer v. Fruehauf Trailer Co., 1954, 283 App.Div. 421, 128 N.Y.S.2d 242, affirmed 307 N.Y. 876, 122 N.E.2d 754.

Attorney's fees

Under sale agreement providing for payment of time balance "with attorney fees and collection charges", and containing "deficiency clause" which

authorized seller to retake possession and required buyer to pay time balance with attorney's fees and other charges if, upon so obtaining possession, the seller should sell the goods, seller could not recover attorney's fees in action for possession of the property, before he had sold repossessed property and applied proceeds to the time balance. Reimer v. Sheets, 1958, 128 Ind.App. 400, 149 N.Y.S.2d 554.

§ 22. Deficiency on Resale.

Statutory Notes

The New York act amended in 1941 by inserting "to which the seller may be entitled" following "goods" and adding provisions relating to the determination of the value of the goods and denying the seller's right to a deficiency where buyer has paid eighty per cent of the purchase price. See McKinney's Personal Property Law, § 80-b.

Case Notes

Prior Law.

The rule laid down in this section as to the right of the seller to recover the balance of the purchase price in case of a deficiency on resale where the terms of the existing statute have been complied with was formerly the rule obtaining in New York. Van Derveer v. Canzano, (1923) 206 App. Div. **130, 200 N. Y. S. 563.**

Application of section 19.

For assignee of conditional seller of automobile to hold buyer for deficiency claimed on sale following repossession of automobile after buyer became delinquent, assignee had to comply with resale requirements of this Act. Commercial Credit Corp. v. Swiderski, 1963, —— Del.Super. ——, 195 A.2d 546, reargument denied 196 A.2d 214.

Right to bring deficiency claim on conditional sales contract is statutory, and compliance with resale provisions of N.J.S.A. 46:32–1 et seq. is prerequisite to maintaining such suit. Bergen Auto Co. v. Mattarochio, 1960, 155 A.2d 787, 58 N.J.Super. 161.

In action on note for deficiency remaining after resale of truck sold under conditional sales act, it was immaterial whether there had been a compliance with provisions of § 19. Superior Finance Corp. v. John A. McCrane Motors, Inc., (N.J.1932) 160 A. 341.

Forfeiture Stipulation.

The right of the seller under this section to recover the deficiency from the buyer is not affected or destroyed by a stipulation in notes given for the purchase price of the goods whereby the buyer agrees to surrender the goods and forfeit all payments in case of default. Such a stipulation "is in direct conflict with the spirit and letter of the Uniform Conditional Sales Act." O. S. Stapley Co. v. Rogers, (1923) 25 Ariz. 308, 216 Pac. 1072.

Actions for Recovery.

Right to bring deficiency claim on conditional sales contract is statutory, and compliance with resale provisions of N.J.S.A. 46:32–1 et seq., is prerequisite to maintaining such suit. Bergen Auto Co. v. Mattarochio, 1959, 155 A.2d 787, 58 N.J.Super. 161.

Conditional seller, by not reselling within reasonable time, would have to be considered as having elected to retain goods and to discharge buyer of debt, and could not maintain deficiency suit. Id.

Where less than fifty per cent of the purchase price has been paid, no resale as prescribed by RSA 361:21, has been demanded by the buyer, and there has been no rescission, conditional seller is entitled following repossession to recover any loss suffered by reason of the fact that goods so retaken are insufficient to pay balance of purchase price and all reasonable expenses incurred. Randall v. Pingree, 1957, 100 N.H. 322, 125 A.2d 658.

The seller of an automobile under a conditional sales contract, who repossesses the property on default of the buyer and resells it, is entitled to recover the deficiency of the purchase price in an action on the original purchase-money note given by the buyer. Hare & Chase, Inc. v. Hutchinson,

(1927) 3 W. W. Harr. (Del.) 384, 138 Atl. 611. To the same effect see Superior Finance Corp. v. John A. McCrane Motors, Inc., (N. J. 1932) 160 Atl. 341.

Where conditional sellers' assignee exercised its right to retake chattels, no cause of action on promissory notes given in part payment of purchase price survived retaking, as against either maker of notes or indorsers thereof. Shenkin v. Grant, 1957, 3 Misc.2d 333, 152 N.Y.S.2d 996.

Complaint seeking to restrain enforcement of judgment for purchase price of personalty on ground that defendant failed to resell personalty within statutory time after retaking possession thereof under conditional sales contract stated cause of action, since it would be inequitable to permit defendant to retain personalty and also enforce purchase price judgment. Goldberg v. Aronowsky (1937) 248 App.Div. 915, 290 N.Y.S. 777.

Discharge of Debt.

Repossession of truck on which less than fifty per cent. of purchase price had been paid, with subsequent invalid sale, discharged indebtedness on conditional sale contract. Mack International Motor Truck Corp. v. Thelen Trucking Co., (1931) 205 Wis. 434, 237 N.W. 75.

Indorser.

Corporate buyer's sole stockholders, who agreed to guarantee payments specified in conditional sales contract and to indorse series of notes to be made by buyer, were not "buyers" under conditional sales contract, nor were they persons succeeding to obligations of buyer, for purposes of McKinney's Personal Property Law, § 80–b permitting sellers to recover deficiencies from buyer or "buyer's successor". Shenkin v. Grant, 1957, 3 Misc.2d 333, 152 N.Y.S.2d 996.

Seller repossessing goods after buyer's default has no right of action **against indorser for balance due on purchase price prior to resale. Central Acceptance Corp. v. Massey, (1929) 107 W.Va. 503, 148 S.E. 864.**

Measure of Deficiency.

Under N.J.S.A. 46:32–28 providing that if proceeds of resale are insufficient to defray allowable expenses and balance due upon purchase price, seller may recover deficiency in action at law, allowance of finance charge rebate is not permitted in determining amount of deficiency under conditional sales default. Pacific Discount Co. v. Powell, 1961, 70 N.J.Super. 156, 175 A.2d 212.

6 Del.C. § 924, restricts liability of buyer to deficiency shown after resale. Bowden v. Sussex Studebaker, Inc., 1960, -- Del.Super. ——, 164 A.2d 595.

In McKinney's Personal Property Law, § 80–b providing that, if proceeds of resale are insufficient to defray expenses thereof, and also the expenses of retaking, keeping and storing the goods to which the seller may be entitled and the balance due upon the purchase price, the seller may recover the deficiency from the buyer, provided that where the contract price covering the conditional sale of the goods amounts to $3,000 or less, the buyer may have the reasonable value of the goods at the time of the resale determined in an action brought by the seller to recover the deficiency, the "contract price" was the "time sale price" named in installment contract for purchase of new automobile, and where such price was $3,425.40 the buyer did not have the right to reopen default judgment for deficiency for purpose of having the reasonable value of the automobile at the time of the resale determined. Universal C. I. T. Credit Corp. v. Bacon, 1959, 19 Misc.2d 773, 186 N.Y.S.2d 313.

Conditional seller may retake goods after suing for unpaid balance due, and resale thereof on buyer's demand does not terminate the action, and the deficiency that seller is entitled to recover may be ascertained by applying the proceeds of the sale to the judgment. Dickson v. Niles, (1924) 122 Misc. 818, 204 N.Y.S. 15, affirmed in (1924) 210 App.Div. 801, 205 N.Y.S. 921.

The buyer is obligated to pay any deficiency caused by his own use of the property, no matter whether the property remained in his hands or was sold for his benefit. Van Deveer v. Canzano, (1923) 206 App.Div. 103, 200 N.Y.S. 563.

Where seller sold radio under conditional sales contract for $64.95 in October and buyer, after paying $11, defaulted in installments in January, whereupon seller seized radio and sold it, buyer was not liable for balance of unpaid purchase price, but seller's recovery would be restricted to amount of $10. Schweg'er Bros. v. Johnson (1937) 161 N.Y.S. 451, 291 N.Y.S. 321.

Conditional seller of personalty is entitled to amount which reasonable man would regard as just under all circumstances for conditional buyer's breach of conditional sales contract by default in payment, where relief asked under this section clearly passes bounds of justice. Id.

Notice of Resale.

Conditional seller which volunteered to resell the machinery, but failed to plead or prove compliance with notice requirements of McKinney's Personal Property Law, § 79, was not entitled to deficiency judgment against conditional buyers. Vanco Corp v Ragone, 1962, 36 Misc.2d 876, 232 N.Y.S.2d 811

Conditional seller's voluntary resale being ineffectual for insufficiency of notice, seller lost right to surcharge buyer with deficiency, and buyer, not having paid half of price, was not entitled to damages. Ellner v. Commercial Credit Corp., (1930) 137 Misc. 251, 242 N.Y.S. 720.

Condition precedent

Where on conditional sale of personalty defendants executed guarantee and endorsed notes covering purchase price and where on default, goods were repossessed and sold, sellers had to show compliance with McKinney's Personal Property Law, § 80-b, as condition to recover for a deficiency. Shenkin v. Grant, 1953, 118 N.Y.S.2d 498.

Damages

Where damage caused conditional buyer because of loss of right of redemption due to lack of notice of statutory sale of repossessed television set did not exceed the deficiency between debt and sale proceeds, buyer would not be entitled to damages. Caraway v. Jean, 1953, 97 N.H. 506, 92 A.2d 660.

Value of goods, determination of

In McKinney's Personal Property Law, § 80-b providing that, if proceeds of resale are insufficient to defray expenses thereof, and also the expenses of retaking, keeping and storing the goods to which the seller may be entitled and the balance due upon the purchase price, the seller may recover the deficiency from the buyer, provided that where the contract price covering the conditional sale of the goods amounts to $3,000 or less, the buyer may have the reasonable value of the goods at the time of the resale determined in an action brought by the seller to recover the deficiency, the "contract price" was the "time sale price" named in installment contract for purchase of new automobile, and where such price was $3,425.40 the buyer did not have the right to reopen default judgment for deficiency for purpose of having the reasonable value of the automobile at the time of the resale determined. Universal C. I. T. Credit Corp v. Bacon, 1959, 19 Misc.2d 773, 186 N.Y.S.2d 313.

Liability of buyer

6 Del.C. § 919 et seq. restricts liability of buyer to deficiency shown after resale. Bowden v. Sussex Studebaker, Inc., 1960, —— Del.Super ——, 164 A.2d 595.

§ 23. Rights of Parties Where There Is No Resale.

Case Notes

Delay as Election.

Delay unless forbidden by statute, may not be found to be unreasonable without reference to the circumstances. Interstate Ice, etc., Corp. v. U. S. F. Ins. Co., 1926, 243 N.Y. 95, 152 N.E. 476.

Discharge of Guarantor.

In Commercial Credit Co. v. Phoenix Hudson-Essex, Inc., (1927) 33 Ariz. 56, 260 Pac. 1, it appeared that a credit company purchased a conditional automobile sales contract from a dealer, who guaranteed performance thereof. The purchaser of the car defaulted in his payments, whereupon the credit company repossessed it and later made an oral agreement with the dealer whereby the car was to be returned to the dealer who was to remain liable as guarantor for payment of the entire obligation of the sales contract. In an action by the credit company against the dealer to recover the amount due on the contract, it was held that, since the credit company was in effect the seller and had, as such, elected to retain the car, rather than have a statutory resale, the purchaser of the car was discharged of any obligation under the contract, and hence the guarantor was also discharged.

Indorser.

An assignee of a conditional sales contract who repossesses goods upon default of the buyer has no right of action for the balance due on the purchase price against an indorser of the buyer's note, prior to a resale of the goods, the assignee being in effect the seller and having no rights against the buyer in the absence of a resale. Central Acceptance Corp. v. Frye, (1927) 103 W.Va. 689, 138 S.E. 369.

Conditional seller's delivery of repossessed goods to conditional buyer's indorser does not create a right of action against the indorser for the balance due, where the seller withholds from the indorser the right to resell the goods, unless the indorser appropriates the goods to his own use. Central Acceptance Corp. v. Massey, (1929) 107 W. Va. 502, 148 S. E. 864.

Notice.

Where purchaser has paid in excess of $500 but less than fifty per cent of the purchase price and the plaintiff, seller, elected under § 20 to sell the chattel but failed to give sufficient notice pursuant to § 19, the parties are precisely in the same position as if no sale had been attempted and the result is the appropriation of the chattel under section 23 by plaintiff. Capitol Dist. L. A. W. Corp. v. Blake, (1930) 136 Misc. 651, 241 N. Y. S. 476.

"Resale."

A "resale" as the term is used in RSA 361:24, governing rights of parties when seller repossesses on buyer's default but does not resell and elsewhere in RSA 361:24, means a resale within RSA 361:20, 21, which requires a sale at public auction within thirty days of repossession and after notice. Randall v. Pingree, 1956, 100 N.H. 322, 125 A.2d 658.

Where bank purchased conditional sale contract and note, repossessed chattels sold after buyer's default, and resold chattels at private sale to original seller, the sale was not a "resale" within meaning of N.J.S.A. 46:32-29, provision giving bank alternative to retain chattels or resell for buyer's account. Veterans Loan Authority v. Rozella, 1953, 21 N.J.Super. 1, 90 A.2d 505.

The word "resale" in this section refers to a resale irrespective of whether 50 per cent of the purchase price had been paid at the time of retaking. Commercial Credit Corp. v. Byerly, (1927) 131 Misc. 872, 229 N. Y. S. 283.

Where a conditional seller retook the property and resold it at a private sale and not at public auction, as provided for by sections 19 and 20, it was held that there had been no resale within the meaning of this section and that the buyer was discharged of all obligations, regardless of whether 50 per cent of the purchase price had been paid at the time of the retaking. Id.

Recovery by Vendee.

If the seller fails to dispose of the property as required within 30 days after expiration of the first 30 day period, the buyer is entitled to recover from the seller the amount paid for the property under the contract. Van Deveer v. Canzano, (1923) 206 App.Div. 103, 200 N.Y.S. 563.

Burden of Proof.

Plaintiff, suing on note arising out of conditional sales contract, had burden of proving compliance with this section and § 19. Bogda v. Wilbur, (1929) 198 Wis. 510, 224 N.W. 716.

Evidence.

Evidence sustained finding that conduct of conditional seller in having car moved from one garage to another, on buyer's departure from state, did not constitute repossession, precluding recovery of price. Waukesha Finance Corp. v. Southard, (1930) 202 Wis. 570, 232 N.W. 534.

Repossession.

In action for damages for conditional seller's repossession of property without resale after buyer had paid more than 50 per cent. of purchase price, judgment for plaintiff on ground that repossession constituted "retaking" of property, rather than "rescission" of contract of sale within section 16 was proper. Squazzo v. Timken Silent Automatic Co. (1937) 249 App.Div. 757, 291 N.Y.S. 945.

Discharge of Buyer's Obligation.

Conditional seller, who had repossessed several items covered by conditional sales contract and who failed to comply with McKinney's Personal Property Law, § 79 et seq., did not forfeit his right to repossess remainder of property covered by same agreement. Aaron Machinery Co. v. Utrilon Corp., C.A.N.Y. 1961, 296 F.2d 83.

Suit on note, which was part of conditional sale contract, could not be maintained by seller who had taken possession of chattel in question after a default in payment before 50 per cent of purchase price had been paid, where seller had failed to make sale of chattel and establish a deficiency. Fogel Refrigerator Co. v. Lamb, 1953, 20 N.J.Super. 613, 90 A.2d 556.

In absence of proof of monetary damages caused by conditional seller's failure to resell repossessed chattel, conditional buyer was not entitled to recover for such failure. Id.

Where bank purchased conditional sales contract and note, and repossessed, after buyer's default, the chattels sold, and resold them at private sale to original seller, bank would be considered to have elected to retain goods and to discharge buyer of debt involved. Veterans Loan Authority v. Rozella, 1952, 90 A.2d 505, 21 N.J.Super. 1.

A seller, not creating deficiency by reselling goods, surrendered to seller by buyer without reservation after default in payment of purchase price under conditional sale contract, cannot recover balance due from buyer. Gang & Gang v. Rogalsky, 1940, 124 N.J.L. 207, 11 A.2d 239.

Buyer was discharged of any obligation to seller under conditional sales agreement where seller, upon repossession, retained property as its own and did not exercise option to resell. Carousel, Inc. v. Ingegno, 1963, 42 Misc.2d 161, 247 N.Y.S.2d 534.

The retention, without exercising privilege of resale, of television set retaken under conditional sales contract, released buyer from further liability under contract. Regent Discount Corp. v. Ortiz, 1960, 211 N.Y.S.2d 822, 32 Misc.2d 431.

Where conditionally sold automobile was repossessed but was not resold as provided by N.Y.Personal Property Law, § 80-c, conditional buyer was discharged from further liability on note representing part payment of purchase price. Brosnan v. Benjamin, 1940, 259 App.Div. 937, 19 N.Y.S.2d 731.

Even if buyer's breaches of conditional sales contract required buyer to surrender immediate possession of property to seller, seller was not entitled to all of proceeds of insurance on property when property was destroyed by fire, where it did not appear that seller took any action with reference to breaches or in any way attemped to comply with Burns' Ann.St. §§ 58–814 to 58–819, with respect to taking possession, notice of intention to retake, redemption, compulsory resale by seller, resale at option of parties, and proceeds of resale. Smith v. Metz, 1958. —— Ind.App. ——, 153 N.E.2d 919.

Where, when conditional seller repossessed phonographs sold, the buyer had been released by the seller from all liability under the contracts and notes and had no rights under A.R.S. § 44–301 et seq., particularly under the resale provisions thereof, the seller had no duty to make a statutory resale, and hence distributor's liability continued when the buyer was released, not because of any provision of A.R.S. § 44–301 et seq., but because the distributor had expressly agreed to be liable in that event under its contract of guaranty. Maestro Music, Inc. v. Rudolph Wurlitzer Co., 1960, 88 Ariz. 222, 354 P.2d 266.

Where distributor of phonographic equipment agreed that the conditional seller could release the buyer and could hold the distributor liable without first proceeding against the buyer, discharge of buyer constituted a consent or agreement by the distributor to be liable to the seller even though the buyer because of the seller's noncompliance with A.R.S. § 44–326, was no longer liable on the notes; the terms "release" and "discharge" being synonymous. Id.

As used in Code, 40–3–23, discharging buyer from "all obligations" if there is not any resale as required by Act, quoted phrase means all obligation incurred or imposed by conditional sales agreement and does not apply to note which is given and accepted as down payment in lieu of cash and which is not included in such agreement. West Virginia Mack Sales Co. v. Brown, 1954, 139 W.Va. 667, 81 S.E.2d 103.

The seller of goods under a conditional sales agreement, who was the holder of a note which was not included in such agreement but which was given by the buyer and accepted by the seller as the equivalent of cash for a preliminary payment, could recover the proceeds of the note after the seller had repossessed the property and retained and sold it as his own, and the buyer and other person who signed the note were not discharged from liability to pay it by the provisions of Code, 40–3–1 et seq. Id.

Assignment

Where bank repossessed chattels sold under conditional sale contract and note, sold chattels to original seller for bank's own account, and thus discharged buyer of debt involved, bank's assignee, which took after default with full knowledge of facts, stood in no better position than bank. Veterans Loan Authority v. Rozella, 1952, 90 A.2d 505, 21 N.J.Super. 1.

§ 24. Election of Remedies.

Case Notes

Prior Law.

This section states the law as it existed in New York prior to 1922. Heating, etc., Corp. v. Friedman, 1934, 264 N.Y. 285, 190 N.E. 641.

Action.

Where the seller has retaken the goods pending an action for the price, as permitted by this section, a resale on demand of the buyer under section 20 does not terminate the action, the seller being entitled to continue it to recover any deficiency between the agreed price and that obtained on the resale. Dickson v. Niles, (1924) 122 Misc. 818, 204 N. Y. S. 15, affirmed in (1924) 210 App. Div. 801, 205 N. Y. S. 921.

Lien.

Where the conditional seller of a sprinkler system, on default in payment, filed a claim for a mechanic's lien and foreclosed the same, he thereby made an election of remedies, within the last sentence of this section, which precluded him from retaking the goods in the manner provided by section 16 of the Uniform Act. Viking Automatic Sprinkler Co. v. Thwaits, (1934) 215 Wis. 225, 253 N.W. 398.

Where a conditional seller installed chattels in certain premises and thereafter the seller filed a mechanic's lien against the real property, no action to recover the chattels, on the ground that the purchaser had defaulted and title was in the seller, can be maintained. Heating, etc., Corp. v. Friedman, (1934) 264 N.Y. 285, 190 N.E. 641.

The filing of a claim for mechanic's lien by the conditional seller of a gas burning heating boiler was held in Montana Dakota Power Co. v. Joy, (1935) 63 S.D. 354, 258 N.W. 808, to prevent conditional seller from retaking boiler as against holder of tax deed of premises in which boiler had been installed, notwithstanding that conditional seller abandoned his attempt to assert his mechanic's lien.

Levy.

Where seller of three scales and one meat chopper under conditional sales contract secured a judgment for unpaid balance and had writ of execution issued against assets of buyer, seller could not thereafter claim title to scales and meat chopper under this Act, notwithstanding clause in contract providing that seller's remedies were cumulative and not in the alternative, since such clause did not constitute a "waiver" of provision of act making resort to a lien, attachment or levy inconsistent with claim of title by conditional seller, In re Elkins, D.C.Pa.1941, 38 F.Supp. 250.

Levy by conditional vendor on chattel conditionally sold as property of conditional vendee operates as waiver of vendor's reservation of title and acknowledgment that vendee is real owner. E. L. Jones & Co. v. Unruh, (1935) 7 W.W.Harr. 241, 182 A. 211; In re Elkins, D.C.Pa.1941, 38 F.Supp. 250.

Replevin.

Where a seller attempts to retake the goods by replevin process but fails to recover them, he may sue for the whole balance due. Continental Guaranty Corp. v. People's Bus Line, (1922) 1 W. W. Harr. (Del.) 595, 117 Atl. 275, wherein the court said: "Section 24 of the Uniform Act provides that, after retaking the possession by the seller, the buyer shall be liable for the deficiency only after a resale. This limitation of liability is, however, predicated upon the 'retaking of possession' by the seller. An abortive attempt at repossession, a replevin suit with no recovery, is not in our opinion a retaking of possession contemplated by the act. The underlying principle is that the seller may not retain the chattel after the retaking and still sue for the balance. If he does not recover the possession, he may sue for the balance due."

Under the Conditional Sales Act, a seller who retakes the goods by replevin process does not thereby elect a remedy inconsistent with an action to recover the balance of the purchase price where he complies generally with the provisions of the act as to voluntary resale and application of the proceeds thereof. Continental Guaranty Corp. v. People's Bus Line, (1922) 1 W. W. Harr. (Del.) 595, 117 Atl. 275.

When the assignee of the seller attempts to retake the goods by replevin but fails to recover them because of fraud perpetrated on the vendee by the seller, the judgment is not res judicata in a suit by the assignee as a bona fide purchaser without notice and before maturity on the note given for the goods. Auto Brokerage Co. v. Ullrich, (1926) 4 N.J.Misc.R. 808, 134 A. 885 (no reference to Uniform Act).

Procedure in replevin action must be construed so as not to violate remedial provisions of sections 18, 19, 20, 21, 23 and 25 of the Uniform Conditional Sales Law. Sturman v. Polito (1937) 161 Misc. 536, 291 N.Y.S. 621.

In replevin action by conditional seller on default of buyer, amount of judgment where goods are not replevied and delivered to seller should be limited to price unpaid and not to value of goods. Id.

Where conditional seller seeks judgment against buyer, value of seller's special property in goods should be fixed under procedural provisions regarding replevin under conditional sales contract, construed in light of safeguarding requirements of sections 18, 19, 20, 21, 23 and 25 of the Uniform Conditional Sales Law. Id.

Repossession.

Conditional seller, who had repossessed several items covered by conditional sales contract and who failed to comply with McKinney's Personal Property Law, § 79 et seq. did not forfeit his right to repossess remainder of property covered by same agreement. Aaron Machinery Co. v. Utrilon Corp., C.A.N.Y. 1961, 296 F.2d 83.

Where a conditional sales contract contains a provision reserving to the seller the right to sue for a deficiency, the repossession proceeding does not constitute an election of remedies. Superior Finance Corp. v. John A. McCrane Motors, Inc., (1932) 10 N.J.Misc. 638, 160 A. 341.

A retaking of property by a conditional vendor is not a rescission of the contract "If this may once have been doubtful (Bogart, Commentaries on Conditional Sales, pp. 166, 169, 170, 171, collating the decisions), the doubt has been dispelled by the Uniform Conditional Sales Act." Interstate Ice, etc., Corp. v. U. S. F. Ins. Co., (1926) 243 N. Y. 95, 152 N. E. 476, affirming (1925) 215 App. Div. 768 mem., 213 N. Y. S. 826 (citing §§ 22, 24).

Actions for recovery of purchase price under conditional sales contract and in claim and delivery for repossession of property may be commenced simultaneously. Allis-Chalmers Mfg. Co. v. Nein, 1936, 64 S.D. 235, 266 N. W. 156.

Where contract covering sale of refrigerator provided for monthly payments and reservation of title until installments were paid and gave seller, or its assigns, right to sue for unpaid balance immediately upon default, seller's assignee upon buyer's default could adopt either remedy. General Electric Contracts Corporation v. Band, (1936) 14 N.J.Misc. 702, 186 A. 684.

That seller of heating equipment under conditional sales agreement, which was executed after recordation of mortgage on realty, obtained judgment, based on note, against owners of the realty, did not limit conditional seller to recovery on judgment, since N.J.S.A. § 46:32-18, terminating right to repossess on entry of judgment applies only to entry of judgment on bond and warrant. Atlantic Highlands Building & Loan Ass'n v. Kelly, 1937, 15 N.J. Misc. 382, 192 A. 93.

Where seller sought to recover machine sold under conditional sales contract and buyer in cross-complaint alleged that seller refused buyer's offer to return machine if seller would return advances under the contract and that buyer had to pay for repair of machine and was otherwise damaged and sought return of advances, money paid to repair machine, and general and special damages, remedy of rescinding sale, returning property, and recovering amount advanced under contract was inconsistent with allegations setting up damages in diminution or extinction of price and affirming contract, and buyer should have made an election, but refusal to require election of remedies was not prejudicial where court in its instructions clearly indicated that remedy

of rescission was exclusive remedy relied on. California Steel Products Co. v. Wadlow, 1942, 58 Ariz. 69, 118 P.2d 67.

Waiver.

Where there is no retaking by the seller within the contemplation of section 16 of the Uniform Act, the right to an action for the balance of the purchase price is not waived. Claude Neon Light, Inc. v. Kingsberg, (1931) 142 Misc. 608, 254 N. Y. S. 467.

Construction.

Under a conditional sales contract, in event of default by purchaser, seller at its election may either bring an action to recover the debt or may elect to take the property and by so doing cancel the debt. Brooks v. Superior Oil Co., D.C.Ark.1951, 96 F.Supp. 641, reversed on other grounds 198 F.2d 89.

Where agreement gives the lessor or conditional seller right either to repossess the property upon default or collect the rental or unpaid purchase price, the lessor or seller can either collect amount due under terms of agreement in affirmance thereof or rescind the contract and repossess the property, but he cannot do both. Scull v. Reiley, 1941, 341 Pa. 529, 19 A.2d 76.

Supplement by N.J.S.A. § 46:32-18, to Conditional Sales Act under which reserved right of conditional seller to repossess is automatically terminated on entry of a judgment on bond and warrant being limitation on pre-existing rights and remedies of conditional seller, its provisions cannot be extended to cover situations clearly beyond limits of its plain language, especially since language of restrictive statute is in particular, rather than general terms. Atlantic Highlands Building & Loan Ass'n v. Kelly, 1937, 15 N.J.Misc. 382, 192 A. 93.

Action for Price.

An action for purchase price of a cash register, which buyer refused to accept when delivery was attempted, could be maintained where under conditional sales contract purchase price became payable on refusal to accept delivery or failure to pay in installments, notwithstanding property in goods had not passed to buyer. National Cash Register Co. v. Lyon, 1939, 257 App. Div. 27, 13 N.Y.S.2d 1.

Conditional seller of air-conditioning system could, on default of buyer, treat the contract as executed on his part and bring action for purchase price, without repossession of system to mitigate buyers' damages. Weiss v. Saffell, 1957, 82 Ariz. 316, 313 P.2d 390.

Inconsistent Remedies.

Under Pennsylvania law, even in absence of conditional sales act, the entry of a judgment for unpaid balance of purchase price on article conditionally sold, even without issuance of execution, and retaking of possession are inconsistent remedies and the resort to one excludes the other. In re Elkins, D.C. Pa.1940, 38 F.Supp. 250.

Under 69 P.S.Pa. § 459, the resort to either a lien, attachment or levy is inconsistent with claim of title by conditional vendor, and is an admission of title in vendee. Id.

Where seller of three scales and one meat chopper under conditional sales contract secured a judgment for unpaid balance and had writ of execution issued against assets of buyer, seller could not thereafter claim title to scales and meat chopper under 69 P.S.Pa. § 459, notwithstanding clause in contract providing that seller's remedies were cumulative and not in the alternative, since such clause did not constitute a "waiver" of provision of act making resort to a lien, attachment or levy inconsistent with claim of title by conditional seller. Id.

§ 25. Recovery of Part Payments.

Statutory Notes

The Indiana act inserts at the beginning of the text the words "Except as otherwise provided in section fifteen [section 17 of the Uniform Act] hereof." and at the end of the text after a semicolon the words "except that the provisions of this section shall not in any event apply to any case in which the buyer has maliciously or with intent to defraud injured, destroyed or concealed the goods or removed them from the state in violation of the terms and conditions of section thirteen [section 15 of the Uniform Act] hereof."—See Laws 1935, ch. 182.

CASE NOTES

Construction.

6 Del.C. § 925 entitling buyer to actual damages from seller, with minimum of one-fourth of payments made plus interest, upon seller's failure to comply with resale provisions is a penalty provision and applies even though resale is voluntary. Commercial Credit Corp. v. Swiderski, 1963, —— Del.Super ——, 195 A.2d 546, reargument denied 196 A.2d 214.

In construing word "payments" within N.J.S.A. 46:32–31, allowing buyer to recover one-fourth of all payments made under contract if seller fails to comply with statute in retaking goods, recourse should be had to transaction of the parties. Frantz Equipment Co. v. Anderson, 1962, 37 N.J.Super. 420, 181 A.2d 499.

A fair construction of this section would seem to imply that the right of the buyer to recover the damage or penalty therein provided must rest upon the failure of the seller to comply with preceding sections, where he is under some duty and obligation to comply therewith, to the injury of the buyer So where the seller could have retained the chattel without in any way accounting to the buyer the former's failure to comply with §§ 19 and 20 does not make it liable to the buyer for damages on a counterclaim pursuant to this section. Capitol Dist. L. A. W. Corp. v. Blake, (1930) 136 Misc. 651, 241 N. Y. S. 476, distinguishing Commercial Credit Corp. v. Byerly, (1927) 131 Misc. 872, 229 N. Y. S. 283.

"Buyer."

Under this section if 50 per cent of the purchase price has been paid, regardless of who has made the payments, the buyer himself or his successor in interest may recover the sum specified. Manx Taxi Holding Co. v. Hoffman Credit Corp., (1931) 232 App. Div. 225, 249 N. Y. S. 563, affirmed without opinion in, 1931, 257 N.Y. 586, 178 N.E. 806.

Plaintiff who had orally notified seller's assignee of conditional sale contract for piano that plaintiff had acquired interest of buyer in the piano held "buyer." Rost v. Wm. Knabe & Co., (1935) 154 Misc. 425, 277 N.Y.S. 896.

Where automobile was damaged on November 21, 1956, and conditional buyer then stopped making payments under conditional sale contract, which seller had assigned to finance company, and finance company repossessed the automobile on December 3, 1956, at which time less than one half of the purchase price had been paid, and on January 4, 1957 the finance company received payment from insurance company, such payment by the insurance company could not be deemed a part payment of the purchase price of the automobile as of December 3, 1956 in order to qualify buyer for greater rights under McKinney's Personal Property Law, § 80–e. Snyder v. Guider, 1959, —— Misc.2d ——, 185 N.Y.S.2d 110.

Recovery.

A.C.L.A.1949, § 29–2–25, providing for recovery of damages by buyer after a retaking is not applicable where there is no finding of an antecedent breach. Daughley v. Peterson, D.C.Alaska 1953, 110 F.Supp. 885.

In determining the sum of all "payments" which had been made under an automobile conditional sales contract in order to discover the statutory minimum of one-fourth of that sum to be allowed the buyer when repossessing seller failed to comply with sections enumerated in this section, the "payments" included the trade-in value of the automobile given at the time of purchase, the cash down payment, and all payments made after the purchase, but did not include the fair value of the repossessed automobile as of the date of repossession. Commercial Credit Corp. v. Swiderski, 1963, —— Del.Super. ——, 195 A.2d 546, reargument denied 196 A.2d 214.

Conditional buyer's actual damage was not demonstrated, and, therefore, buyer was entitled to one-fourth of payments made under conditional sales contract as penalty for seller's failure to comply with this section upon resale of repossessed automobile, where third persons' bids prior to resale were less than amount owed on conditional sales contract. Id.

Where a conditional seller retakes an automobile because it deems itself "insecure" within the contract, the buyer may redeem in accordance with section 18 but may not recover part payments. Jenkins v. Blackstone Motor Co., Inc., (1926) 216 App. Div. 583, 215 N. Y. S. 694.

Where a conditional seller of an automobile, after retaking it, refused to comply with the provisions of the Act for redemption and resale, the buyer

was entitled to recover payments made, in accordance with this section. Commercial Credit Co. v. Street, (1930) 37 Ariz. 204, 291 P. 1003.

The right to recover part payments under this section for failure of the seller to resell to the goods under section 19 of the Uniform Act cannot be determined in an action in which the only question to be determined is whether the plaintiff (seller) had the right to retake possession of the goods, this right depending upon the determination of the question whether the sale was conditional or absolute. H. W. Roos Co. v. Brady, (1931) 103 Pa. Super. Ct. 579, 157 Atl. 490.

The seller of property by conditional sale who retakes the same on the default of the buyer, is not bound to refund any part of the purchase price previously paid, in the absence of contractual arrangement or statutory requirement. Accordingly, the judgment on a counterclaim in an action of replevin, compelling the seller under a conditional sale contract thus seeking to recover chattels on the buyer's default, to restore to the buyer the amount paid on the purchase price, less the reasonable value of the use, and damages, resulting other than from natural wear and tear, is erroneous. Laufer v. Burghard, (1932) 146 Misc. 39, 261 N. Y. S. 364, holding further that a retaking of the property by a conditional seller is not a rescission of the contract so as to require the seller to place the buyer in a former position and return the consideration received under the contract.

That plaintiff, who succeeded to buyer's interest in piano under conditional sales contract, removed the piano in violation of such contract from the address specified therein without first obtaining seller's written consent, held not to preclude plaintiff from recovering damages for such assignee's violation. Rost v. Wm. Knabe & Co., (1935) 154 Misc. 425, 277 N.Y.S. 896.

Seller's failure to sell replevined trucks covered by conditional sales contract within 30 days after repossession held to entitle buyer's administrators, who had paid more than 50 per cent. of purchase price, to recover on counterclaim one-fourth of amount paid. Autocar Sales & Service Co. v. Hansen, 1936, 270 N.Y. 414, 1 N.E.2d 830.

Repossession.

Seller can not both retake property and keep or recover full price. Commercial Inv. Trust, Inc. v. Wesling, (1928) 53 S.D. 337, 220 N.W. 855.

Pleading.

The damages provided for in this section, for failure to make a sale of repossessed property, may be recovered under the common counts as well as on special counts. Davis v. International Harvester Co., (1931) 110 W. Va. 121, 157 S. E. 584.

Damages.

A.C.L.A.1949, § 29–2–25, providing for recovery of damages by buyer after a retaking is not applicable where there is no finding of an antecedent breach. Daughley v. Peterson, D.C.Alaska 1953, 110 F.Supp. 885.

Actual damages of conditional buyer allegedly flowing from repossessing seller's failure to comply with notice requirements of section 19 were not established where the only evidence of fair value of the vehicle at time of repossession showed value of less than the unpaid balance and where higher figures submitted by the conditional buyer flowed from the initial transaction which had occurred between the parties over 10 months prior to repossession and resale. Commercial Credit Corp. v. Swiderski, 1963, — Del.Super. —, 196 A.2d 214.

Seller's failure to comply with enumerated provisions of this section not only deprives him of his right to seek a deficiency judgment but also exposes him to imposition of damages, regardless of fact that resale may have been voluntary on part of seller, and seller is liable to buyer for his actual damages or one-fourth the sum of all payments made by him, whichever is the greater, and hence no proof of any actual damage is required, since absent any proof of actual damage, one-fourth of sum of all payments is the greater amount. Frantz Equipment Co. v. Anderson, 1962, 37 N.J.Super. 420, 181 A.2d 499.

Where purchase price of used tractor and bulldozer was set at $15,000, and allowance of $6,000 on that price was made for tractor which was traded in and balance from buyer was computed at $9,000, parties by their voluntary acts established value of article traded in and seller could not contest such value in determining amount of damages recoverable by buyer for seller's alleged noncompliance with N.J.S.A. 46:32–25 in selling repossessed tractor and bulldozer. Id.

Where conditional buyers of automobile defaulted and seller retook the automobile and seller's notice to the buyers of resale was defective in that the notice contained the wrong address where the public sale of the automobile was to be held, seller was liable for damages to buyers in the minimum amount fixed by N.J.S.A. 46:32–31, of one-fourth of the sum of all the payments made under the contract, with interest, notwithstanding that under such act the resale by seller was not compulsory in that buyers had paid less than 50 per cent of purchase price and had not demanded the resale by notice. Bancredit, Inc. v. Meyers, 1960, 62 N.J.Super. 77, 162 A.2d 109.

Conditional purchaser of automobile, having paid 50 per cent of the purchase price, held entitled to recover his actual damages, which in no event should have been less than one-fourth of the amount actually paid, it appearing that the seller had retaken the car and had not complied with sections 17–22, inclusive, of the Uniform Act. Commercial Invest. Trust, Inc., v. Westling, (1928) 53 S. D. 337, 220 N. W. 855.

Where the seller on retaking and reselling property fails to comply with the provisions of sections 18, 19, 21, and 23 of the Uniform Act, the original buyer may recover his actual damages. LaRocca Builders, Inc. v. Sanders, (1930) 230 App. Div. 594, 245 N. Y. S. 262.

In a replevin action by a conditional buyer of an automobile against an assignee of the seller, who, after retaking the car, failed to comply with the redemption provisions in section 18 of the Uniform Act, the buyer was not entitled to recover the cost of the replevin bond and attorney's fees. Harlee v. Federal Finance Corp., (1932) 5 W.W.Harr. (Del.Super.) 162, 160 Atl. 906.

In ascertaining the buyer's damages under this section the resale price may be treated as the value of the car when retaken, in the absence of other proof of value and that the car had been improved after repossession. Underwood v. Raleigh Transp. etc. Co., (1926) 102 W.Va. 305, 135 S.E. 4.

Where seller retook truck without complying with provisions of statute, buyer's damages held one-fourth of entire amount paid and not one-fourth of amount paid after corporation succeeding to original partnership was formed. Sheeley Bros. v. International Harvester Co. of America, (1935) 243 App.Div. 831, 278 N.Y.S. 134.

Vendee held entitled to recover claim of 25 per cent of the amount paid for failure of the vendor's assignee to comply with the provisions of sections 18 and 19 of the Uniform Act. U. S. Taxi Corp. v. Mogul Finance Corp., (1931) 140 Misc. 386, 250 N. Y. S. 549.

In an action by conditional vendee, under this section, to recover 25 per cent of payments made on taxi cabs, repossessed by conditional vendor and alleged to have been improperly resold, no damage need be proven, as this section provides for recovery of amount claimed. Manhattan Taxi Service Corp. v. Checker Cab Mfg. Co., (1929) 226 App. Div. 624, 236 N. Y. S. 559.

In action by conditional buyer of motor truck for damages for conditional seller's failure to comply with statutory requirements in reselling goods, evidence held to establish that truck for which buyer paid $2,275.12 was worth $1,550 when retaken nine months later, which was amount recoverable as damages by conditional buyer, less balance due on purchase price. Fisher v. Stewart Motor Corp., (1928) 132 Misc. 225, 228 N.Y.S. 549.

The inapplicability of the resale provisions in A.R.S. §§ 44–319–323, does not mean that a creditor who repossesses the property conditionally sold which is security for an obligation may appropriate the property to his own use to the prejudice of the obligors, and where the creditor willfully or negligently loses, misapplies or harms the security, the obligation is reduced pro tanto. Maestro Music, Inc. v. Rudolph Wurlitzer Co., 1960, 88 Ariz. 222, 354 P.2d 266.

§ 26. Waiver of Statutory Protection.

Statutory Notes

The New York act contains this section as amended at the 1920 conference. See McKinney's Personal Property Law, § 80-f.

The West Virginia act was amended to correct an erroneous section reference contained in prior amendment by L.1925, c. 64. Code 4032.

The Wisconsin act was amended in 1921 by changing this section to conform to the amendment adopted at the 1920 conference.—See Laws 1921, ch. 231.

CASE NOTES

Generally.

In contract for the conditional sale of a cabin, furniture and fixtures, which parties thereto treated as personalty, provision allowing seller to re-enter and retake possession of the property, in so far as it would deprive buyers of their right as buyers, was in conflict with A.C.L.A.1949, § 29–2–26, which authorizes rescission only upon specific stipulation therefor in contract, and hence, was invalid. Daughley v. Peterson, D.C.Alaska 1953, 110 F.Supp. 885.

Under A.C.L.A.1949, § 29–2–26, a retaking is an enforcement rather than a rescission of the contract. Id.

The positive requirements of this title for resale of repossessed goods cannot be validly waived by conditional buyer either by a stipulation in conditional sales agreement or by waiver before, at or after default in payment by conditional buyer. Waverly, Sayre & Athens Transp. Co. v. General Motors Truck Co., D.C.Pa.1940, 36 F.Supp. 285.

Mere waiver of a statute, not in form of a contract, by a defaulting vendee cannot serve to remove a conditional sales contract from protection of McKinney's Personal Property Law, § 60 et seq. Universal C I T Credit Corp. v. Owens, 1958, 8 Misc.2d 1074, 171 N.Y.S.2d 686.

A seller may not circumvent the provisions of McKinney's Personal Property Law, § 60 et seq., and the buyer cannot waive the protection it affords him. Id.

The seller may not circumvent the statute nor the buyer waive the protection given him thereunder. Clark v. Tri-State Discount Co., Inc., (1934) 151 Misc. 679, 271 N. Y. S. 779.

Public Policy.

The provisions of this title for resale of repossessed goods are clear and positive, are there for the protection of conditional buyers from oppression by their sellers, and cannot be waived generally. Waverly, Sayre & Athens Transp. Co. v. General Motors Truck Co., D.C.Pa.1940, 36 F.Supp. 285.

Buyer's redemption of personalty, taken by seller on buyer's default after part payment of purchase price, is sedulously guarded by law. Triple Cities Const. Corporation v. Byers Machine Co., 1939, 172 Misc. 519, 15 N.Y.S.2d 89, reversed on other grounds, 1940, 259 App.Div. 451, 19 N.Y.S.2d 709, appeal denied, 1940, 259 App.Div. 955, 20 N.Y.S.2d 844.

The legislative purpose of preventing wrong and oppression by giving buyer under conditional sale contract certain rights under McKinney's N.Y.Personal Property Law, §§ 78 and 80-f, cannot be defeated by permitting parties to make contract in which buyer waives such rights. Id.

It has been said that the provision in this section forbidding the buyer to enter into any contract of waiver is a declaration by the legislature of a public policy and one may not contract contrary to such policy. O. S. Stapley Co. v. Rogers, (1923) 25 Ariz. 308, 216 P. 1072; Street v. Commercial Credit Co., (1929) 35 Ariz. 479, 281 P. 46, 67 A.L.R. 1549; San Francisco Securities Corp. v. Phœnix Motor Co., (1923) 25 Ariz. 531, 220 P. 229.

Time of Waiver.

McKinney's Personal Property Law, § 80–f, prohibiting waiver of statutory provisions operates against waiver prior to, in, or at time of making of conditional sales contract and not against waiver effected by subsequent agreement; but, in ordinary case, subsequent agreement must be supported by consideration. Goldner Trucking Corp. v. Stoll Packing Corp., 1959, 24 Misc.2d 262, 193 N.Y.S.2d 736.

In Fisher v. Stewart Motor Corp., (1928) 132 Misc 225, 228 N.Y.S. 549, it was held that this section does not authorize a waiver, after default of the buyer, of the provisions relating to resale of the goods by the seller, in spite of the fact that the section reads, "No act or agreement of the buyer *before or at the time of the making of the contract* . . . shall constitute a valid waiver," etc. But compareDavis v. International Harvester Co., (1931) 110 W.Va. 121, 157 S.E. 584, wherein it was held that since this section made no provision with regard to waivers after the execution of a conditional sales contract, the conduct of a conditional seller in turning back, after the expiration of the redemption period, a repossessed truck, after the buyer had executed a conditional sales note, extinguished the buyer's right to recover damages under § 25 for the failure of the seller to resell the repossessed property.

New Consideration.

Filing a mechanic's lien against premises for value of venetian blinds furnished operated to "waive" claimant's title to such blinds described in conditional bill of sale of the blinds, and buyer, after becoming bankrupt, was entitled to have the conditional bill of sale vacated. In re Franklin Garden Apartments, D.C.N.Y.1942, 42 F.Supp. 117.

Where, upon default of conditional buyer, the parties to conditional sales contract enter into an agreement for the settlement of their rights for new consideration passing between the parties, this section no longer applies. Waverly, Sayre & Athens Transp. Co. v. General Motors Truck Co., D.C.Pa. 1940, 36 F.Supp. 285.

A conditional buyer may validly waive a statutory resale by an agreement entered into after default and supported by new consideration. Maestro Music, Inc. v. Rudolph Wurlitzer Co., 1960, 88 Ariz. 222, 354 P.2d 266.

Insurance

Where it appeared that conditional seller did not decide to act upon buyer's failure to provide him with copy of insurance policy until informed by insurer that policy had not been renewed but, on day before giving notice of intention to repossess, wrote letter acknowledging that property was insured but that buyers had forgotten to provide copy of policy, and further appeared that, buyers had, in fact, renewed insurance with other insurer, buyers' failure to provide policy copy was not such a material breach as to warrant exercise by seller forfeiture provision of contract. Daughley v. Peterson, D.C.Alaska 1953, 110 F.Supp. 885.

Retaking

In contract for the conditional sale of a cabin, furniture and fixtures, which parties thereto treated as personalty, provision allowing seller to re-enter and retake possession of the property, in so far as it would deprive buyers of their right as buyers, was in conflict with A.C.L.A.1949, § 29–2–26, which authorizes rescission only upon specific stipulation therefor in contract, and hence, was invalid. Daughley v. Peterson, D.C.Alaska 1953, 110 F.Supp. 885.

Evidence

In action on conditional sales contract, where contract did not provide for rescission, trial court's finding of rescission was unwarranted by the evidence. Randall v. Pingree, 1956, 100 N.H. 322, 125 A.2d 658.

Customer release

Where buyer, who was in default on automobile payments, alone signed a so-called "customer release" which authorized a private sale of automobile and which provided that buyer would, in effect, remain liable for deficiency, "customer release" was not a waiver in form of a contract and buyer had not waived protection of McKinney's Personal Property Law, § 79, which provided for a public auction, under circumstances. Universal C. I. T. Credit Corp. v. Owens, 1958, 8 Misc.2d 1074, 171 N.Y.S.2d 686.

Agreements releasing buyer

Where agreement was executed by conditional buyer of phonographic equipment after he was again in default with the conditional seller and the buyer agreed to deliver the equipment to the seller at their then location and to surrender to the seller all of the buyer's right, title and interest in the location and the agreement released the buyer of all claims of whatsoever nature, delivery by the buyer of the equipment to the seller constituted a waiver of the resale provisions in A.R.S. §§ 44-319–323. Maestro Music, Inc. v. Rudolph Wurlitzer Co., 1960, 88 Ariz. 222, 354 P.2d 266.

§ 27. Loss and Increase.

Case Notes

Increase.

Conditional sales contract with respect to sale of tires and tubes to conditional vendee of motor trucks, precludes their classification as increase of goods to which they became attached. John W. Snyder, Inc. v. Aker, (1929) 134 Misc. 721, 236 N. Y. S. 28, holding also that the mere attachment of said goods to the trucks did not merge their identity into the vehicles so as to vest title thereto in the conditional vendor of the trucks.

"Accession" as used in conditional sales note for balance of purchase price of truck by which buyer agreed that title to truck and its "accessions" would

remain in seller until note was paid, used in the legal sense, meant an addition to the truck by the "annexation" of some material thereto; "annexation" implying that the object attached would remain so permanently and not that it could not be removed. Valley Chevrolet Co. v. O. S. Stapley Co., 1988, 50 Ariz. 417, 72 P.2d 945.

A trailer which was intended to remain permanently as an integral part of truck sold was an "accession" within conditional sales note by which buyer agreed that title to truck was to remain in seller together with all accessions to truck. Id.

Loss.

Provisions in agreement for sale of real and personal property imposing conditions upon sale of personal property by purchaser did not prevent vendors from bringing agreement within 6 Del.C. § 927, with respect to personal property and thereby making vendee in possession responsible for loss occurring prior to full payment. Briz-Ler Corp. v. Weiner, Del.Ch 1960, affirmed 171 A.2d 65, 163 A.2d 790.

Fact that sales agreement provided for sales of both real and personal property did not make provisions of conditional sales contract making vendee in possession responsible for loss inapplicable to the personal property sold. Id.

Where goods are sold and delivered to the buyer on a conditional contract of sale, the loss or destruction of the goods while in the buyer's possession does not relieve him of the obligation to pay the price. Gas City Transfer Co. v. Miller, 1939, 107 Ind.App. 210, 21 N.E.2d 428.

The theft of the property from the buyer does not relieve him from the necessity of paying further installments of the purchase price. Vigiotti v. Home Ins. Co., (1923) 206 App. Div. 398, 201 N. Y. S. 407 (no reference to Uniform Act — date of contract not appearing).

Where conditional sales agreement required seller to supervise operation of dairy farm after delivery of same to buyer and until seller was paid in full, and it was alleged that livestock was missing at time seller was paid in full, seller was not liable for loss, in absence of agreement to assume such obligation or finding that seller proximately caused such loss by some willful or negligent act, or failure to act. Lunny v. Labrucherie, 1951, 103 Cal.App.2d 865, 230 P.2d 427.

Where agreement for sale of dairy business provided buyer was to make cash down payment with remainder to be paid in installments, that title was to be retained by seller until price was paid in full, and that seller was to remain on farm and supervise its operation until he was paid in full, but possession was to be given to buyer and proceeds of sales and expenses of operation were to be paid by buyer, there was conditional sales contract which passed risk of loss of goods involved to buyer at time of delivery of premises to buyer, even though yet under supervision of seller. Id.

Third Party Liability for Loss.

Conditional vendor after default can maintain action against third party for negligent injury to chattel sold; assignee of conditional vendor of automobile had property interest therein, entitling it to recover after default for damage to automobile resulting from third person's negligence. Commercial Credit Corp. v. Satterthwaite, (1930) 107 N.J.Law, 17, 150 A. 235, affirmed in (1931) 108 N.J.Law, 188, 154 A. 769.

A conditional buyer has the right to recover the full measure of damages occasioned by injury to or loss of the subject matter of the sale from third person causing the injury or loss and is not relieved from his obligation to pay the full purchase price agreed on even though the property be lost or destroyed. Gas City Transfer Co. v. Miller, 1939, 107 Ind.App. 210, 21 N.E.2d 428.

Liability of seller

Where seller was required by conditional sales agreement to deliver machinery to buyer f. o. b. common carrier, and there was provision that seller was not liable for delay in transit in contract, and bill of lading ran to seller to secure down payment, machinery was at risk of buyer after delivery to carrier, and therefore where seller delivered machinery to carrier, but part of it was delayed in transit to buyer's damage, seller could not be held liable. Para-Type Stationery Corp. v. Brandtjen & Kluge, 1951, 279 App.Div. 179, 108 N.Y.S.2d 377, reargument denied 279 App.Div. 777, 109 N.Y.S.2d 359.

§ 28. Act Prospective Only.

Statutory Notes

The New York act substitutes for this section the following provision. "The repeal of present article four of the personal property law, by this act, shall not impair the application of such article to conditional sales made prior to the time this act takes effect."—See Laws 1922, ch. 642, § 3.

Case Notes

Contracts Prior to Act.

The New York act has been said to have no application to contracts existing when the act took effect. Van Derveer v. Canzano, (1923) 206 App. Div. 130, 200 N. Y. S. 563.

Consent to Retroactive Operation.

In Dickson v. Niles, (1924) 122 Misc. 818, 204 N.Y.S. 15, involving a conditional sale contract made before the enactment of the Uniform Act in New York, it was said: "When plaintiff took possession of the two motor trucks after the commencement of the action, he served a notice upon the defendants under date of January 5, 1924, that he had retaken possession of the trucks 'pursuant to the provisions of sections 76 and 78 of the Personal Property Law of the state of New York.' Thereafter, under date of January 10, 1924, defendants served notice upon plaintiff that he was required to forthwith sell the property retaken 'pursuant to section 80 of the Personal Property Law.' These sections referred to are all in the new article 4, and no such numbered sections appear in the former article 4, or otherwise in the Personal Property Law. Not only this, but both parties in the briefs submitted on this motion quote from the new article and base substantially their whole argument upon its provisions. Therefore it is clear that the parties have elected to have this controversy determined in accordance with a statute passed subsequent to the date of the contract out of which the controversy arises. It seems to me that it is within the power of the parties to an action to agree that it shall be determined by a law which otherwise might be held inapplicable. Such mutual election has the force of an agreement or stipulation. No reason is apparent why the court should not accede to this agreement and carry it out."

Prior Litigation.

The Pennsylvania act, it has been intimated, has no application to a controversy which was in litigation prior to the passage of the act. John Deere Plow Co. v. Hershey, (1926) 287 Pa. St. 92, 134 Atl. 490. See also Ridgway Dynamo, etc., Co. v. Werder, (1926) 287 Pa. St. 358, 135 Atl. 216.

Recordation.

Where contract antedated this Act no question of compliance with recordation requirements was involved. Federal System of Bakeries v. Miller, (1922) 92 W.Va. 442, 114 S.E. 749.

§ 29. Rules for cases not provided for.

Statutory Notes

Panama Canal Zone. Omits "bankruptcy" from section. 4 C.Z.C. § 1595.

Case Notes

Acceleration Clause.

Where the issue was whether an acceleration clause in a conditional sales contract was valid, and where the conditional seller contended that, since such a clause was not provided for or against in the Act, it came within the provisions of this section, the court, in Harlee v. Federal Finance Corp., (1930) 4 W. W. Harr. (Del. Super.) 345, 152 Atl. 596, said: "This section as clearly expressed by its language was only intended to include matters not provided for in the act and was not intended to have reference to those things for which provision had been made in the act. While the act makes no mention of the acceleration clause, it does, however, affirmatively provide for the right of redemption and the terms thereof and any provision in a contract, abridging this statutory right must be regarded as contrary to the terms of the statute and not as a case coming within the class of cases set out in section 29 as cases not provided for in the act."

Bankruptcy.

Transfer of after-acquired property to conditional seller by bankrupt buyer within four months before bankruptcy petition was filed held preferential and voidable under bankruptcy act. Robinson v Bowe, (1934) 73 F.(2d) 238 (construing South Dakota Act).

Machinery sold to debtor in New York under conditional sales contracts which provided that machinery should remain seller's property until paid for was not "property" of debtor within provision of Bankruptcy Act relating to corporate reorganization, and was not part of subject-matter of reorganization proceedings, and seller's right to repossess property under New York law could not be impaired. In re Lake's Laundry, Inc., (1935) 79 F.(2d) 326, affirming (1935) 11 F.Supp. 237.

Rejection of tender.

Principles of equity and reason, as well as law, preclude a conditional seller from rejecting a tender by conditional buyer or his assignee, proper in amount constituting full payment of purchase price, the day before an advertised foreclosure sale, for purpose of enabling the seller to acquire the goods on resale by bidding them in at a price far above the balance due and then appropriating such balance for alleged indebtedness having nothing to do with the contract in question. Schnitzer v. Fruehauf Trailer Co., 1954, 283 App. Div. 421, 128 N.Y.S.2d 242, affirmed 307 N.Y. 876, 122 N.E.2d 754.

§ 30. Uniformity of Interpretation.

Case Notes

Construction.

"The purpose of the act was to make uniform the law relating to conditional sales—not the laws with respect to landlord and tenant, distress for rent, or other independent matters. As I view it, section 30 does not bring within the purview of the act matters which, but for section 30, would not be embraced by the act." In re Brittingham Candy Mfg. Co., (1924) 1 Fed. (2d) 489 (construing Delaware act) holding that the section does not require a consideration of the laws of other states in deciding whether a distress for rent is paramount to the reserved title of a conditional vendor.

"Section 122.30 [§ 30 of the Uniform Act] impels us to follow the decisions of other courts in construing uniform acts, to the end that uniformity may result. Under uniform acts uniformity of construction by the courts is greatly to be desired." Forgan v. Smedal, (1931) 203 Wis. 564, 234 N. W. 896.

Intention of Drafters.

"In construing a uniform law, the meaning of which is not clear, the intention of those who drafted it, if that intention may be ascertained, should be given controlling consideration, else the desired uniformity will not result. Futile, indeed, is the passage of uniform laws by the several states if the courts are to construe them differently." People's Sav., etc., Co. v. Munsert, (1933) 212 Wis. 449, 249 N. W. 527, 88 A. L. R. 1306, rehearing denied (1933) 212 Wis. 449, 250 N. W. 385, 88 A. L. R. 1306.

Particular Applications.

Wisconsin court on grounds of logic, equity, and uniformity, adopted the construction given § 5 by the New Jersey courts. Mlodzik v. Ackerman Oil Co., (1926) 191 Wis. 233, 210 N.W. 694, 54 A.L.R. 226.

Presumption.

Where effect can not be given to dissimilar provisions of a section, court must assume that legislature intended to preserve uniformity of Uniform Conditional Sales Act. Castaneda v. National Cash Register Co., (1934) 48 Ariz. 119, 29 P.(2d) 730.

§ 32. Inconsistent Laws Repealed.

Statutory Notes

The Indiana act repealed all inconsistent laws and parts of laws.—See Laws 1935, ch. 182.

The New York act continued former section 64 of the Personal Property Law, relating to the indorsement, entry, refiling and discharge of conditional contracts, in effect until the repeal thereof, effective January 1, 1931.—See Laws 1922, c. 642, § 2; L.1930, c. 874, § 5.

The West Virginia act contains the exception noted in this section and declares that "all acts and parts of acts inconsistent herewith shall be and hereby are repealed."—See Laws 1925, ch. 64, amending and reenacting Laws 1921, ch. 75.

CASE NOTES

Arizona.

In Arizona it has been suggested that section 5 of the Uniform Act repeals Civ. Code Ariz. 1913, par. 3278, but the point was not decided. Babbitt, etc., Live Stock Co. v. Hooker, (1925) 28 Ariz. 263, 236 Pac. 722.

APPENDIX

CONDITIONAL SALES STATUTES

JURISDICTIONS WHERE UNIFORM CONDITIONAL SALES ACT HAS NOT BEEN ADOPTED

ALABAMA

Sections of Alabama Civil and Criminal Codes 1907, are now contained in Code 1940, as follows:

Civil Code 1907, §§ 3393-3395	Code 1940, Tit. 47, §§ 130-132
" " " §§ 3789-3791	" " Tit. 7, §§ 929-931
Criminal Code 1907, §§ 7342, 7423	" " Tit. 14, §§ 363, 364

CONDITIONAL SALES GENERALLY

Code 1940 of Ala., Tit. 47

§ 131. (6898) (3394) (1017) Conditional Sales, leases, etc., to be recorded.—All other contracts for the conditional sale of personal property, by the terms of which the vendor retains the title until payment of the purchase money and the purchaser obtains possession of the property, and all contracts for the lease, rent or hire of personal property, by the terms of which the property is delivered to another on condition that it shall belong to him whenever the amount paid shall be a certain sum, or the value of the property, the title to remain in the other party until such sum or value shall have been paid, are, as to such conditions void against purchasers for a valuable consideration, mortgagees, landlords with liens and judgment creditors without notice thereof, unless such contracts are in writing and recorded in the office of the judge of probate of the county in which the party so obtaining possession of the property resides. and also the county in which such property is delivered; and if any such property is brought into this state while subject to such condition, the contract of sale, lease, hire, or rent, must within three months thereafter be recorded in the county into which the property is brought and remains; but where such contracts are for less than five hundred and no/100 ($500.00) dollars in amount and also run for two years or less, and relate exclusively to household or kitchen furniture, goods, appliances or equipment they need not be filed for record as provided in this section, and provided further that in counties having a population of more than 80,000 inhabitants according to the last federal census, or any subsequent federal census, no contract covered by this section for less than five hundred and no/100 ($500.00) dollars in amount need be filed for record as provided herein. (1939, p. 1006, § 1, appvd. July 11, 1940; 1943, p. 577, appvd. July 10, 1943; 1951, No. 292, appvd. July 26, 1951.)

CRIMINAL PROVISIONS

Code 1940, Tit. 14

§ 365. (4927) Selling, concealing or disposing of property purchased on conditional sale.—Any purchaser of personal property under a written or printed contract of conditional sale, the consideration in whole or in part remaining unpaid, who shall, without the consent of the vendor, sell, give away, or otherwise dispose of or conceal such property, so that the vendor cannot, by due process of law, recover the same under the terms of the contract, shall be guilty of a misdemeanor, and shall, on conviction, be punished by fine of not more than five hundred dollars and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than six months.

ARKANSAS

Adopted the Uniform Commercial Code in 1961, to take effect Jan. 1, 1962, Article 9 of which supersedes existing conditional sales statutes in respect to transactions entered into on and after said date. See Ark.Stats. §§ 85-1-101 to 85-9-507

CALIFORNIA

Adopted the Uniform Commercial Code in 1963, to take effect Jan. 1, 1965, Article 9 of which supersedes existing conditional sales statutes in respect to transactions entered into on and after said date. See Cal.U.C.C. §§ 1101-10104.

COLORADO

Laws 1917, c. 43, §§ 1-17, are now contained in 1935 Colorado Statutes Annotated, c. 32, §§ 1-20.

Mills Annotated Statutes 1912, §§ 6172-6175, were contained in 1935 Colorado Statutes Annotated, c. 139, §§ 92-95, now C.R.S. '53, 116-1-10 to 116-1-12.

CHATTEL MORTGAGES

C.R.S. '53 20-1-1 to 20-2-12

20-1-2. Valid on crops, when.—No chattel mortgage on any crop shall be, or be deemed invalid by reason of the mortgagee consenting or agreeing, either expressly or by implication, that the crop may be sold by the mortgagor, but the lien of the mortgage in such case shall continue and attach to the proceeds of the sale in the hands of the purchaser, unless the mortgagee shall have expressly waived such lien. (L.'23, p. 196, § 1.)

20-1-8. Filing and recording—Time limit.—Any chattel mortgage or a copy of any chattel mortgage certified to be a true copy by any notary public or other public officer authorized to take acknowledgments, may be filed in the office of the clerk and recorder of the county in which the mortgaged property is situated, or, at the option of the mortgagee, any such chattel mortgage, or a certified copy thereof, may be recorded at length in public records of said county and thereupon, whether filed or recorded,

if bona fide, shall be good and valid from the time of such filing or recording, notwithstanding the mortgaged property remains in the possession of the mortgagor pursuant to provisions therefore in the mortgage. If the date of final maturity of the mortgage debt, as shown in the mortgage, exceeds a period of two years, then beginning with two years from the date of filing or recording of such mortgage and within ninety days thereafter, and annually thereafter within ninety days after each anniversary of the filing or recording of such mortgage, there shall be filed or recorded in the office of the county clerk and recorder where such mortgage is filed or recorded a sworn statement of the mortgagee showing:

(1) That said mortgage was given in good faith to secure the payment of the sum of money mentioned therein.

(2) That said sum of money is still unpaid; or if a part has been paid, how much thereof remains unpaid.

Such statement may be executed and filed by one of the mortgagees if there be more than one, by any assignee thereof, or by an agent or attorney acting for and upon behalf of such mortgagee or assignee. [L. '17, p. 127, § 7; C.L. § 5089; L. '27, p. 255, § 1; L. '35, p. 280, § 1; L. '45, Ex.Sess. p. 32, § 1, eff. Dec. 8, 1945; L.1955, c. 86.]

20–1–9. **Mortgage on livestock and feed.**—No chattel mortgage on any livestock and on feed, shall be, or be deemed invalid by reason of the fact that the feed included in the mortgage is permitted by the mortgagee to be consumed by being fed to the same animals which are included in the same chattel mortgage. [L.'23, p. 195, § 1.]

20–1–10. **Property subject to mortgage.**—Chattel mortgages may be given upon personal property of any kind or character, including, but not by way of limitation, livestock, the natural increase thereof, immediate and remote, and crops, either annual or perennial, including, but not by way of limitation, fruits and berries, which may be harvested within the period of one year next ensuing after the execution of the mortgage, whether or not the same be grown, growing or planted at the time of the execution of such mortgage. Any chattel mortgage may secure future advances to be made by the mortgagee or assignee, at his or its option for any purpose, but such chattel mortgage must state a specific sum as the ultimate amount to be advanced thereunder and secured thereby, and the date prior to which said advance shall be completed, and the date on which the last installment or portion of the indebtedness secured thereby shall mature, and all advances so made shall be secured by such mortgage equally, to the same extent and with the same priority, as the amount originally advanced on the security of such mortgage and such advances may be made and repaid and again made and the amount so stated shall be considered only as the total amount of such advances as may be outstanding and unpaid from time to time. [L.'23, p. 193; amending L.'17, p. 128, § 8; C.L., § 5090; L.'35, p. 282, § 2.]

20–1–11. Property in two or more counties.—If the mortgaged property is situated in two or more counties, the original, a duplicate original or a copy thereof certified to be a true copy by any notary public or other officer authorized to take acknowledgments shall be recorded or filed in each county. [L.'17, p. 128, § 9; C.L., § 5091; L.'35, p. 282, § 3.]

20–1–12. Mortgagee take possession, when.—The mortgagee of any chattel mortgage, or the agent or attorney or such mortgagee, shall be allowed six months after the maturity of the debt secured by said mortgage or six months after the date to which the lien of said mortgage shall have been or shall be extended, as may then be provided by law, within which to take possession of the mortgaged property, and such mortgage during such six months period shall be good and valid; and until possession is taken by such mortgagee, or the agent or attorney of such mortgagee, the mortgagor shall have the right to pay the debt and upon payment the mortgage shall be discharged in the same manner as if the debt had been paid at maturity. [L.'17, p. 129, § 10; C.L., § 5092; L.'25, p. 184, § 1; L.'35, p. 283, § 4.]

20–1–13. Extensions of mortgage.—The lien of any chattel mortgage filed or recorded as provided by this article may be extended at any time within six months after the maturity of the last installment of the indebtedness secured thereby or at any time within six months after the date to which the lien shall have been extended in conformity with the provisions of this article for the unpaid portion of such debt by the mortgagee or his assignee filing with the clerk and recorder of the county wherein the mortgage is filed or recorded, a sworn statement, showing:

(1) The total payments made on the debt and the amount remaining unpaid.

(2) That the debt or the part thereof stated, is still due the mortgagee or his assignee, and that said mortgagee or assignee does thereby extend the lien of said chattel mortgage for some definite period of time, stating it, not exceeding two years.

Thereupon the lien of the mortgage shall be extended for the period of time designated. At any time within six months after the expiration of said extended period of time the lien of said mortgage may be again extended for another period not exceeding two years, with like effect, by filing a sworn statement as provided above, and other extensions may be made from time to time in the same manner and with like effect, until the debt secured by the mortgage is paid or barred by the statute of limitations. [L.'17, p. 129, § 11; C.L. § 5093; L.'25, p. 185, § 2.]

20–1–14. Recorder to keep index records—Copies—Releases.—The clerk and recorder of each and every county in this state shall procure and keep separate index books, alphabetically and scientifically arranged, in which shall be entered in proper order all mortgages, extensions of mortgages, and sworn statements, executed and filed or recorded, pursuant to the pro-

visions of this article or any other act now or hereafter in effect relating to chattel mortgages. Whenever the clerk and recorder shall receive for filing in his office, any such sworn statement, extension, or other instrument affecting any chattel mortgage, he shall note a memorandum in red ink on the original index entry of the mortgage to which the instrument relates, showing the date of filing such instrument, and shall also make a new index entry for each such instrument, in the general index for chattel mortgages. A copy of any such mortgage, statement, extension, or other instruments affecting a filed or recorded chattel mortgage, duly certified by the clerk and recorder may be used in foreclosure proceedings, or otherwise, in all respects the same as the original instrument and if it shall appear from the affidavit of any credible witness that the original is lost or that it is not within the power of the person wishing to use the same to produce it, such certified copy may be read in evidence in any court of this state without further proof of the execution of the original. Any mortgage executed pursuant to the provisions of this article may be released by an appropriate notation on the margin of the mortgage or on the margin of the record thereof, or by a separate instrument suitably executed. [L.'17, p. 130, § 12; C.L. § 5094; L.'35, p. 283, § 5.]

20–1–15. Recorder's fees.—The county clerk and recorder shall be entitled to the following fees: for recording and indexing any chattel mortgage, a copy thereof, or a sworn statement relative thereto, or making a certified copy of any of said instruments, the same fees allowed by law for recording or making copies of deeds of real estate; for filing and indexing any chattel mortgage, or copy thereof, or any release of chattel mortgage, or of filing and indexing any sworn statement made pursuant to the provisions of this article, or any other act relating to chattel mortgages, seventy-five cents. [L.'17, p. 130, § 13; C.L. § 5095; L.'35, p. 284, § 6; L.'51, p. 227, § 1.]

20–1–16. Search of record—fees.—County clerks and recorders shall be entitled to receive as fees for searching their records and certifying the result, for each name searched against for chattel mortgages, assignments thereof, sworn statements, extensions, releases of chattel mortgages, partido contracts and judgments for the first year, two dollars ($2.00); for each additional year, fifty cents ($.50). It shall be the duty of county clerks and recorders to search their records and certify the result upon demand, accompanied by a tender of the fees. [L.'35, p. 285, § 7; L.1955, c. 87.]

CONNECTICUT

Adopted the Uniform Commercial Code in 1959, to take effect Oct. 1, 1961, Article 9 of which supersedes existing conditional sales statutes in respect to transactions entered into on and after said date. See C.G.S.A § 42a–1–101 et seq.

DELAWARE

Adopted Uniform Conditional Sales Act in 1919. See Table of Adopting States.

FLORIDA

Revised General Statutes 1920, §§ 3871, 4534, 4535, are now contained in Florida Statutes Annotated, §§ 726.09, 351.10, 351.11, respectively.

Conditional Sales Generally

Florida Statutes Annotated

§ 319.15 Notice of lien on motor vehicles; recorded, subsequent creditors, etc. No liens for purchase money or as security for a debt in the form of retain title contract, conditional bill of sale or chattel mortgage, or otherwise, on a motor vehicle, as now or may hereafter be defined by law, shall be enforceable in any of the courts of this state, against creditors or subsequent purchasers for a valuable consideration and without notice, unless a sworn notice of such lien, showing the following information, viz.:

(1) Name and address of the registered owner;

(2) Date and amount of lien;

(3) Description of the motor vehicle; particularly showing make, type, motor and serial number; and

(4) Name and address of lien holder;

shall be recorded in the office of the motor vehicle commissioner of the State of Florida, which filing is in lieu of all filing and recording now required or authorized by law, and shall be effective as constructive notice when filed; provided, however, that this law shall not apply or be effective as to any retain title contract, conditional bill of sale, chattel mortgage or other like instrument executed prior to August 1, 1941, nor to any retain title contract, conditional bill of sale, chattel mortgage or other like instrument covering any new or used motor vehicle floor plan stock of any motor vehicle dealer. Laws 1941, c. 20917, § 1.

§ 699.07 Where instruments relating to livestock must be recorded in order to constitute notice. All bills of sale, conditional bills of sale, retain title contracts, contracts, mortgages, liens and leases upon livestock to be of any force and effect against any bona fide purchaser or party acquiring an interest in or a lien upon said livestock, without actual knowledge of outstanding claims against same, must be recorded and indexed in the county where said livestock is located or in the county from which said livestock has just recently been removed.

Criminal Provisions

Florida Statutes Annotated

§ 818.01 Disposal of personal property under lien, etc. Whoever shall pledge, mortgage, sell, or otherwise dispose of any personal property to him belonging, or which shall be in his possession, and which shall be subject to any written lien, or which shall be subject to any statutory lien, whether written or not, or which shall be the subject of any written conditional sale

contract under which the title is retained by the vendor, without the written consent of the person holding such lien, or retaining such title; and whoever shall remove or cause to be removed beyond the limits of the county where such lien was created or such conditional sale contract was entered into, any such property, without the consent aforesaid, or shall hide, conceal or transfer, such property with intent to defeat, hinder or delay the enforcement of such lien, or the recovery of such property by the vendor, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding one year.

It shall be prima facie evidence of concealing, selling, or disposing of such personal property whenever the person owning the property at the time the lien was created, or who bought the same under such retained title contract, fails or refuses to produce such property for inspection within the county where the lien was created, or the property delivered, upon demand of the person having such lien, or retaining such title, after the debt secured by such lien has become enforcible, or the vendee has substantially defaulted in the performance of such retained title contract.

§ 818.03 Removing such property beyond the limits of county. Whoever shall knowingly and without the written consent of the person having such a lien thereon, as mentioned in § 818.01, buy, take, receive or remove or cause to be removed beyond the limits of the county, any personal property subject to such lien from the owner or any person in possession thereof, and whoever shall willfully conceal such property or obstruct, delay or hinder such lien holder in prosecuting his rights against any of such property, shall be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding one year.

§ 818.05 Sale, etc., of property held under contract or conditional sale; penalty. No person who is in possession of any personal property under and by virtue of any contract or conditional sale or otherwise where the title to said personal property does not vest in the possessor, shall sell, conceal, or dispose of such personal property without first having the written consent of the person then having or retaining the bona fide title to such personal property so to sell, dispose of, or conceal the same.

Any person who shall violate the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars.

IDAHO

Laws 1921, c. 153, §§ 1–5, are now contained in Idaho Code, §§ 62–801 to 62–805.

Compiled Statutes 1919, §§ 4826–4828, are now contained in Idaho Code, §§ 60–501 to 60–503.

CONDITIONAL SALES GENERALLY

Laws 1957, c. 153, §§ 1, 2 provides:

§ 1. Every conditional sales contract for the time sale of tangible personal property with or without accessories, shall be in writing and shall contain all of the agreements between the buyer and the seller, and particularly the following items:

(a) The cash price which is the amount for which the seller would sell or transfer to the buyer unqualified title to the personal property described in the sales contract if the same were sold for cash at the seller's place of business on the date such contract is executed, including any applicable tax.

(b) The amount of the buyer's down payment whether made in cash or represented by the agreed net value of described property traded in, or both, together with a statement as to the amount that was in cash, if any.

(c) The cost to the buyer of any insurance and other optional benefits which are included in the contract.

(d) A description of amounts, if any, actually incurred and paid as fees in connection with drafting the contract, recording instruments, registering title, etc.

(e) The amount of the unpaid balance which is the difference between the cash price plus the items contained in (c) and (d), and the down payment.

(f) The amount of the time price differential which is the amount by which the sellers total time price exceeds the total of the items contained in (a), (c) and (d).

(g) The contract balance or the sum of items (e) and (f).

(h) The number of installments required to pay the contract balance, the amount of each installment, and the time for payment of each installment.

The contract shall be signed by the buyer or his authorized representative and by the seller or its authorized representative and when so executed an exact copy thereof shall be delivered by the seller to the buyer.

§ 2. A conditional contract of sale which does not comply with the terms hereof shall not be entitled to be recorded or registered in the official records of either state or county recording or registering offices.

Idaho Code

§ 64-801. Contracts of sale upon condition—Effect of failure to file for record—Removal from county by consent of seller.—All contracts for sale of personal property where the possession of such property is delivered to vendee on condition that the title shall remain in the vendor until performance of such contract by vendee or the happening of any other contingency, shall vest such title in such vendee as to subsequent purchasers and encumbrancers of such property in good faith and for value unless prior to the time such subsequent purchasers or encumbrancers become such, such contract is put in writing and duly executed and acknowledged by the vendee and such contract or duplicate thereof, or a copy thereof verified by the affidavit of the vendee

or some one in his behalf to the effect that the said copy is true copy of the original as filed with the county recorder of the county where such property is located at the time of such filing: provided, when such personal property is removed by the written consent of the seller or his successors in interest from any county wherein such contract, duplicate or copy thereof is duly filed with the recorder of such county, title to said property shall likewise vest in the vendee as to subsequent purchasers and encumbrancers of such property in good faith and for value unless prior to the time such subsequent purchasers or encumbrancers become such either (1) said contract or a duplicate, or a copy thereof duly verified by any county recorder where filed or verified as a true copy as above provided is filed in the office of the county recorder of the county to which the property is removed, or in the office of the secretary of state of the state of Idaho or, (2) the seller or his successor in interest takes and retains possession of the property.

Filing in the office of the secretary of state as above provided shall be of no force or effect until the contract has also been duly filed in the office of a county recorder in whose county the property was situate at the time of such filing in such county, but after filing in such county, filing with the secretary of state has the same force and effect as if the contract had been duly filed in the office of the recorder of each county in the state.

The secretary of state as to contracts filed in his office, shall perform the same duties and charge and collect the same fees as provided for the county recorder under the provisions of this chapter. As amended L.1927, c. 15, § 1; L.1931, c. 184, § 1.

§ 64-803. Contract of sale upon condition—Filing and satisfaction of record—Filing fee.—For the purpose of filing, and satisfaction of record, contracts for sales upon conditions shall be treated as chattel mortgages; and the recorder shall keep a book in which shall be entered a minute of all conditional sale contracts. Such book shall be ruled off into separate columns with headings as follows: "Time of Reception," "Vendor," "Vendee," "Date of Instrument," "Amount of Sale," "When due," "Property Subject to Contract," "Remarks." The proper entry shall be made under each such heading and an index showing both vendee and vendor shall be maintained by the recorder. The recorder shall receive the sum of seventy-five cents, and no more, for filing any such contract, which amount he may demand before filing any such contract. As amended L.1927, c. 15, § 2; L.1951, c. 251, § 7.

§ 64-804. Contract of sale upon condition—Satisfaction or release—Fee for filing.—For filing a satisfaction or release of a conditional sale contract the recorder shall be entitled to a fee of fifty cents. As amended L.1927, c. 15, § 3; L.1951, c. 251, § 8.

Criminal Provisions

Idaho Code

§ 18-2403. Embezzlement by lessee or possessor under contract to purchase.—Every person who shall fraudulently remove,

conceal or dispose of any goods, chattels or effects, leased or let to him by any instrument in writing, or any personal property or effects of another in his possession, under a contract of purchase not yet fulfilled, and any person in possession of such goods, chattels, or effects knowing them to be subject to such lease or contract of purchase, who shall so remove, conceal or dispose of the same with intent to injure or defraud the lessor or owner thereof, is guilty of embezzlement. Added L.1929, c. 279, § 10.

§ 64-802. **Effect of removing or disposing of property before payment of purchase-price.**—If the purchaser of any property sold in pursuance of the provisions of this chapter, remove from the county or counties where said contract or copy is filed, destroys, conceals or in any manner disposes of the property so sold or any part thereof before the full purchase-money has been paid without first securing the written consent of the seller of such property, he is guilty of larceny and such sale or transfer is void.

ILLINOIS

Adopted the Uniform Commercial Code in 1961, to take effect July 1, 1962, Article 9 of which supersedes existing conditional sales statutes in respect to transactions entered into on and after said date. See S.H.A. ch. 26, § 1–101 et seq.

INDIANA

Adopted the Uniform Commercial Code in 1963, to take effect July 1, 1964, Article 9 of which supersedes existing conditional sales statutes in respect to transactions entered into on and after said date. See Burns' Ann St. §§ 19–1–101 to 19–9–507.

IOWA

Sections of the Compiled Code 1919 are now contained in Code 1950, as follows:

Code 1919	Code 1950	Code 1919	Code 1950
§ 6317	556.4	§ 6324–6327	556.17–556.20
6318	556.1	6328	omitted
	556.3	6329	556.8
6319	556.5	6330	556.11
6320	556.12	6331	556.7
6321	556.14	6332	556.2
6322	556.15	5071	556.22–556.24
6323	556.9	5072	556.25–556.27
		8669	710.12

Chattel Mortgages And Conditional Sales

Iowa Code Annotated.

§ 556.1 **Exempt property—mortgage by husband and wife—exception.** No encumbrance of personal property which may be held exempt from execution by the head of a family, if a resident of this state, shall be of any validity as to such exempt property only, unless the same be by written instrument, and unless the husband and wife, if both be living, concur in and sign the same joint instrument. Encumbrances on the property sold, given to secure the purchase price, need only be signed and acknowledged by the purchaser; except that an encumbrance of a motor vehi-

cle as defined in section three hundred twenty-one point one (321.1) of the Code, given to secure the claim of any person for services or materials, or both, used in repairing, improving or enhancing the value of such motor vehicle need be signed only by the owner of the motor vehicle to be valid. [C51, § 1193; R60, § 2201; C73, § 1923; C97, § 2906; C24, 27, 31, 35, 39, § 10013]

§ 556.2 **Right to possession—Title.** In the absence of stipulations in the mortgage, the mortgagee of personal property is entitled to the possession thereof, but the title shall remain in the mortgagor until divested by sale as provided by law. [C51, § 1210; R60, § 2217; C73, § 1927; C97, § 2911; C24, 27, 31, 35, 39, § 10014]

§ 556.3 **Sales or mortgages—recording.** No sale or mortgage of personal property where the vendor or mortgagor retains actual possession thereof, is valid against existing creditors or subsequent purchasers without notice, unless a written instrument conveying the same is executed, acknowledged like conveyances of real estate, and such instrument or a true copy thereof is duly recorded by, or filed and deposited with, the recorder of the county where the mortgagor or vendor resides if he be a resident of this state at the time of the execution of the instrument; but if he be not such a resident then of the county where the property is situated at that time. [C51, § 1193; R60, § 2201; C73, § 1923; C97, § 2906; C24, 27, 31, 35, 39, § 10015]

§ 556.4 **Conditional sales.** No sale, contract, or lease, wherein the transfer of title or ownership of personal property is made to depend upon any condition, shall be valid against any creditor or purchaser of the vendee or lessee in actual possession obtained in pursuance thereof, without notice, unless the same be in writing, executed by the vendor and vendee, or by the lessor and lessee, acknowledged by the vendor or vendee, or by the lessor or lessee, and such instrument or a true copy thereof is duly recorded by, or filed and deposited with, the recorder of deeds of the county where the vendee or lessee resides if he be a resident of this state at the time of the execution of the instrument; but if he be not such a resident, then of the county where the property is situated at that time. [C73, § 1922; C97, § 2905; C24, 27, 31, 35, 39, § 10016]

§ 556.5 **Filing equivalent of recording.** Upon receipt of any such instrument or a true copy thereof affecting the title to personal property, the recorder shall indorse thereon the time of receiving it, and shall file the same in his office for the inspection of all persons, and such filing shall have the same force and effect as if recorded at length. [C24, 27, 31, 35, 39, § 10017]

§ 556.6 **Receipt.** Upon request of person presenting such instrument or a true copy thereof for filing, the county recorder shall issue a receipt therefor, and such receipt shall describe the instrument as to grantor, grantee, date, consideration, and date filed. [C24, 27, 31, 35, 39, § 10018]

§ 556.7 **Option to record.** The recorder shall, if requested, as soon as practicable, record such instrument or any assignment or release thereof, and enter in his index book in its proper place the page and book where the record may be found, and deliver the instrument to the owner upon request. [C51, § 1196; R60, § 2204; C73, § 1926; C97, § 2910; C24, 27, 31, 35, 39, § 10019]

§ 556.8 **Time of filing noted—effect.** When any such instrument or a true copy thereof of the character above contemplated is filed, the recorder shall note thereon the day and exact time of filing the same, and forthwith enter in his index book the first seven requirements specified in section 556.9; and from the time of said entry the sale or mortgage shall be deemed complete as to third persons, and have the same effect as though it had been accompanied by the actual delivery of the property sold or mortgaged. [C51, § 1195; R60, § 2203; C73, § 1925; C97, § 2908; C24, 27, 31, 35, 39, § 10020]

§ 556.9 **Index book.** The county recorder shall keep an index book in which shall be entered a list of instruments affecting title to or encumbrance of personal property, which may be filed under this chapter. Such book shall be ruled into separate columns with appropriate heads, and shall set out:

1. Time of reception.
2. Name of each mortgagor or vendor.
3. Name of each mortgagee or vendee.
4. Date of instrument.
5. A general description of the kind or nature of the property.
6. Where located.
7. Amount secured.
8. When due.
9. Page and book where the record is to be found.
10. Extension.
11. When released.
12. Remarks and assignments.

[C51, § 1194; R60, § 2202; C73, § 1924; C97, § 2907; C24, 27, 31, 35, 39, § 10021]

§ 556.10 **Under name of vendee.** A sale or contract recorded or filed under the provisions of section 556.4 need only be indexed under the name of the vendee or purchaser. [C39, § 10021.1]

§ 556.11 **Transfers in representative capacity.** In indexing transfers of personal property made by an administrator, executor, guardian, referee, receiver, sheriff, commissioner, or other person acting in a representative capacity, the recorder shall enter upon such index book the name and representative capacity of each person executing such instrument, and the owner of the property, if disclosed therein. [C97, § 2909; C24, 27, 31, 35, 39, § 10022]

§ 556.12 Mortgage void after five years—extension. Every mortgage so filed shall be void as against the creditors of the person making the same, or as against subsequent purchasers or mortgagees in good faith, after the expiration of five years after the maturity of the debt thereby secured, unless an extension agreement, duly executed by the mortgagor, shall be filed with the instrument to which it relates, and such extension agreement shall operate to continue the lien in the same manner as the original instrument. [C24, 27, 31, 35, 39, § 10023]

§ 556.13 Assignments—how made. A chattel mortgage filed or recorded may be assigned of record by the mortgagee or the record holder thereof, by the execution of an appropriate written instrument, duly acknowledged, and filed in the same office where the mortgage is filed or recorded. If the mortgage is recorded, an assignment thereof may be made by the mortgagee or the record holder of the mortgage executing an assignment on the margin of the record of such mortgage, or, if the mortgage be filed but not recorded, such assignment may be indorsed upon the original instrument, but where the assignment is on the margin of the record or indorsed upon the instrument, the assignor shall be identified and his signature to such assignment witnessed and attested by the recorder or his deputy. [C24, 27, 31, 35, 39, § 10024]

§ 556.14 Copy furnished and certified—additional filings. A duplicate or copy of such mortgage, bill of sale, or other instrument filed under the provisions of this chapter, shall be supplied by the county recorder upon request of any party in interest, and the payment of fees therefor. Such duplicate or copy shall be duly certified by the county recorder and may be filed in other counties of the state in the same manner as herein provided. [C24, 27, 31, 35, 39, § 10025]

§ 556.15 Certified copies. A copy of such original instrument, duly certified by the county recorder in whose office the same shall have been filed, shall be received in evidence in all suits to which it may be applicable. [C24, 27, 31, 35, 39, § 10026]

§ 556.16 Production of original. If in any suit or action, the due execution of such instrument or its genuineness be questioned in such manner as to render the production of the original instrument desirable or necessary, then the same may be produced by the recorder of the county in obedience to a proper judicial process or court order. [C24, 27, 31, 35, 39, § 10027]

§ 556.17 * Release of mortgages. When the amount due on any chattel mortgage, conditional sales contract, or pledge of personal property is paid, the mortgagee, conditional vendor, pledgee or his personal representative or assignee, or those legally acting for him shall release of record such instrument evidencing the security, at his own expense, by filing with the original instrument a duly executed satisfaction piece or release, or by indorsing a satisfaction on the index book under the heading of "remarks"

in the same manner as mortgages are released by marginal satisfaction, and when so released on index book, the recorder shall enter a memorandum thereof on the original instrument or on the record thereof, if recorded.

The fee for the release of any of the above instruments shall be paid directly to the county recorder at the time the original instrument is filed of record.

Any person who fails to comply with the provisions of this section within thirty days after being requested in writing shall forfeit to the mortgagor, conditional vendee or pledgor the sum of twenty-five dollars. [Acts 1951 (54 G.A.) ch. 137, § 4.]

* Former § 556.17 was repealed by Acts 1951 (54 G.A.) ch. 137 § 4.

§ 556.18 **Original returned to maker.** When any unrecorded chattel mortgage or other instrument of writing or indebtedness, which may have been filed as herein provided, shall have been satisfied, it shall be the duty of the recorder, after making a proper entry of such satisfaction in the index book or record where the original instrument is recorded, to return the original instrument, with any extension, assignment, or release, thereto attached, to the mortgagor or person executing the same, upon request therefor. [C24, 27, 31, 35, 39, § 10029]

§ 556.19 **Originals destroyed.** In case such unrecorded instrument, with the extension or release thereof, if any, be not returned as hereinbefore provided, after the expiration of five years from the maturity thereof, or the maturity of any extension thereof, the recorder shall destroy such chattel mortgages with the extension or releases thereto attached, or other instruments or writing relating thereto, by burning the same in the presence of the board of county supervisors, or a committee appointed by the board of supervisors from their own number, to superintend the same, and when so destroyed the date of such destruction shall be entered on the index record under "remarks". [C24, 27, 31, 35, 39, § 10030]

§ 556.20 **Fees.** The fees to be collected by the county recorder under this chapter shall be as follows:

1. For filing any instrument affecting the title to or encumbrance of personal property, fifty cents each.
2. For recording or making certified copies of such instruments, one dollar for the first four hundred words and twenty cents for each one hundred additional words or fraction thereof.
3. For the marginal assignment or release of any instrument, fifty cents. [C24, 27, 31, 35, 39, § 10031; 51GA, ch. 201, § 6; Acts 1951 (54 G.A.) ch. 137, § 3.]

§ 556.21 **Real estate mortgage with chattel mortgage clause.** Real estate mortgages which create an encumbrance on personal property, shall, after being recorded at length, be indexed in the chattel mortgage index book. Said indexing shall show the book and page where said mortgage is recorded and such record and index shall have the same effect as though said mortgage

were retained by the recorder as a chattel mortgage, or as though the same had been recorded at length in the chattel mortgage records and indexed accordingly. When such mortgage is released of record, the recorder shall make entry thereof on said chattel mortgage index book. [C24, 27, 31, 35, 39, § 10032]

Railroad Equipment

Iowa Code Annotated.

§ 556.22. Conditional sale or lease authorized. In any contract for the sale of railroad or street railway equipment or rolling stock or power house, electric or other equipment of street or interurban railways or of electric light and power companies or of steam-heating companies, such equipment including engines, boilers, generators, switchboards, transformers, motors, and other machinery and appliances, it may be agreed that the title thereto, although possession thereof be delivered immediately or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money. [C97, § 2051; S13, § 2051; C24, 27, 31, 35, 39, § 10033]

§ 556.23 Rental as purchase money. In any contract for the leasing or hiring of such property, it may be stipulated for a conditional sale thereof at the termination of such contract, and that the rentals or amounts to be received under such contract may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price shall have been paid in full, and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee. [C97, § 2051; S13, § 2051; C24, 27, 31, 35, 39, § 10034]

§ 556.24 Validity of contract conditioned. No such contract shall be valid as against any subsequent judgment creditor, or subsequent bona fide purchaser for value without notice, unless:

1. The same shall be evidenced by an instrument executed by the parties and acknowledged by the vendee, or lessee, or bailee, as the case may be, in the same manner as deeds are acknowledge or proved.

2. Such instrument or a true copy thereof shall be filed for record in the office of the secretary of state.

3. Each locomotive engine, stationary engine, boiler, switchboard, transformer, motor, other piece of machinery or appliance or car sold, leased, or hired as aforesaid shall have the name of the vendor, lessor, or bailor plainly marked on each side thereof, followed by the word "owner", "lessor", or "bailor", as the case may be. [C97, § 2051; S13, § 2051; C24, 27, 31, 35, 39, § 10035; Acts 1947 (52 G.A.), ch. 273, § 1]

§ 556.25 **Recording.** The contracts herein authorized or true copies thereof shall be filed with the secretary of state who shall number consecutively all such contracts filed in his office and shall maintain a card index thereof alphabetically arranged, and shall preserve the same as permanent records of his office. [C 97, § 2052; S13, § 2052; C24, 27, 31, 35, 39, § 10036 52 GA, ch. 273, § 2]

§ 556.26 **Release and satisfaction.** On payment in full of the purchase money and the performance of the terms and conditions stipulated in such contract, a declaration in writing to that effect may be made by the vendor, lessor, or bailor, or his or its assignee, by separate instrument to be executed and acknowledged by the vendor, lessor, or bailor, or his or its assignee, which said instrument or a photostatic copy thereof shall be filed with the secretary of state, who shall number and index all such declarations as provided in section 556.25. [C97, § 2052; S13, § 2052; C.24, 27, 31, 35, 39, § 10037 52 GA, ch. 273, § 3]

§ 556.27 **Fees.** For such service the secretary of state shall charge a filing fee of one dollar for each contract and each declaration. [C97, § 2052; S13, § 2052; C24, 27, 31, 35, 39, § 10038]

§ 556.28 **Prior contracts not affected.** Sections 556.22 to 556.27, inclusive, shall not invalidate or affect in any way any contract of the kind referred to in sections 556.22 to 556.24, inclusive, made prior to April 24, 1894, and any such contract made prior to said date upon compliance with the provisions of said sections 556.22 to 556.27, inclusive, may be recorded as therein provided. [C97, § 2053; C24, 27, 31, 35, 39, § 10039]

KANSAS

Sections of General Statutes 1915, are now contained in General Statutes 1949, as follows:

G.S.1915,	§§ 6508, 6509	G.S.1949,	§§ 58–314, 58—315
" "	§§ 8714–8716	" "	§ 58–318
" "	§ 6513	" "	§§ 66–1206 to 66–1209

Conditional Sales Generally

General Statutes 1949

§ 58-315a. **Conditional sale contract defined.** For the purposes of this act "conditional sale contract" shall mean contract for the sale of personal property by the terms of which the title of such personal property is retained in the vendor until the purchase price is paid in full. [L.1939, ch. 230, § 1; June 30.]

Criminal Provisions

General Statutes 1949

§ 58-315b. **Same; injurying, destroying, concealing or unlawfully disposing of, deemed larceny; penalties.** Any vendee of personal property sold under conditional sale contract or any

other person who shall injure, destroy or conceal any property sold under conditional sale contract, or any part thereof, with intent to defraud the vendor, his executors, administrators, personal representatives or assigns, or shall sell or dispose of the same without the written consent of the vendor or his executors, administrators, personal representatives or assigns shall be deemed guilty of larceny and on conviction thereof shall be punished as follows: For selling, injuring, destroying, concealing or disposing of such property of the value of twenty dollars and under, or of the value of twenty dollars or over, and on the purchase price of which not more than twenty dollars remains unpaid, such person shall be deemed guilty of petty larceny, and on conviction shall be punished by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one hundred dollars, or by both such fine and imprisonment; for selling, injuring, destroying, concealing or disposing of such property of the value of twenty dollars and over, on the purchase price of which more than twenty dollars remains unpaid, such person shall be deemed guilty of grand larceny, and on conviction, shall be punished by confinement at hard labor not exceeding five years. [L.1939, ch. 230, § 2; June 30.]

KENTUCKY

Adopted the Uniform Commercial Code in 1958, to take effect July 1, 1960, Article 9 of which supersedes existing conditional sales statutes in respect to transactions entered into on and after said date. See KRS 355.1-101 et seq.

LOUISIANA

Laws 1894, Act No. 111, §§ 1–4, are now contained in LSA–R.S. 45:1241–45:1244.

Laws 1918, Act No. 119, §§ 1, 2, are now contained in LSA–R.S. 45:611, 45:612.

CHATTEL MORTGAGES

Louisiana Statutes Annotated—Revised Statutes

9:5351. **Mortgage of movable property.**—In order to secure the performance of any obligation, including future advances, it shall be lawful by complying with the provisions of this Part to mortgage any and every kind of movable property, materials, including machinery and manufactured, constructed or prefabricated articles used in steel and/or metal buildings or other facilities erected and/or constructed under the Farm Storage Facility Loan Program formulated by the Commodity Credit Corporation and the Production and Marketing Administration of the United States Department of Agriculture, or either of such agencies which said mortgage shall cover and rest against the building or buildings in the construction of which such materials are used, and such building or buildings erected from such materials shall, notwithstanding any other provision of the revised statutes or of the Civil Code, have the status of a movable for the purpose of the mortgage and shall be covered thereby and

section 5357 of this Title shall apply thereto, and to mortgage any of the following masses or assemblages of things, lumber, logs, staves, cross-ties, tiles, bricks, loose cotton, cotton seed and its by-products, live stock, poultry, stocks of merchandise, or other things in bulk, but changing in specifics, including without limitation, stocks of merchandise in retail, wholesale or manufacturing establishments, even though the same may not be all of a similar nature or kind. In the case of stocks of merchandise, including those in retail, wholesale and manufacturing establishments, as well as all other movable property in bulk, but changing in specifics, the effect of the mortgage shall cease as to all articles disposed of by the mortgage or up to the time of foreclosure but shall attach to the purchases made to supply their place and to other after acquiring additions to the original stock of goods, merchandise or other things in bulk ordinarily mortgaged to secure the debt.

Source: Acts 1944, No. 172, § 1; Acts 1948, No. 474, § 1; Acts 1950, No 515, § 1; Acts 1952, No. 50, § 1.

9:5352. **Mortgage to be in writing; content; description.**—Every chattel mortgage shall be in writing and the obligation secured thereby shall be described and the exact sum secured thereby shall be stated, or, if the same is to secure future advances, then the maximum amount thereof, shall be stated, and there shall also be stated whether the same be payable on demand or at what fixed or determinable future time. A chattel mortgage granted on any mass or assemblage of things, including without limitation, stocks of merchandise in retail, wholesale or manufacturing establishments, permitted by R.S. 9:5351, whether owned at the time of execution of the mortgage or to be acquired thereafter and on such additions as may come from natural increase or otherwise, shall describe the same as all of a particular class or classes or grade or kind or type or species or dimensions or as a stock of merchandise to be kept at a certain location. In all other cases a full description of the property to be mortgaged shall be set forth so that it may be identified and its location shall be stated.

Source: Acts 1944, No. 172, § 2; Acts 1950, No. 516, § 1.

9:5353. **Authentication; filing; fee.**—In order to affect third persons, every chattel mortgage shall be by authentic act, or by private act, duly authenticated in any manner provided by law. A multiple original of every such act of mortgage shall be filed in the office of the recorder of mortgages of the parish where the mortgaged property is to be located according to the terms of the mortgage instrument and also in the office of the recorder of mortgages of the parish of the mortgagors' domicile, if the mortgagor is domiciled in the state. If the mortgagor is not domiciled in the state, filing in the office of the recorder of mortgages of the parish where the property is to be located according to the terms of the mortgage instrument will be sufficient. Upon receipt of the instrument the recorder of mortgages shall note thereon the date, hour, and minute of receiving it and shall

be the duty of the recorder of mortgages to segregate the mort- shall immediately cause to be indorsed on the instrument his certificate of recordation. For these services each recorder of mortgages shall receive fifty cents.

Source: Acts 1944, No. 172, § 3.

9:5354. **Effect of filing.**—Every such mortgage shall be effective as against third persons from the time of the filing in the proper offices, and the filing shall be notice to all parties of the existence of the mortgage, which shall be superior in rank to any privilege or preference arising subsequently thereto.

Source: Acts 1944, No. 172, § 4.

9:5355. **Chattel mortgage book; form.**—For the purpose of this Part, it shall be sufficient for the recorders of mortgages each to keep a book to be known as the chattel mortgage book, which shall be ruled off into columns, with the headings as follows:

"Time of filing for Recordation"; "Name of Mortgagor"; "Name of Mortgagee"; "Date of Instrument"; "Amount Secured"; "When Due"; "Property Mortgaged"; "Remarks."

Under the head of "Property Mortgaged," it shall be sufficient to enter a general description of the property and the particular place where it is located. An index to each chattel mortgage book shall be kept in the same manner as required for other records.

In the event that the mortgage instrument also includes an act of sale whereby the vendor reserves a vendor's privilege, it shall record it in their respective offices. The recorder of mortgages gage from the vendor's privilege and to record the instrument merely as a mortgage, for which he shall make no additional charge.

Source: Acts 1944, No. 172, § 5.

9:5356. **Cancellation; reinscription; fee.**—When any mortgage under this Part shall have been fully paid or satisfied the mortgage may be cancelled in any manner provided by law for the cancellation of mortgages on immovable property. The effect of a chattel mortgage shall cease if the inscription thereof has not been renewed in the same manner in which it was first made by the recorder of mortgages within five years from the date of the execution of the act of mortgage. Reinscription shall renew the effect of the mortgage for the amount unpaid for a period of five years from the date of the reinscription and further renewals may be made thereafter from time to time, the effect of each new reinscription being for five years from its date. Chattel mortgages heretofore given and not already prescribed under existing law, may be reinscribed by complying with this procedure. The recorders of mortgages shall each receive fifty cents for each cancellation and fifty cents for each reinscription of a mortgage under this Part.

Recorders of mortgages may destroy the chattel mortgage records in their respective offices ten years after the date of their

recordation unless they have been reinscribed in the form and manner herein provided.

Source: Acts 1944, No. 172, § 6; Acts 1948, No. 387, § 2; Acts 1952, No. 344, § 1.

9:5357. **Mortgaged property becoming immovable; effect.**—When any movable property whatsoever which is subject to a mortgage granted under the provisions of this Part shall be moved to and located in or upon any immovable property, or installed therein or thereon in such a manner as to make the chattel an immovable by nature or by destination, the chattel shall be and will remain movable in so far as the mortgage upon it is concerned, and shall not pass by the sale of the immovable property to which it has been actually or fictitiously attached, whether such sale be conventional or judicial. No sale or mortgage of the immovable property shall in any manner affect or impair the rank or privilege of the chattel mortgage, or the remedies of the holder thereof for its enforcement.

Source: Acts 1944, No. 172, § 7.

9:5358. **Mortgaging with fraudulent intent; penalty.**—If any person shall fraudulently give or attempt to give a mortgage on the movable property described in R.S. 9:5351 and 9:5352, without being the lawful owner, or without having the proper authority to represent the lawful owner of the property, or if any person shall fraudulently give a mortgage under this Part without fully disclosing and causing to be written into the act of mortgage the description and amount of any existing liens, privileges, or encumbrances on the property mortgaged, he shall be fined not more than five hundred dollars, or imprisoned for not more than six months, or both.

Source: Acts 1944, No. 172, § 8.

9:5359. **Disposal of property with fraudulent intent; penalty.**—Any person who, having executed a mortgage on movable property, sells, assigns, exchanges, injures, destroys, conceals, or otherwise disposes of any part of the mortgaged property with fraudulent intent to defeat the mortgage, or removes the mortgaged property from the parish where it was located at the time the mortgage was executed, without the written consent of the mortgagee and with fraudulent intent to defeat the mortgage, shall be fined not more than five hundred dollars, or imprisoned for not more than six months, or both.

Source: Acts 1944, No. 172, § 8.

9:5360. **Acceleration of maturity date, grounds for.**—The obligation secured by the act of mortgage shall, at the option of the creditor or holder of the mortgage note, forthwith mature and become due and payable and the mortgagee shall be entitled to enforce the collection of the obligation secured by the mortgage immediately and in the manner provided, in any case where the mortgagor shall have (1) committed any of the fraudulent practices denounced by R.S. 9:5358 and 9:5359, or (2) removed

the mortgaged property from the parish where the act of mortgage stipulated that it was to be located, without the written consent of the mortgagee. These provisions for acceleration of the mortgage debt shall not be construed as excluding the operation of any other statutory provision, or any lawful stipulation between the parties, accelerating the maturity of the obligation secured by the mortgage.

Source: Acts 1944, No. 172, § 8.

9:5361. **Fraudulent release of mortgage; penalty.**—If any mortgagee named in a chattel mortgage, and not being at the time the owner and holder of the debt secured, shall fraudulently execute a release or satisfaction of said chattel mortgage, he shall be fined not more than five hundred dollars, or imprisoned for not more than six months, or both.

Source: Acts 1944, No. 172, § 8.

9:5362. **Purchase from nonresident without affidavit; personal liability.**—It shall be unlawful for a resident of any parish to purchase the movable property described in R.S. 9:5351 from any nonresident of such parish, without first obtaining an affidavit from the nonresident that there is no mortgage on the property, nor any money due for the purchase price thereof, and the purchaser who shall buy the movable property without having obtained the affidavit, shall be personally liable to the creditor for the debt secured by the property.

Source: Acts 1944, No. 172, § 8.

9:5363. Remedies of creditors.—All laws and rules and all remedies and processes now or hereafter made available to creditors for the protection or enforcement of their rights under mortgages affecting immovables shall be available to creditors of obligations secured by mortgages affecting movables.

Source: Acts 1944, No. 172, § 9.

9:5363. **Remedies of creditors.**—All laws and rules and all remedies and processes now or hereafter made available to creditors for the protection or enforcement of their rights under mortgages affecting immovables shall be available to creditors of obligations secured by mortgages affecting movables; the right of executory process is hereby specifically granted to all creditors on movable property as hereinabove set forth whether their rights shall arise under the terms of authentic act or acts under private signature duly acknowledged.

Source: Acts 1944, No. 172, § 10; Acts 1952, No. 441, § 1.

9:5365. **Incorporeal movables not mortgageable under Part.**—Nothing in this Part shall authorize the mortgage under this Part of any incorporeal movables such as certificates of stock, bonds, notes, warehouse receipts, bills of lading, or any other written evidence of debt whether negotiable or not.

Source: Acts 1944, No. 172, § 13.

RAILROAD EQUIPMENT

Louisiana Statutes Annotated—Revised Statutes

45:1241. Conditional sale of railroad or street railroad equipment or rolling stock.—In any contract for the sale of railroad or street railway equipment or rolling stock, the parties may agree that title to the property sold or contracted to be sold, shall not vest in the purchaser until the price is paid although possession may be delivered immediately or subsequently, or that the seller shall have against any person a privilege for the unpaid purchase money. And in any contract for the leasing or hiring of such property, the parties may stipulate for a conditional sale after termination of such contract. They may also agree that the rentals or amount to be received under the contract may be applied and treated as purchase money, and that title to the property shall not vest in the lessee or bailee until the purchase price is paid in full, and until the terms of the contract are performed, notwithstanding delivery to and possession by the vendee, lessee or bailee.

Source: Acts 1894, No. 111, § 1.

45:1242. Conditional sale; validity.—No contract authorized by R.S. 45:1241 shall be valid against any subsequent judgment creditor or any subsequent bona fide purchaser for value and without notice unless:

(1) The contract is evidenced by an instrument executed by the parties and duly acknowledged by the vendee, lessee or bailee, or duly proved before some person authorized by law to take acknowledgments;

(2) The contract shall be filed for record in the office of the recorder of the parish of East Baton Rouge, in a book to be kept by him for the purpose, called Railroad Conditional Sales Book, if the vendee, lessee or bailee therein is a railroad or railway company whose line is situated in more than one parish; and if the vendee, lessee or bailee is a railroad or railway company whose line is situated in only one parish, then in the mortgage book of the office of the recorder of the parish where the railroad or railway is situated;

(3) Each locomotive engine or car sold, leased or hired, or contracted to be sold, leased or hired, shall have the name of the vendor, lessor, or bailor plainly marked on each side thereof, followed by the word "owner", "lessor", or "bailor".

Source: Acts 1894, No. 111, § 1.

45:1243. Conditional sale; retaking of property.—If the vendee, lessee, or bailee fails to make the payments or perform the covenants in any such contract, the lessor, vendor or bailor, or his assignee may retake the property in accordance with the contract; and in case of retaking the vendee, lessee, or bailee or his assignee has no right of redemption, and all payments made under the contract shall be forfeited to the vendor, lessor, or bailor, or to the party to whom they may have been made.

Source: Acts 1894, No. 111, § 3.

MAINE

Adopted the Uniform Commercial Code in 1963, to take effect Dec. 31, 1964, Article 9 of which supersedes existing conditional sales statutes in respect to transactions entered into on and after said date. See R.S. c. 190, §§ 1-101 to 9-507.

MARYLAND

Sections of Bagby's Annotated Code are now contained in Maryland Code 1957, as follows:

Bagby's	Art. 21, § 53A	Code	1957,	art. 21,	§ 66
"	" 17, § 2A	"	"	art. 17,	§ 6
"	" 63, § 54	"	"	art. 63,	§ 41
"	" 21, § 91	"	"	art. 21,	§ 102

CONDITIONAL SALES GENERALLY

Code 1957, art. 21.

§ 66. Every note, sale or contract for the sale of goods and chattels, or of any item of furnishing or equipment which is affixed to real property, wherein the title thereto, or a lien thereon, is reserved until the same be paid in whole or in part, or the transfer of title is made to depend upon any condition therein expressed and possession is to be delivered to the vendee, shall in respect to such reservation and condition, be void as to subsequent purchasers, mortgagees, incumbrancers, landlords with liens, pledgees, receivers, and creditors who acquired without notice a lien by judicial proceedings on such goods and chattels, or in the case of any item affixed to real property on such real property, until such note, sale or contract be in writing, signed by the vendee and be recorded, as provided in this section and Section 52 of Article 17, in the Clerk's office of the Superior Court of Baltimore City, or in the Clerk's office of the Circuit Courts of the various counties, as the case may be, where the vendee resides, or in the case of a corporate or partnership vendee, then where such vendee has its principal place of business in the State of Maryland, but in any case of any item affixed to real property, such recording shall be where such property is located and may also be where the vendee resides, or where a corporate or partnership vendee has its principal place of business in this State. Such recording shall be sufficient to give actual or constructive notice to such parties when a memorandum of the paper writing signed by the vendee or vendees, setting forth the date thereof, the amount due thereon, when and how payable and a brief description of the goods and chattels therein mentioned shall have been recorded with the clerk aforesaid, provided, however, that, as to any item affixed to real property, such recording shall be sufficient to give notice to such third parties in transactions involving such real property only when the memorandum shall also contain a reference to such property sufficient for identification purposes and when such memorandum has been cross-indexed in the land records as provided in Section 50 of Article 17. It shall not be necessary that said paper writing shall be acknowl-

edged or an affidavit made to the consideration therein expressed as in the case of bills of sale.

Code 1957, art. 21.

§ 67. Any recording pursuant to Section 66 shall be effective only for period of three (3) years from the date of recording. Thereafter, except as between the parties, the recorded obligation, unless re-recorded, shall be conclusively presumed to have been discharged and shall not operate either as actual or constructive notice to any person. Added L.1941, c. 875.

Code 1957, art. 63.

§ 41. Whenever a motor vehicle or any part thereof is left by the owner or by any other person with his authority, express or implied, in the custody of any corporation, firm or individual, association, or person for repair, rebuilding, storage, or for the purpose of having furnished for or on account of the same any parts, accessories, or tires, the corporation, firm, individual, association or person in whose custody said motor vehicle or part thereof is left for all or any of the purposes aforesaid, shall have a lien on said motor vehicle or part thereof for all charges so incurred, and may lawfully retain the same until said charges have been paid, or until said lien is extinguished or discharged as hereinafter provided. Said lien shall be superior to the rights of the holders of conditional sale contracts, bills of sale, chattel mortgages or other liens or claims of any kind which are not theretofore executed and recorded or filed for record as required by law, but shall be subordinate thereto where the same have been theretofore executed and recorded as required by law. Surrender or delivery of any motor vehicle subject to the lien aforesaid shall operate as a waiver or extinguishment of the same as against third persons without notice thereof, but shall not operate as such waiver or extinguishment as against the owner or as against third persons with notice.

§ 42. Should the owner dispute the amount of the charge, or any part thereof, for which the lien is claimed as aforesaid, such dispute may be determined by appropriate legal proceedings, and the institution of any such legal proceedings shall operate as a stay of execution under said lien until the amount thereof shall have been judicially determined, or the owner of such motor vehicle shall have the right to immediately repossess himself of his said motor vehicle upon filing a good and sufficient corporate bond, in double the amount of said claim, with the Clerk of the Circuit Court for the County, or with the Clerk of the Circuit Court of Baltimore City, where the corporation, firm, individual, association, or person, claiming such lien may have repaired or stored said motor vehicle, which said bond shall be approved by the Clerk of said Court, and which said bond shall be conditioned upon the payment of the full amount of any final judgment which may be recovered upon such claim, together with interest, and all costs incident to any such suit, and any costs and expenses which may have been incurred in con-

nection with the enforcement of such lien up to the time that such lien claimant is notified of the filing of such bond. And the filing of such bond shall operate as a stay of execution under said lien until the amount thereof shall have been judicially determined; and in any such suit against the owner of said motor vehicle by such lien claimant after filing of such bond, if any defendant is returned non est, service may be secured by publication as in the case of a suit against a nonresident, provided, however, that suit be instituted within six months from the presentation of said bond, otherwise the bond is to be null and void.

§ 43. Any corporation, firm, individual, association or person who may have a lien under this sub-title on any motor vehicle or part thereof for repairs, rebuilding or storage, or having furnished for or on account of said motor vehicle and parts, accessories or tires may, if the account is due and unpaid for a period of thirty days and if the lienor still retains possession of the same, sell said motor vehicle or part thereof at public sale at some place which shall be convenient and accessible to the public at any time between the hours of 10 o'clock A. M. and 6 o'clock P. M., provided the time, place and terms of said sale, together with a full detailed description of said motor vehicle or part thereof shall be inserted in one or more newspapers published in the city or county where said sale is to take place at least once each week for two successive weeks prior to said sale; and provided further, that a registered notice shall be mailed at least ten days prior to said sale to the owner of said motor vehicle or part thereof, if his address be known, or if it can be ascertained by the exercise of reasonable diligence, or by mailing said notice by registered mail to the person who gave the order for said repairs, storage, rebuilding, parts, accessories, or tires. If the address of neither of said persons is known, and by the exercise of reasonable diligence cannot be ascertained, then such notice shall be mailed to "General Delivery" at the Post Office of the city or county where the business of said lienor is located. Any excess in the amount of the selling price of said motor vehicle or part thereof at said sale over and above the expenses thereof, including a reasonable attorney's fee and the amount of said lien, shall be remitted to the owner of said motor vehicle or part thereof. As amended L.1945, c. 738.

§ 44. The remedies for enforcing the aforesaid lien herein provided shall not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the custodian's claim as shall not be paid by the proceeds of the sale of the property.

Criminal Provisions

Code 1957, art. 214.

§ 214. Any mortgagor of personal property in possession of the same, or any purchaser of personal property under a recorded conditional, written contract, in possession of said property, or any execution debtor in possession of personal property levied

on and taken in execution, or any vendor of personal property under a recorded bill of sale, in possession of said property, who, in the case of mortgaged personal property, without the consent of the mortgagee or his assigns, first had and obtained in writing, or who, in the case of the purchaser of personal property under a recorded, conditional, written contract, without the consent first had and obtained in writing of the conditional vendor in said contract, or his assigns, or who, in the case of personal property levied on and taken in execution, without the consent of the execution creditor, his assigns or lawfully authorized agents, first had and obtained in writing, or who, in the case of the vendor of personal property under a recorded bill of sale, without the consent first had and obtained in writing of the vendee in said contract or his assigns, and with intent to defraud the mortgagee, or with intent to defraud the said vendor of personal property in a recorded, conditional, written contract, or his assigns, or with intent to defraud the execution creditor or his assigns, and defeat his or their lien under said execution, or with intent to defraud the vendee, shall remove any of the personal property so mortgaged or purchased under said recorded, conditional, written contract, or levied on and taken in execution as aforesaid, or so sold under said recorded bill of sale, as the case may be, beyond the limits of the city or county where it is located when so mortgaged or purchased under said recorded, conditional, written contract, or levied on and taken in execution, or so sold under said recorded bill of sale, or who, with intent as aforesaid, removes, secretes, hypothecates, destroys or sells the same shall be deemed guilty of a misdemeanor, and on indictment therefor and conviction thereof shall be imprisoned in the city or county jail not more than six months, or shall be fined not more than five hundred dollars, or both, in the discretion of the court; but nothing herein contained shall be construed to relieve the sheriff or other officer holding said execution from his responsibility to the execution creditor for the safe keeping of any personal property by him levied on and taken in execution as aforesaid.

MASSACHUSETTS

Adopted the Uniform Commercial Code in 1957, to take effect Oct. 1, 1958, Article 9 of which supersedes existing conditional sales statutes in respect to transactions entered into on and after said date. See M.G.L.A. c. 106, § 1-101 et seq.

MINNESOTA

Sections of General Statutes 1913 are now contained in Minnesota Statutes Annotated as follows:

Gen. St. 1913, §§ 6981–6984	M.S.A.	§ 511.18
Gen. St., 1917 Supp., §§ 6993—1 to 6993—7	"	§§ 511.20–511.24, 511.26
Gen. St. 1913, §§ 6225–6227	"	§§ 222.15–222.17
" " " §§ 8907, 8908	"	§ 621.21

CONDITIONAL SALES GENERALLY

Minnesota Statutes Annotated

§ 511.18 * * * * *

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Subdivision 4. Satisfaction. When any such contract has been fully performed on the part of the vendee, the vendor his representatives or assigns, shall give duplicate satisfactions thereof, one of which he shall deliver to the person entitled thereto, and the other he shall file, at his own expense, with the officer having custody of the instrument so satisfied. Thereupon such officer shall deliver up the note, contract, memorandum, or copy to which the satisfaction relates. Such satisfaction need not be witnessed or acknowledged. Failure to file such satisfaction within 60 days after condition performed shall subject its holder to damages at the suit of any person injured by such neglect. As amended L.1957, c. 107.

§ 511.19 Retaking of possession. Subdivision 1. Conditional sale contract. For the purposes of this section a conditional sale contract includes all agreements where possession of personal property under either an agreement where title is reserved until the purchase price is paid or where personal property is rented under an agreement that when the entire rental is paid that title thereto shall be transferred.

Subdivision 2. Seller to give notice. When the seller shall have the right to retake possession of the property under a conditional sale contract because of default in payment only, the seller may serve upon the buyer personally or by registered mail directed to the last known address of the buyer, at least ten days prior to the retaking, a written notice of intention to retake the property on account of the buyer's default. The notice shall state the default and the period at the end of which the property will be retaken and the amount which the buyer will be required to pay within that time to avoid such retaking. If the notice is so served and the buyer does not pay the delinquent instalment, or instalments, or at the election of the then owner of the contract, pay the entire balance of the purchase price if the contract so provides, together with the actual costs and expenses of preparing and serving the notice before the day set for retaking, the seller may retake the property and the buyer shall have no right of redemption.

Subdivision 3. Period to redeem. If the seller does not give the notice of intention to retake prescribed in subdivision 2 hereof, he shall retain the property for ten days after the re-

taking, during which period the buyer, upon payment or tender by him of the amount due under the contract at the time of retaking, together with all costs and expenses of the retaking, may redeem the property and become entitled to the possession thereof, and to continue in the performance of the contract as if no default had occurred. If the then owner of the contract so elects and the contract so provides, the buyer may be required to pay the entire balance of the purchase price, together with the costs and expenses of retaking the same. If the buyer pays such entire balance together with the costs and expenses he shall then have possession of and title to the property. If the property is perishable so that retention for ten days, as herein prescribed, would result in its destruction or substantial injury, the provisions of this section shall not apply and the buyer shall have no right of redemption.

Subdivision 4. Waiver provisions not valid. No act or agreement of the buyer before or at the time of the making of the contract, or any agreement or statement by the buyer in such contract, shall constitute a valid waiver of the provisions of this section, but the buyer, by an agreement in writing executed subsequent to his default in payment, may waive the right of redemption hereby given.

Subdivision 5. Application. This section shall not apply in any case where the conditional sale contract and the rights of the buyer thereunder shall be foreclosed by action in any court of this state.

§ 511.20 Register of deeds to accept filings; notice; exceptions; conditional sales. (1) Any bill of sale, instrument evidencing a lien on, or reserving title to personal property and satisfactions of liens on personal property, shall be filed with the register of deeds in the county in which the personal property is situate.

(2) Chattel mortgages, assignments, releases and satisfactions thereof, and instruments relating to the priority or status of a lien on personal property shall be filed with the register of deeds in the county in which the property is situate except in cities of the first class. Copies of any such instrument certified by any officer with whom it has been filed pursuant to law, may be filed in any other place wherein such property or any part thereof is situated at the date of such instrument or to which it or any part thereof may be thereafter removed.

(3) The filing of any such instrument shall operate as notice thereof to all subsequent purchasers and encumbrancers as to so much of said property as is situate in the counties or city where such instrument, or certified copy of any thereof, is filed.

(4) The provisions of paragraphs (2) and (3) shall not apply to conditional sales contracts.

§ 511.21 Filing; fees. Every register of deeds shall receive and file any such instrument, which shall be executed, witnessed, and acknowledged according to law, or a true copy thereof and shall immediately number and index the same, and certify on each instrument the exact time of receipt, which certificate shall

be prima facie evidence of the facts stated therein. No such instrument shall be removed from the office where filed until canceled, released, or satisfied. The fees for filing such instruments shall be 35 cents for each instrument and 25 cents for a certified copy thereof, when copy is furnished, this amount to be paid to the register of deeds at the time of filing, and such fee shall be retained by the register of deeds, as additional salary and compensation for filing such instruments. The register of deeds shall, upon request, furnish and certify an abstract of all such chattel mortgages, bills of sale, conditional sales contracts, assignments, releases, renewals, affidavits and all other instruments relating to any thereof on file in his office, giving the number of the instrument, date and time of filing, name of grantor, name of grantee, name of instrument, date of instrument, amount, and brief description of the property, upon payment of 25 cents for the first four entries and ten cents for each subsequent entry on each instrument abstracted and 25 cents for his certificate thereon, with a minimum fee of 25 cents, provided, that in each of the cases mentioned hereinabove, in any county having a population of over 500,000, the fee in each case shall be 50 cents. As amended L.1949, c. 504, § 1.

AIRCRAFT

Minnesota Statutes Annotated.

§§ 511.261–511.263. Repealed. L.1953, c. 721, eff. Jan. 1, 1954.

§ 511.264. Aircraft, evidence of title ownership. Every owner of aircraft residing in this state shall file evidence of title ownership with the State Commissioner of Aeronautics. As amended L.1953, c. 721, eff. Jan. 1, 1954.

§ 511.265. Lien interest, evidence of. The holder of any title, mortgage or conveyance intended to operate as a mortgage or any instrument which affects the interest in, or title to, any aircraft owned by residents of this state shall file evidence of such lien interest with the State Commissioner of Aeronautics and shall renew such filing in accordance with the general laws of this state respecting mortgages or conveyances and instruments having the force and effect of interest in or lien against chattels. As amended L.1953, c. 721, eff. Jan. 1, 1954.

§ 511.266. Title ownership; copy filed. A true copy of such title ownership or instrument affecting title to or interest in aircraft as may be filed with the United States Civil Aeronautics Administrator accompanied by an affidavit by the person presenting such document for filing that it is a true copy of such instrument recorded with the federal agency and that the consideration of such instrument was actual and adequate and that the same was given in good faith for the purposes set forth in such instrument shall be deemed sufficient evidence of title to or interest in the aircraft for recording purposes in this state. No officer shall receive such instrument or file the same in his office until such affidavit is made and annexed thereto. The

affidavit shall be in a form approved by the Attorney General and the Commissioner of Aeronautics shall supply copies of such approved affidavit forms. Every person who shall knowingly make a false statement in any such affidavit, upon conviction thereof, shall be deemed guilty of the crime of perjury. As amended L.1953, c. 721, eff. Jan. 1, 1954.

§ 511.267. Nonresident title owner. When the title owner of aircraft having permanent situs in this state, or being operated from airports or landing fields of this state as a main point of such operation, is a non-resident, every instrument intended as a mortgage, lien, or encumbrance thereon, or a true copy thereof with affidavit attached thereto as provided in Section 3 hereof shall be filed with the State Commissioner of Aeronautics. As amended L.1953, c. 721, eff. Jan. 1, 1954.

§ 511.268. Void as to creditors. Every title, or instrument in title document, or lien document, which shall hereafter be made which shall not be accompanied by an immediate delivery and followed by an actual and continued change of possession of the aircraft, shall be absolutely void as against creditors of the seller or lien giver and as against subsequent bona fide purchasers or lien holders in good faith, unless the title, or interest in title, mortgage or lien document, has been recorded as provided in this Act. As amended L.1953, c. 721, eff. Jan. 1, 1954.

§ 511.269. Recordation. Recording of instrument affecting title to, or interest in, aircraft, made mandatory in Sections 1, 2, 3 and 4 of this Act, shall be deemed notice to all persons and compliance with the general laws of this state respecting title affecting chattels. Aircraft shall be deemed chattels for the purpose of recording instruments relating thereto, and shall be subject to all other provisions of the laws of this state respecting chattels, excepting that all aircraft shall be subject to the payment of licensing or property taxes as otherwise provided in the laws of this state governing the registration and licensing of aircraft and the payment of airline flight property taxes. As amended L.1953, c. 721, eff. Jan. 1, 1954.

§ 511.271. Records, kept by Commissioner of Aeronautics. The Commissioner of Aeronautics shall keep suitable books and record at large, word for word, all instruments left with him for recording; keeping separate records of titles, mortgages, liens, and other instruments. He shall keep an alphabetical index where he shall record under the proper letter of the alphabet the name of each grantor and grantee in any instrument left for recording, or of a discharge of any mortgage indicating by entry in the margin of the record thereof, which entry shall show the book and page of record where the mortgage so discharged is recorded. As amended L.1953, c. 721, eff. Jan. 1, 1954.

§ 511.272. Fees for recordation. The Commissioner of Aeronautics may charge a fee of $.50 for the recordation of each mortgage, lien, or other document affecting title and a fee of $.50 for each abstract of title or registered property report, said fees to be deposited in the general revenue fund. As amended L.1953, c. 721, eff. Jan. 1, 1954.

§ 511.273. Inspection of records. The Commissioner of Aeronautics shall exhibit free of charge during the hours that his office is required by law to be open any of the records or papers in his official custody to the inspection of any person demanding the same either for examination, or for the purpose of making or completing an abstract or transcript therefrom; but no such person shall have the right to have or use such records for the purpose of making or completing abstracts or transcripts thereof so as to hinder or interfere with the Commissioner in the performance of his official duties. As amended L.1953, c. 721, eff. Jan. 1, 1954.

§ 511.274. Abandoned aircraft. Aircraft which shall have been, or remained, abandoned or unclaimed by any record owner or title holder, mortgage or lien holder, for a period of three months from the date of such abandonment, shall be removed or impounded by the state agency governing aeronautics, or their [its] duly appointed officer for such purposes, and held for a period of 45 days after personal notice by registered mail to the registered owner and lien holders as the records of the U. S. Civil Aeronautics Administrator shall show, after which period the said abandoned or unclaimed aircraft may be sold at public auction by the Sheriff of the County where the aircraft was located at the time of abandonment in the same manner and after the same notice required in sales of property seized on chattel mortgage. Any surplus received at said sale, shall, after all charges incidental to the Sheriff's sale shall have been paid and satisfied, and all costs of sale have been deducted, be placed in an escrow fund of the state agency governing aeronautics, in trust for the recorded title or lien holders, for a period of three years, for distribution as may be ordered by a court of record of this state in an action to determine the rights and priorities of claimants thereto. At the expiration of such three year period the surplus, if any, not so distributed under court order, shall be deposited in the state funds earmarked for aeronautics. Sheriff's deed executed at such public auction shall be filed in the County where the public auction sale was effected, and a true copy thereof, with affidavit annexed thereto executed by the Sheriff stating the time, place, and circumstances of the sale thereof at public auction, shall be forwarded by said Sheriff by registered mail to the state agency governing aeronautics which shall register the instrument on their [its] record and forward it to the U. S. Civil Aeronautics Administrator for recording in their [his] register. As amended L.1953, c. 721, eff. Jan. 1, 1954.

§ 511.275. Limitation of application. The provisions of this act shall not apply to any aircraft used or useful in any commercial flying and owned or operated by an air carrier pursuant to a certificate of public convenience and necessity issued by the federal government. As amended L.1953, c. 721, eff. Jan. 1, 1954.

Railroad Equipment

Minnesota Statutes Annotated.

§ 222.15 Rolling stock; lien for purchase money. In any contract for the purchase and sale of railroad equipment or roll-

ing stock, whether deliverable at once or at future stated times, by the terms of which the purchase money is to be paid wholly or partly after such delivery, it may be agreed that the title to such property shall not pass to the vendee until the purchase price shall have been fully paid, or that the vendor shall have and retain a lien thereon for the unpaid purchase money, notwithstanding delivery thereof. The term of credit for purchase money shall not exceed 15 years from the execution of the contract.

CRIMINAL PROVISIONS

Minnesota Statutes Annotated

§ 621.21 Selling or concealing mortgaged chattels. Every person who, with intent to place mortgaged personal property beyond the reach of the mortgagee or his assigns, shall remove or conceal, or aid or abet in removing or concealing, any such property, and any mortgagor of such property who shall assent to or knowingly suffer such removal or concealment, or, at any time before the debt secured by a chattel mortgage has been fully paid, shall sell, convey, or in any manner dispose of the personal property so mortgaged, or any part thereof, without the written consent of the mortgagee or his assigns, or without informing the person to whom he shall sell, convey, or dispose of the same that it is mortgaged, and the true amount then due on the debt secured by such mortgage, shall be punished by imprisonment in the state prison or county jail for not more than one year, or by fine of not more than $500.

"Chattel mortgage," within the meaning of this section, shall include every written instrument, whether in form a chattel mortgage or contract of conditional sale, whereby the title of personal property therein described is mortgaged, held, or reserved as security for a debt; mortgaged personal property shall include all personal property which is described in or covered by any such instrument; and the provisions and penalties of this section shall apply to all vendors and vendees of personal property, the title to which is so held or reserved, in the same manner and with the same force and effect as applicable to mortgagors and mortgagees.

When, in any prosecution under this section, it shall appear that default has occurred in the payment of the debts secured by the mortgage or conditional sale contract, and it shall further appear that the mortgagor or conditional vendee has failed or refused to reveal the location of the mortgaged property or the property to which the title was reserved, it shall then be considered as prima facie evidence that the mortgagor or conditional vendee has removed, concealed, or disposed of the property.

In any prosecution under this section, it shall be a sufficient allegation and description of the mortgage and the mortgaging of personal property to state that such property was duly mortgaged by a certain chattel mortgage, giving the date thereof and the names of the mortgagor and the mortgagee.

MISSISSIPPI

Sections of Hemingway's Annotated Code 1917 are now contained in Code 1942 as follows:

Hemingway's	1917,	§ 3121	1942,	§	266
"	"	§ 2289	"	"	§ 863
"	"	§§ 6732-6735	"	"	§§ 7753-7756
"	"	§§ 990, 992	"	"	§§ 2250, 2252

CONDITIONAL SALES GENERALLY

Code 1942

§ 2250. Larceny—removing property subject to lien out of state.—If any person shall move, or cause to be removed, to any place beyond the jurisdiction of this state, any personal property which shall at the time of such removal be under written pledge, or mortgage, or deed of trust, or conditional sales contract, or lien by judgment, or any other lien in this state, with intent to defraud the pledgee, mortgagee, trustee, cestui que trust, conditional vendor, or creditor, he shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than one thousand dollars ($1,000.00) or imprisoned in the county jail not more than twelve (12) months, or both.

§ 2252. Larceny—removing property subject to lien out of the county—selling.—Any person who shall remove, or cause to be removed, or aid or assist in removing from the county in which it may be, any personal property which may be the subject of a pledge, mortgage, deed of trust, conditional sales contract, lien of a lessor of lands, or lien by judgment, or any other lien of which such party has notice, without the consent of the holder of such encumbrance or lien, or who shall conceal or secrete such property, or who shall sell or dispose of the same or any part thereof without the consent of the mortgagee or beneficiary, or conditional vendor, whether any of these acts shall be done before or after the maturity of the debt secured by the lien, and shall not immediately discharge such encumbrance or lien or pay to the holder of such lien or encumbrance the value of such property in event same is less than the amount of such lien or encumbrance, shall, upon conviction, be imprisoned in the county jail not more than one year, or be fined not exceeding the value of such property, or both.

MISSOURI

Sections of Revised Statutes 1919 are now contained in Vernon's Annotated Missouri Statutes as follows:

R. S. 1919, §§ 2256, 2282, 2284, 2285..V.A.M.S. §§ 428.080, 428.100, 428.110, 443.460
" " " §§ 10117, 10118, 10120.... " " " " §§ 391.200, 391.210, 391.220
" " " § 3348 ..... " " " " § 561.570

R.S.1919, § 10119 was repealed by Laws 1939, p. 287, § 1.

Conditional Sales Generally

Vernon's Annotated Missouri Statutes

§ 443.480. **Certification of filing of chattel mortgage on motor vehicles—release—fee—exemptions.**—It shall be the duty of the recorder of deeds, on request of the mortgagee, or his assignee, to certify on the certificate of title to the mortgaged motor vehicle, that such chattel mortgage has been filed showing the date, the amount of the mortgage and the name of the payee. When such chattel mortgage is released it shall be the duty of the recorder to so show on the certificate of title. In all counties now or hereafter having a population of 300,000 inhabitants or less the recorder shall receive for services herein provided a fee of twenty cents; in all counties now or hereafter having a population of 300,000 inhabitants or more the recorder shall receive for services herein provided a fee of thirty cents. A mortgage on a motor vehicle shall not be notice to the whole world, unless the record thereof is noted on the certificate of title to the mortgaged motor vehicle, as herein provided; provided, however, that the provisions of this section shall not apply to chattel mortgages given to secure the purchase price or any part thereof or to a motor vehicle sold by the manufacturer or their distributing dealers, or to a chattel mortgage given by dealers to secure loans on the floor plan stock of motor vehicles. (R.S.1939, § 3488, A.L.1941 p. 327, A.L.1947, V. II, p. 200.)

Railroad Equipment

Vernon's Annotated Missouri Statutes

§ 391.200. **Sales of railway equipment and rolling stock—conditional sales.**—In any contract for the sale of railroad or street railway equipment, or rolling stock, it shall be lawful to agree that the title to the property sold, or contracted to be sold, although possession thereof may be delivered immediately, or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money; and in any contract for the leasing or hiring of such property, it shall be lawful to stipulate for a conditional sale thereof at the termination of such contract, and that the rentals or amounts to be received under such contract may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase

price shall have been paid in full and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee; provided, that no such contract shall be valid as against any subsequent judgment creditor, or any subsequent bona fide purchaser for value and without notice, unless

(1) The same shall be evidenced by an instrument executed by the parties, and duly acknowledged by the vendee or lessee or bailee, as the case may be, or duly proved before some person authorized by law to take acknowledgment of deeds, and in the same manner as deeds are acknowledged or proved;

(2) Such instrument shall be filed for record in the office of the secretary of state;

(3) Each locomotive engine or car so sold, leased or hired, or contracted to be sold, leased or hired, as aforesaid, shall have the name of the vendor, lessor or bailor plainly marked on each side hereof, followed by the word "owner," or "lessor," or "bailor," as the case may be, which mark or marks shall be effaced immediately upon the payment or satisfaction of the indebtedness or encumbrance thereon; and every corporation, person or persons, which shall fail, neglect or refuse to comply with this provision, shall forfeit and pay for such failure, neglect or refusal the sum of five dollars for every day the same shall be continued, for each piece of property so marked, to be sued for and recovered in the name of the people of the state, by the attorney general, in any court of cognizance thereof, to be paid to the state collector of revenue. (R.S.1939, § 5312, A.L.1947, V.I, p. 234).

§ 391.210. Conditional contracts of sale or lease to be recorded.—The contracts herein authorized shall be recorded by the secretary of state in a book of records to be kept for that purpose. And on payment in full of the purchase money, and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect may be made by the vendor, lessor or bailor, or his or its assignee, which declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument, to be acknowledged by the vendor, lessor or bailor or his or its assignee, and recorded as aforesaid. And for such services the secretary of state shall be entitled to a fee of twenty-five dollars, and one dollar in addition for every hundred words, in excess of one thousand words, for recording each of said contracts, and each of said declarations, and a fee of ten dollars for noting such declaration on the margin of the record; and all such fees shall be paid by him to the state collector of revenue who shall deposit same to the credit of the "seminary fund". (R.S.1939, § 5313, A.L.1947, V.I, p. 234).

§ 391.010. Requirements for incorporating street railway companies.—1. Any number of persons, not less than five, may form a company for the purpose of constructing, maintaining and operating a street railroad for public use in the conveyance of persons, mail and express parcels; and for that purpose may make

and sign articles of association in which shall be stated the name of the company, the number of years the same is to continue, the city and county in which the road is to be constructed or maintained and operated, the amount of the capital stock, common and preferred, of the company, and the number of shares of which said capital stock shall consist, and the names and places of residence of the directors, not less than five nor more than thirteen in number, who shall manage its affairs for the first year and until others are chosen in their places. Each subscriber to such articles of association shall subscribe thereto his name, place of residence and the number of shares of stock he agrees to take in said company.

2. When one-half of the capital stock shall have been subscribed and ten per cent paid thereon in good faith to the directors named in said articles of association, and an affidavit annexed thereto, made by at least three of the directors named therein, that one-half of the stock of the said proposed corporation has been in good faith subscribed, and ten per cent of the amount so subscribed has been paid, and that it is intended in good faith to construct or maintain and operate the road mentioned in such articles of association, the said original articles of association shall be recorded in the office of the recorder of deeds of the county or city in which the corporation is to be located and then be filed in the office of the secretary of state, and thereupon the said association shall by the name mentioned in the said articles of association become a body politic and corporate with the powers, rights and franchises, herein specified; provided, the said articles of association shall not be filed and recorded until such association or corporation shall pay to the state collector of revenue fifty dollars for the first fifty thousand dollars or less of the capital stock of the corporation, and a further sum of five dollars for every additional ten thousand dollars of the capital stock. (R.S.1939, § 5315, A.L.1947, VI, p. 234).

MONTANA

Adopted the Uniform Commercial Code in 1963, to take effect Jan. 2, 1965, Article 9 of which supersedes existing conditional sales statutes in respect to transactions entered into on and after said date. See R.C.M.1947, §§ 87A-1-101 to 87A-10-103.

NEBRASKA

Sections of Revised Statutes 1913 are now contained in Revised Statutes 1943 as follows:

R. S. 1913,	§§ 2636, 2637	R. S. 1943,	§§ 36-207, 36-208
" " "	§§ 545, 546	" " "	§§ 69-301, 69-302
" " "	§§ 2638, 2639	" " "	§§ 36-209, 36-210
" " "	§§ 534, 535	" " "	§§ 69-109, 69-110

Conditional Sales Generally

Revised Statutes 1943.

§ 36-207. Sale, lease, or contract upon condition; condition void, when. Where a vendee or lessee of personal property,

except motor vehicles, obtains actual possession pursuant to a contract of sale or lease containing a stipulation which makes the transfer of title or ownership depend on any condition, such stipulation shall not be valid against any purchaser, judgment creditor or mortgagee of the vendee or lessee without notice of such stipulation unless the said contract or lease be in writing signed by the vendee or lessee and said contract or lease or a copy thereof be filed in the office of the clerk of the county within which such vendee or lessee resides, or if the vendee or lessee is a nonresident of the state in the office of the clerk of the county where the property is located. Such contract or copy shall set forth the names of the vendor and vendee, or lessor and lessee, a description of the property transferred, and the full and true interest of the vendor or lessor therein. All such sales and transfers shall cease to be valid against purchasers in good faith, judgment or attaching creditors, or subsequent mortgagees without notice at the expiration of five years unless such vendor or lessor shall, within thirty days prior to the expiration of the five years from the date of such sale or transfer, file said contract, or lease, or a copy thereof, in the office of said clerk, and said vendor or lessor may preserve the validity of his said sale or transfer of personal property by an annual refiling of a copy of said contract or lease in the same manner. As amended L.1947, c. 130.

§ 36-208. Sales contracts; copy or assignment; county clerk's filing fee. The county clerk, on presentation, shall file such copy, or assignment thereof, in his office, and index the same in the same manner as chattel mortgages are required to be indexed. He shall receive therefor a fee of fifty cents; and for certified copies of such instruments so filed, twenty cents for each one hundred words. As amended L.1949, c. 93, § 8.

Criminal Provisions

Revised Statutes 1943.

§ 69-111. Mortgaged property; failure to account or produce for inspection; penalty. Any person who, after having conveyed any article of personal property to another by mortgage, shall, during the existence of the lien or title created by such mortgage, fail to give, from time to time upon the demand of the mortgagee, an accounting for such mortgaged property, or who, when the mortgagee has reason to believe his security insufficient or when the mortgagor requests an extension of the time of payment, shall fail, on demand of the mortgagee or his agent, to identify and exhibit for inspection the mortgaged property at reasonable hours; or who, in case of loss or death of such mortgaged articles, shall fail to produce within ten days after knowledge of the loss or death, notice in writing to the mortgagee of such death or loss, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than five dollars nor more than one hundred dollars, or imprisoned in the county jail not exceeding thirty days.

§ 69-303. Conditional vendee; property; removal from county; penalty. Any person who removes, or causes to be removed, any article of personal property, purchased under a written conditional sale contract, out of the county within which such personal property was situated at the time the same was purchased without the written consent of the vendor, and before the full purchase price is paid, in violation of the express terms of a written conditional sale contract prohibiting such removal, and with the intent to deprive the vendor of his security, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding one hundred dollars, or imprisoned in the county jail not exceeding three months, or both.

NEVADA

Revised Laws 1912, §§ 1081, 5501–5503, 6700, are now contained in Compiled Laws 1929, §§ 1538, 9048–9050, 10387, respectively.

Revised Laws 1912, § 1080, was repealed by Compiled Laws 1929, § 996. The subject matter is now covered by Compiled Laws 1929, §§ 994, 995 and Compiled Laws Supplement 1941, §§ 985–989.

Laws 1913, c. 278, §§ 1–3, are now contained in Compiled Laws 1929, §§ 6300–6302.

CHATTEL MORTGAGES

Compiled Laws, 1929.

§ 994. Mortgages on live stock—requirements of such mortgage. § 9. A chattel mortgage creating a lien upon live stock of any kind may provide that the mortgagor may, in the ordinary course of business, sell the live stock or any part thereof, upon which mortgage lien is given, provided that such mortgage:

1. Shall require the mortgagor at all times until the mortgage debt is paid to own and maintain, subject to the lien of such mortgage, the same number of live stock of the same kind as that described in said mortgage and made subject to the lien thereof; and

2. Shall require the mortgagor to use the proceeds received from the sale of any such live stock for:

a. The carrying on of the business of which said live stock is a part; or

b. The purchase of live stock of a similar kind as that covered by said chattel mortgage; or

c. The payment of the mortgaged debt.

§ 995. Property mortgaged may be seized under attachment or execution; procedure.—Officer may sell property, when. § 10. Any personal property mortgaged as aforesaid, may be seized under attachment or execution, and the surplus, over and above the mortgage debt, secured to any other creditor of the mortgagor by serving upon the mortgagor and mortgagee, or, in his absence from the county, upon his or their agent or other person in charge or possession of such personal property, a copy of the attachment or execution, or, in case no such person

can be found in the county in charge or possession thereof, then by filing a copy of the writ of attachment or execution in the office of the county recorder of the county where such property is situate, with a notice endorsed thereon by the officer executing the same, to the effect that such property is so attached. But the possession of mortgaged personal property shall not be taken from the mortgagor or mortgagee unless full payment of the mortgagee's demand be first made, which, if done by the attaching or executing creditor of the mortgagor, shall entitle him to hold such personal property and the possession thereof under his levy for repayment to him of the amount so paid, in addition to his own individual demand; and any officer executing any execution is hereby authorized to sell such property for the amount of such mortgage demand, in addition to the amount of execution, and out of the proceeds of sale to first satisfy such mortgage demand. In case of such levy of attachment or execution upon such mortgaged personal property, when the amount of the mortgage demand is not paid to the mortgagee, the officer may expose such property for sale, and may sell the same subject to the rights of the mortgagee under the mortgage, and the purchaser shall take the property subject to such rights and subject to the possession of the parties to the mortgage.

Compiled Laws Supp.1931–1941.

§ 985. Mortgages on movable property—exceptions—crops.—§ 1. Mortgages may be made upon all agricultural crops, livestock, and upon any and all kinds of personal property and chattels except articles of wearing apparel and personal adornment, and upon the stock in trade of merchants.

Crops. A chattel mortgage upon an agricultural crop may be executed as well before as after the crop is planted, and may be made for all agricultural crops planted and grown by the mortgagor during the life of the mortgage and until the obligation or debt for which the mortgage is given as security is extinguished or discharged; and when executed before the crop is planted, it shall be expressed in the mortgage that it is the intention of the parties that the same shall take effect upon the crop when planted. The lien of the mortgage upon an agricultural crop shall continue until after the crop shall be harvested, thrashed or baled, or otherwise prepared for market and delivered to the mortgagee or his order. For purposes of mortgaging crops, fruits, berries, emblements, and industrial crops (either annual or perennial), and either grown or growing, or to be planted, produced or grown within two years from the execution of any such mortgage, and things attached to or forming part of the land which may be severed therefrom under the terms of any such mortgage, shall be deemed to be personal property and mortgageable as such and in the manner provided by law.

[Sec. 2.] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

[Sec. 3.] This act shall become effective from and after its passage and approval. As amended, Stats.1935, 242; Stats.1939, 204.

§ 986. **Chattel mortgage defined.**—§ 2. Every mortgage, deed of trust or other instrument which creates a lien upon personal property, crops, or chattels, even though real property be included therein, is a chattel mortgage within the terms of this act, and when the same is executed, as required by this act, shall be entitled to filing as provided for in this act; provided, however, that the recording of any such instrument in the manner provided, by law shall, for the purpose of the act, be equivalent to filing the same in any county where such instrument shall have been so recorded. As amended L.1953, c. 76.

§ 987. **Mortgage void unless made in good faith and filed and indexed.**—§ 3. A mortgage of personal property or crops is void as against creditors of the mortgagor and subsequent purchasers or encumbrancers of the mortgaged property in good faith and for value, unless the mortgage, or a copy thereof certified to be such by a notary public or other officer authorized to take acknowledgments, or an executed counterpart of such mortgage, is filed and alphabetically indexed in the proper book of indexes, but not for recordation, in the office of the recorder of the county where the mortgagor resides at the time the mortgage is executed, or in case the mortgagor is a nonresident of this state, in the office of the recorder of the county or counties where the property mortgaged is located at the time the mortgage is executed.

A mortgage of personal property or crops when so filed and alphabetically indexed in the proper book of indexes, operates as constructive notice to all persons of the contents thereof.

[Sec. 2.] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

[Sec. 3.] This act shall become effective upon its passage and approval. As amended, Stats.1933, 260; 1935, 243; 1937, 162.

§ 988. **Mortgage must be filed in office of county recorder.**—§ 4. A mortgage of personal property or crops must be filed in the office of the county recorder of the county in which the mortgagor resides if the mortgagor be a resident of this state, and it shall also be filed in the county in which the property mortgaged is situated at the time of the execution thereof. Where the mortgagor is a corporation, said mortgage shall be filed in the county in which said corporation has its principal office, and where the mortgagor is a copartnership it shall be sufficient if said mortgage be filed in the county in which the principal place of business of said copartnership is located.

When mortgagor is nonresident.—If the mortgagor is a nonresident of this state, said mortgage shall be filed in the office of the recorder of the county or counties within this state where the property mortgaged, or any part thereof, is located at the time the mortgage is executed. As amended, Stats.1933, 260; 1935, 243.

§ 989. **Filing of mortgage is notice to all parties—Proviso as to nonresident.**—§ 5. Every chattel mortgage executed as re-

quired by this act, and filed with the recorder of the proper county or counties in the manner prescribed in this act shall, from the time of filing the same with the county recorder, impart notice to all the world, and subsequent purchasers and mortgagees shall be deemed to purchase and take with notice; *provided,* when personal property mortgaged by a nonresident of this state is removed from the county in which it is situated at the time of the execution of the mortgage, the lien of the mortgage shall not be affected thereby for thirty days after such removal; but, after the expiration of such thirty days, said property mortgaged is exempt from the operation of the mortgage, except as between the parties thereto (and except as may otherwise be provided by law), until either:

(1) The mortgagee causes the mortgage to be filed in the manner permitted by law in the county to which the property has been removed; or

(2) The mortgagee takes possession of the property as prescribed in the next paragraph.

Except as may otherwise be provided by law as to any particular class of personal property, if the mortgagor removes or permits the removal of the mortgaged property from the county in which it was situated at the time it was mortgaged, the mortgagee may take possession and dispose of the property as a pledge for payment of the debt, though the debt is not due.

[Sec. 10.] It is hereby expressly provided that in the event any section of this act or of the act of which this act is amendatory, shall be held by any court to be unconstitutional, void or inoperative for any cause, such holding shall not affect any other section or provision contained in this act or the act of which this act is amendatory.

[Sec. 11.] All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

[Sec. 12.] This act shall become effective from and after its passage and approval. As amended, Stats.1933, 260; 1935, 244.

§ 990. Mortgage on migratory chattels—Report to Secretary of State. § 6. [Repealed.] Stats.1935, 244.

§ 991. Form of certificate to Secretary of State—Secretary of State to keep indexes of mortgages of migratory property. § 7. [Repealed.] Stats.1935, 244.

§ 992. Filing by Secretary of State imparts notice to all parties. § 7a. [Repealed.] Stats.1935, 244.

§ 996.01. Mortgage lien continuous until released.—§ 1. Where a mortgage of livestock, or other animate chattels, or crops is taken to secure mainly, or among other things, funds that may be advanced thereafter from the mortgagee or assigns to the mortgagor, mortgagors or any of them, which funds to be advanced shall be for the purpose of financing the mortgagor, mortgagors or any of them during any regular production

period involving the property or any part thereof encumbered by or described in said mortgage, or for other particular purposes, and during which period or periods the mortgagor, mortgagors or any of them may need and request such financing, such mortgage shall be and continue to be (subject to the limitation of six years except as between parties as provided by law), until formally released or discharged in the recorder's office, a lien and encumbrance upon the property described therein, of status, effect, rank and standing equal to that established initially and thereafter obtained by such mortgage, as security for the repayment of all sums that may be or become due under such mortgage, and all obligations secured thereby, even though during such period or periods of financing the debt or debts, obligation or obligations secured by such mortgage, as they exist at any particular time, may have been repaid in full to the mortgagee or assigns, from proceeds of sale of the mortgaged property, or otherwise, and all creditors, encumbrancers and purchasers of the mortgagor, mortgagors or any of them of any such mortgaged property shall be bound thereby and held to have notice of the continuation of the mortgage lien, provided such mortgage has been executed and filed or recorded as required by law, or such parties have actual notice thereof.

§ 996.02. Mortgage to protect subsequent loans or advances.— § 2. A mortgage of personal property or crops may be given to secure the repayment of sums that may be optionally or obligatorily advanced, expenditures that may be made, or indebtednesses or obligations that may be incurred subsequent to the execution of such mortgage. If the maximum amount, the repayment of which is intended to be secured by such mortgage, is expressed therein, such mortgage shall be and constitute a lien or encumbrance of rank, effect, status and standing equal to that established thereby initially and as it may thereafter obtain, as security for the repayment of any sums, expenditures, indebtednesses, and obligations, owing or due or becoming owing or due thereunder, up to and including such expressed maximum amount which shall be considered only as a limit of the debts, sums, expenditures, indebtednesses, and obligations that may be secured thereby at any one time, and not to include such as may have existed and been repaid or discharged thereunder. A mortgage of personal property or crops shall also constitute a lien or encumbrance of rank, effect, status and standing equal to that established initially or thereafter obtained thereby, as security for the repayment of all sums or amounts that are necessarily advanced or expended by the mortgagee or assigns, for the maintenance or preservation of the property, or any part thereof, described in such mortgage.

§ 996.03. Mortgage on livestock or other animate chattels.— § 3. A mortgage may be given of livestock, or other animate chattels, title to which is acquired by the mortgagor subsequent to the execution of the mortgage, through the use of funds loaned or to be loaned, or otherwise, the repayment of which is secured or to be secured in whole or in part by such mortgage, and it shall be a sufficient description of such livestock, or other

animate chattels, if the number thereof as nearly as may be reasonably ascertained at the time the mortgage is executed, the place where the same will be ordinarily located while owned by the mortgagor, the marks and brands that are or shall be placed upon the same, if any, and, as nearly as may be ascertained at the time the mortgage is executed, the general kind or class of the same, are stated in such mortgage. Any such mortgage, when duly executed and filed or recorded as required by law, shall constitute notice thereof to all parties.

§ 997.01. **Cost of sustaining livestock not to invalidate mortgage.**—§ 1. No mortgage of livestock, or other animate chattels, and hay, grain or other feed materials shall be invalid or deemed fraudulent in any particular because provision is contained therein, or otherwise, or because the mortgagee or assignee consents that the mortgagor may use or permit the use or consumption of such feed, forage and fodder crops or materials in caring for, preserving or preparing for markets or sale the livestock or other animate chattels covered thereby.

§ 998.01. **Life of mortgage of personal property; exception.**—§ 1. The lien of a mortgage of personal property or crops is extinguished, except as between the parties thereto, by a lapse of six years from the time such mortgage is executed; *provided, however,* that nothing herein shall be deemed to apply to any mortgage or other lien upon the personal property of any railroad or public utility, electrical, gas, water, telephone or telegraph corporation, given to secure the bonds thereof.

[Sec. 2.] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

[Sec. 3.] This act shall be in full force and effect from and after its passage and approval. As amended, Stats.1937, 96.

NEW HAMPSHIRE

Adopted the Uniform Commercial Code in 1959, to take effect July 1, 1961, Article 9 of which supersedes existing conditional sales statutes in respect to transactions entered into on and after said date. See RSA c 283-A

NEW MEXICO

Adopted the Uniform Commercial Code in 1961, to take effect Jan. 1, 1962, Article 9 of which supersedes existing conditional sales statutes in respect to transactions entered into on and after said date See 1953 Comp § 50A-1-101 et seq.

NEW YORK

Adopted the Uniform Commercial Code in 1962, to take effect Sept. 27, 1964 Article 9 of which supersedes existing conditional sales statutes in respect to transactions entered into on and after said date. See McKinney's Uniform Commercial Code, § 9-101 et seq.

NORTH CAROLINA

Sections of Consolidated Statutes 1919 are now contained in General Statutes 1943 as follows:

C. S. § 3312	G. S. § 47—23
" " § 2587	" " § 45—24 (repealed L.1949, c. 720, § 5)
" " § 3313	" " § 47.24
" " §§ 4287, 4288	" " §§ 14—114, 14—115

NORTH DAKOTA

Sections of Compiled Laws 1913 are now contained in Revised Code 1943 as follows:

C. L. 1913,	§ 6757	R. C. 1943,	51—0710				
" " "	§ 6758	" " "	35—0406				
" " "	§§ 4625, 4626	" " "	49—0912,	49—0913			
" " "	§ 10248	" " "	35—0126				

Railroad Equipment

Revised Code 1943.

49-0912. Conditional Sale of Railroad Equipment; Term. In all cases where railroad equipment and rolling stock shall be sold to any person, firm, or corporation to be paid for in whole or in part in installments, or shall be leased, rented, hired, or delivered on condition that the same may be used by the person, firm, or corporation purchasing, leasing, renting, hiring, or receiving the same, and that the title to the same shall remain in the vendor, lessor, renter, hirer, or deliverer of the same until the price agreed upon or rent for such property shall have been fully paid, such condition in regard to the title so remaining in the vendor, lessor, renter, hirer, or deliverer until such payments are fully made shall be valid to all intents and purposes as to subsequent purchasers in good faith and creditors. The term during which the installments or rents are to be paid shall not exceed fifteen years and such contract shall be in writing and acknowledged.

49-0913. Conditional Sale Contract; Where Recorded; Property; How Marked. A conditional sale contract affecting railroad equipment shall be recorded in the office of the secretary of state, and on each locomotive or car which may be sold or leased, the name of the vendor, lessor, or assignee of the vendor or lessor shall be marked in a conspicuous place followed by the word "owner" or "lessor," as the case may be

Criminal Provisions

Revised Code 1943.

35-0126. Destroying, Removing, Concealing, Selling Property Subject to Lien; Penalty. Every person having in his possession or under his control any personal property upon which there is known to him to be a subsisting lien, by operation of law, by contract, or conditional sale contract, who willfully destroys, removes from the county, conceals, sells, or in any manner disposes of such property or any part thereof otherwise than as prescribed by law, or materially injures the same without the written consent of the holder of the lien, is guilty of a misdemeanor if the value of the property does not exceed one hundred dollars, and shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment, and is guilty of a felony if the value of the property exceeds one hundred dollars.

OHIO

Adopted the Uniform Commercial Code in 1961, to take effect July 1, 1962, Article 9 of which supersedes existing conditional sales statutes in respect to transactions entered into on and after said date See R.C §§ 1301.01-1309.50

OKLAHOMA

Adopted the Uniform Commercial Code in 1961, to take effect Jan 1 1965 Article 9 of which supersedes existing conditional sales statutes in respect to transactions entered into on and after said date See 12A Okl.St.Ann § 1–101 et seq.

OREGON

Adopted the Uniform Commercial Code in 1961, to take effect Sept. 1, 1965 Article 9 of which supersedes existing conditional sales statutes in respect to transactions entered into on and after said date See ORS 71.1010 et seq

PENNSYLVANIA

Adopted the Uniform Commercial Code in 1953, to take effect July 1, 1954, Article 9 of which supersedes existing conditional sales statutes in respect to transactions entered into on and after said date See 12A P.S § 1-101 et seq.

PUERTO RICO

Laws 1916, No. 81, §§ 1–13, are now contained in Civil Code Appendix, No. 61, §§ 1–13.

CONDITIONAL SALES GENERALLY

Civil Code Appendix, No. 61.

Section 4.—(As amended by Act No. 88 of August 22, 1925, page 670.) Such contracts shall be filed in the municipality where the conditional vendor resides, if he resides in Porto Rico at the time of the execution thereof, and if not, in the municipality where such property is located at such time. The secretary of each municipality shall keep a register called "Registry of Conditional Sales", in which he shall record such contracts of conditional sales as are presented to him for that purpose. When a contract of conditional sale is presented to the secretary of a municipality, he shall immediately make an entry in said registry, stating the name of the conditional vendor, and of any other parties to said contract a brief statement of the movable goods and chattels transferred by said contract of conditional sale, the future event or contingency required to occur before the ownership of such goods and chattels shall pass from the vendor to the vendee, the amount due upon such contract and the time when due, the day, hour and minute of presentation, and a reference to the files where such contract, or a copy thereof as above provided, may be readily found. A separate index book shall be kept in which the names of the conditional vendors shall be entered at once in alphabetical order in a column marked "conditional vendors", and the names of the conditional vendees in another column marked "conditional vendees", and a reference therein shall be made to the

place in the registry of conditional sales where the record may be found; *Provided*, That when the object of said conditional sale is a motor vehicle, excepting motorcycles and traction engines, the contract shall be filed in the Department of the Interior of Porto Rico. The Commissioner of the Interior shall keep a register to be known as the conditional-sales register wherein shall be entered all contracts of conditional sales filed for such purpose. Upon presentation of a contract of conditional sale to the Commissioner of the Interior, he shall immediately make an entry in said register showing the name of the conditional vendor, the conditional vendee, and those of any other parties to said contract, mark of the vehicle, manufacturers thereof, motor number, horsepower of the motor, hour of presentation of the contract, day and year of the contract, of the event or contingency required to happen before ownership of said vehicles passed from the vendor to the vendee, the amount due on account of said contract, the date of expiration and a reference as to the files in which said contract, or a copy thereof, as hereinbefore prescribed, may be promptly found. A separate index shall be kept for the immediate entry in alphabetical order of the names of the conditional vendors in one column under the heading "Conditional Vendor", and the names of the conditional vendees in another column under the heading "Conditional Vendees", and reference shall be made in said index as to such part of the conditional-sale register where the entry may be found; *Provided, however,* That the Commissioner of the Interior shall make no transfer of licenses issued for a vehicle sold under contract of conditional sale until he shall have received an authenticated certificate issued by the vendor to the effect that the vendee has complied with all the requisites of said contract of conditional sale; *Provided, further,* That in cases of the recording of conditional sales of motor vehicles by the Department of the Interior, such fees as may accrue pursuant to Section 9 of this Act shall be paid to the Commissioner of the Interior in internal-revenue stamps

Section 6.—(As amended by act No. 40 of June 27, 1925, page 246.) Whenever articles are sold upon the condition that the title thereto shall remain in the vendor, or in some other person than the vendee, until the payment of the purchase price, or until the occurrence of a future event or contingency, the same may be retaken by the vendor, or his successor in interest, on the breach of the condition, and in such case they shall be retained for a period of thirty days from the time of such retaking, and during such period the vendee, or his successor in interest, may comply with the terms of such contract, and thereupon receive such property. After the expiration of such period, if such terms are not complied with, the vendor, or his successor in interest, may cause such articles to be sold at public auction. If such articles are not sold within thirty days after the expiration of such period, the vendee, or his successor in interest, may recover of the vendor the amount paid on such articles by such vendee or of his successor in interest under the contract for the conditional sale thereof, less a reasonable charge for the use of the said articles for the time they

were in the possession of the conditional vendee, or of his successor in interest; *Provided*, That to enable the conditional vendor to recover the movable goods or chattels, the object of the contract, for retention during the aforesaid term of thirty days, he shall file with the judge of such court as may have jurisdiction in the case, an affidavit showing that the conditional vendee has failed to observe the terms of the contract of sale and that the claim is made in good faith, and he shall attach to such affidavit a copy of the contract of conditional sale, containing a statement of its registration in the Conditional Sales Register hereby established. Upon receipt by the judge of the affidavit and of the copy of the contract, he shall cite the parties concerned to a hearing which shall be held within the ten days following the date of the citation, and after having called them orally to hear the case, if he deems the buyer has failed to comply with the condition, he shall issue an order directing the marshal to seize the claimed property which the marshal shall deliver to the conditional vendor, subject to the provisions of this Act. The marshal shall make due return on the back of the affidavit, of the fact of the delivery of the aforesaid movable goods or chattels, with a detailed description thereof, and shall deliver to the conditional vendee a copy of the affidavit and of the proceedings endorsed thereon, which shall show the place, date and hour of seizure, and he shall forward the original documents to the secretary of the court for entry on the docket. Upon receipt by the marshal of the court of the aforesaid affidavit, he shall collect three (3) dollars as fees which shall be paid by means of revenue stamps attached to and canceled on the said document, said sum to cover also the recording of the case in the office of the secretary of the court.

Section 10.—(As amended by Act No. 88 of August 22, 1925, page 670.) The Attorney General shall prepare the record books and blanks for use by the municipal secretaries and by the Commissioner of the Interior of Porto Rico, and shall prepare such rules and regulations as are necessary to carry out the provisions of this Act, and such records shall be kept under his supervision.

RHODE ISLAND

Adopted the Uniform Commercial Code in 1960, to take effect Jan. 2, 1962. Article 9 of which supersedes existing conditional sales statutes in respect to transactions entered into on and after said date. See Gen.Laws 1956, § 6A-1-101 et seq.

SOUTH CAROLINA

Civil Code 1912, §§ 705–707, 3542, 3740, are now contained in Code 1952, §§ 58–861, 60–251 to 60–255.1; 60–101, 60–156; 57–308, respectively, and Laws 1921, No. 40, § 1, is now Code 1952, § 60–256.

Criminal Code 1912, §§ 446, 447, are now contained in Code 1952, §§ 45–4, 45–157.

CONDITIONAL SALES GENERALLY

Code 1952.

§ 60-101. Conveyances, etc., valid as to purchasers, etc., only when recorded

All deeds of conveyance of lands, tenements or hereditaments, either in fee simple or for life, all deeds of trust or instruments in writing conveying either real or personal estate, creating a trust in regard to such property or charging or encumbering it, all mortgages or instruments in writing in the nature of a mortgage of any property, real or personal, all marriage settlements or instruments in the nature of a settlement of a marriage, all leases or contracts in writing made between landlord and tenant for a longer period than twelve months, all statutory liens on buildings and lands for materials or labor furnished on them, all statutory liens on ships and vessels, all certificates of renunciation of dower, all contracts for the purchase and sale of real property, all assignments, satisfactions, releases and contracts in the nature of subordinations, waivers and extensions of landlords' liens, laborers' liens, sharecroppers' liens or other liens on real or personal property, or both, created by law or by agreement of the parties and generally all instruments in writing required by law to be recorded in the office of the register of mesne conveyances or clerk of court in those counties where the office of register of mesne conveyances has been abolished or in the office of the Secretary of State delivered or executed on or after August 1, 1934, except assignments and satisfactions of conditional sale contracts securing the purchase money of motor vehicles or refrigerators, shall be valid so as to affect the rights of subsequent creditors (whether lien creditors or simple contract creditors) or purchasers for valuable consideration without notice only from the day and hour when they are recorded in the office of the register of mesne conveyances or clerk of court of the county in which the property affected is situated, in the case of real estate or in the case of personal property, in which the owner of such property resides, if he resides within the State, or, if he resides without the State the county in which such personal property is situated at the time of the delivery or execution of such deed or instrument.

But chattel mortgages or instruments in the nature thereof, securing the payment of the purchase price or any portion thereof of household furniture and furnishings, appliances, refrigerators, radios, and musical instruments, shall be valid against the lien of a landlord for rent when so recorded within five days from the date of the execution thereof.

RAILROAD EQUIPMENT

Code 1952.

§ 60-251. Recordation of deeds, etc., of railroads.

All deeds of conveyance of railroad beds, tracks and rights of way, cars, locomotive engines, rolling stock and other railway equipment, all leases and conditional sales of, and all other instruments in writing relating to, such property in this State, other than mortgages and deeds of trust, delivered or executed on or after January 1, 1894 shall be valid, so as to affect from the time of such delivery or execution the rights of subsequent creditors

or purchasers for valuable consideration without notice, only when filed in duplicate within forty days from the execution and delivery thereof in the office of the Secretary of State. But the above mentioned deeds, leases, mortgages and other conditional sales and instruments in writing, if filed subsequent to the expiration of such period of forty days, shall be valid to affect the rights of subsequent creditors and purchasers for valuable consideration without notice from the date of such record only, one of the copies of any such instrument so filed shall be given its proper file number, indexed and retained in the office of the Secretary of State and the other shall be properly endorsed, giving the file number under which it is to be found and returned.

TENNESSEE

Adopted the Uniform Commercial Code in 1962, to take effect July 1, 1964. Article 9 of which supersedes existing conditional sales statutes in respect to transactions entered into on and after said date. See T C A Title 47

TEXAS

Sections of Complete Texas Statutes 1920—Civil Statutes are contained in Vernon's Annotated Civil Statutes as follows:

Civ. St. 1920, arts. 5654–5662 Vernon's Ann. Civ. St. arts. 5489, 5490, 5492–5499
" " " art. 6841.. " " " " " arts. 3914, 5490, 6645

Section of Complete Texas Statutes 1920—Penal Code is contained in Vernon's Annotated Penal Code as follows:

St. 1920, P. C. art. 1430.....Vernon's Ann. P. C. art. 1558

CONDITIONAL SALES GENERALLY—RAILROAD EQUIPMENT

Vernon's Annotated Civil Statutes.

Art. 5490. Chattel mortgages.—Every chattel mortgage, deed of trust, or other instrument of writing, intended to operate as a mortgage, or lien upon personal property, and every transfer thereof which shall not be accompanied by an immediate delivery and be followed by an actual and continued change of possession of the property mortgaged, pledged, or affected by such instrument, shall be absolutely void as against the creditors of the mortgagor or person making same, as against subsequent purchasers and mortgagees or lien holders in good faith, unless such instrument, or a true copy thereof, shall be forthwith deposited with and filed in the office of the County Clerk of the county where the property shall then be situated, or if the mortgagor or person making the same be a resident of this State, then, of the county of which he shall at that time be a resident; provided, that written contracts for the conditional sale, lease or hire of railroad equipment and rolling stock, by which the purchase money is therein agreed to be paid at any time or times after the date of such contract, with a reservation of title or lien in the vendor, lessor or bailor until the same has been fully paid, and chattel mortgages, deeds of trust and other instruments of writing intended to operate as a mortgage or lien upon railroad equipment and rolling stock as security for any indebtedness, shall be recorded in the office of the Secretary of State, in a

book of records to be kept by him for that purpose; and on payment in full of the purchase money or indebtedness and the performance of the terms and conditions stipulated in any such contract, chattel mortgage, deed of trust or other instrument, a declaration in writing to that effect may be made by the vendor, lessor, bailor, mortgagee or lien holder, or his or its assignee, which declaration may be made on the margin of the record of the contract, chattel mortgage, deed of trust or other instrument of writing, duly attested, or it may be made by a separate instrument to be acknowledged by the lessor, vendor, bailor, mortgagee or lien holder, or his or its assignee, and recorded as aforesaid; and for such services the Secretary of State shall be entitled to a fee of Five Dollars ($5) for recording each of said written contracts, chattel mortgages, deeds of trust, and other instruments of writing, and each of said declarations, and a fee of One Dollar ($1) for entering such declaration on the margin of the record. As amended Acts 1947, 50th Leg., p. 459, ch. 261, § 1.

Art. 5494. [5658] Chattel mortgage record. The county clerk shall keep a book in which shall be entered a minute of all such instruments, which shall be ruled off into separate columns, with heads as follows: Time of reception, name of mortgagor, name of mortgagee or trustee and cestui que trust, date of instrument, amount secured, when due, property mortgaged, and remarks; and the proper entry shall be made under each of such heads. Under the head of "property mortgaged" it will be sufficient to enter a general description of the property pledged and the particular place where located, and an index shall be kept in the manner as required for other records. When the instrument is the transfer of a lien the county clerk shall enter on the margin, or under the head "remarks" in connection with the original record of registration of such lien, a notation, "transferred by ..... to ..... this ..... day of ....., 19....," filling the blanks with the names of the parties and the date of such transfer, and note the date it is filed for registration. Provided, however, that the failure of the transferee of any note or lien to have the records so noted shall not operate as a release of the lien then in existence in any manner whatsoever to affect the validity of said lien or to operate so as to give the transferee of said note or lien any less rights than those held by the original payee in the note. [Acts 1925, p. 368.] [39th Leg., ch. 157, § 2.]

Art. 5495. [5659] [3332] Satisfaction to be entered. When the debt secured by any such instrument has been paid or satisfied, the mortgagee, his assignee, attorney or legal representative shall enter or cause to be entered, and attested by the clerk, as aforesaid, satisfaction thereof, in the record book in which the instrument is entered, which may be done under the head of "remarks." Any instrument acknowledging payment or satisfaction need not be recorded at length, but the entry as above provided showing the same has been paid shall be sufficient, and the original instrument or copy thereof on file shall then

be delivered to the mortgagor or maker upon demand, or the clerk may mail the same to him. [Id.]

Art. 5496. [5660] [3333] Property not to be removed. The person making any such instrument shall not remove the property pledged from the county, nor otherwise sell or dispose of the same, without the consent of the mortgagee; and in case of any violation of the provisions of this article, the mortgagee shall be entitled to the possession of the property, and to have the same then sold for the payment of his debt, whether the same has become due or not. [Id.]

Art. 5497. [5661] [3334] Effect of registration. Chattel mortgages and other instruments intended to operate as mortgages or liens upon personal property shall not be recorded at length, and all persons shall be thereby charged with notice thereof, and of the rights of the mortgagee, his assignee or representatives thereunder. [Acts 1879, p. 134; Acts 1917, p. 361; G.L. vol. 8, p. 1434.]

[Art. 5497a. Registration of chattel mortgages on motor vehicles]. That all chattel mortgages hereafter given as security for money advanced for the purchase of motor vehicles shall, when registered as required by law of chattel mortgages, be and are superior to the claim or claims of other creditors even though such motor vehicle or vehicles are daily exposed for sale. Provided, however, any such chattel mortgage shall be void as to bona fide purchasers when such motor vehicles are daily exposed for sale. [Acts 1933, 43rd Leg., p. 305, ch. 117.]

Art. 5498. [5661] [3334] Record of chattels on realty. When any machinery or other manufactured article is susceptible of being attached to the realty in such a way as to become a fixture thereto and is located upon real estate in such manner as the same may be deemed a fixture thereto, and at the time of its location upon such real estate there is a lien or mortgage evidenced by written instrument or any instrument reserving title in such machinery or other manufactured article to secure an indebtedness thereon, executed by the purchaser or owner of such machinery or other manufactured article at the time of its location on such real estate, and the instrument evidencing said lien, mortgage or reservation of title contains a description of said machinery or other manufactured article, as well as the real estate upon which it is to be located or situated, reasonably sufficient to identify said real estate, and such instrument is registered under the provisions of this Act, then the registration of such instrument evidencing said lien, mortgage, or reservation of title as provided for by this Act, shall be notice to all persons thereafter dealing with or acquiring any right or interest in said machinery or other manufactured article, or the realty upon which the same is located or other improvements or property situated on said real estate, of all of the rights of the owners or holders of the indebtedness secured by said instrument the same as if recorded at length in

the deed records or records of mortgages upon realty of the county where the real estate is situated, and such lien, mortgage or reservation of title upon or to such machinery or other manufactured article shall be as to such machinery and other manufactured article superior to any lien or rights existing in any one to said real estate or other improvements or other property located and situated thereon existing at the time of the location of said machinery or other manufactured article thereon, but nothing herein contained shall be held to give the holder of such lien, mortgage or reservation of title any right to or claim upon the real estate save and except the right to establish and foreclose his lien, mortgage or reservation of title upon such machinery or other manufactured article, and to enforce his rights thereto under the instrument evidencing his lien, mortgage or reservation of title, as in other cases of liens upon personal property hereunder. All such instruments shall be endorsed on the back thereof, to wit, "Liens on machinery situated on realty," and shall be registered in the county where the real estate is located in the manner as other chattel mortgages except that there shall be kept, indexed and recorded, as now herein provided for chattel mortgages, a separate book to be endorsed "chattel mortgage records on realty." The record thereof shall in addition to the other requirements of this Act contain a brief description of said real estate to which said fixtures are to be attached. [Acts 1879, p. 134; Acts 1917, p. 361: G.L. vol. 8, p. 1434.]

Art. 6645. [6841] [4651] [4341] Titles to chattels, where recorded. Every deed, mortgage, or other writing, respecting the title of personal property hereafter executed, which by law ought to be recorded, shall be recorded in the clerk's office of the county court of that county in which the property shall remain; and if afterwards the person claiming title under such deed, mortgage, or other writing, shall permit any other person in whose possession such property may be to remove with the same, or any party thereof, out of the county in which the same shall be recorded, and shall not, within four months after such removal cause the same to be recorded in the county to which such property shall be removed, such deed, mortgage, or other writing for so long as it shall not be recorded in such last mentioned county, and for so much of the property aforesaid as shall have been removed, shall be void as to all creditors and purchasers thereof for valuable consideration without notice; provided, that this Article 6645 shall not apply to written contracts for the conditional sale, lease or hire of railroad equipment and rolling stock, nor to chattel mortgages, deeds of trust and other written instruments intended to operate as a mortgage or lien upon railroad equipment and rolling stock, which are authorized to be recorded in the office of the Secretary of State by Article 5490, Chapter 6, Title 90, of the Revised Civil Statutes of the State of Texas, 1925. [Acts 1897, p. 209; Acts 1840, p. 156; P.D. 4993; G.L. vol. 10, p. 1263; G.L. vol. 2, p. 330; Acts 1947, 50th Leg., p. 459, ch. 261, § 1.]

CRIMINAL PROVISIONS

Vernon's Annotated Penal Code.

Art. 1558. [1430] [950] [797] Fraudulent disposition of mortgaged property. If any person has given or shall hereafter give any mortgage, deed of trust or other lien, in writing, upon any person or movable property or growing crop of farm produce, and shall remove the same or any part thereof out of the State, or out of the county in which it was located at the time the mortgage or lien was created, or shall sell or otherwise dispose of the same with intent to defraud the person having such lien, either originally or by transfer, he shall be confined in the penitentiary for not less than two nor more than five years. Proof that the mortgagor removed such property out of the county in which it was located at the time the mortgage or lien was created or that he sold or otherwise disposed of the same either originally or by transfer and that the mortgagor failed to pay the debt or any part thereof when due for which the mortgage or lien was given, or shall fail to deliver possession of said property upon demand of the mortgagee, shall be prima facie evidence that such property was removed or disposed of with intent to defraud as provided in this Act. [As amended Acts 1929, 41st Leg., 2nd C.S., p. 85, ch. 48, § 1.]

UTAH

CHATTEL MORTGAGES

Utah Code Annotated 1953.

9–1–1. Requisites for Validity.—Unless the possession of personal property is delivered to and retained by the mortgagee, no mortgage thereof shall be valid as against the rights and interests of any person other than the parties thereto, unless:

(1) The mortgage, duly witnessed by at least one person, provides that the property may remain in the possession of the mortgagor.

(2) The mortgage, or a copy thereof certified to be such by a notary public or other officer authorized to take acknowledgments, is filed, but not for recordation, in the office of the recorder of the county where the mortgagor resides, or, in case he is a nonresident of this state, in the office of the recorder of the county or counties where the property may be at the time of the execution of the mortgage. As amended L.1945, c. 18, approved March 14, 1945.

9–1–2. When Husband and Wife Must Join.—No mortgage by a husband of personal property exempt by law from execution shall be valid unless both husband and wife join in the execution thereof. (C.L. 17, § 486.)

9–1–3. Property Subject to Attachment and Execution.—Personal property mortgaged may be taken on attachment or on

execution; but before the property is so taken the officer must pay or tender to the mortgagee at the place where by its terms it is made payable the amount of the mortgage debt and interest, if such place is within this state. If it specifies no place of payment or if it is payable without this state, then he must deposit the amount thereof and interest with the county recorder of any county wherein the mortgage is filed, payable to the mortgagee or his order. (C.L. 17, § 476.)

9–1–4. **Discharge—Penalty for Neglect.**—A chattel mortgage when satisfied shall be discharged by an entry by the mortgagee, his agent, assignee or legal representative on the margin of the index which shall be attested by the recorder or the recorder may discharge the same on the presentation of an order in writing duly assigned and acknowledged. After the full performance of the conditions of the mortgage any mortgagee, agent, assignee or legal representative who shall willfully neglect, for the space of ten days after being requested, to discharge the same shall be liable to the mortgagor or his assigns in the sum of $50 punitive damages and also for all actual damages sustained by such neglect or refusal. (C.L. 17, § 473.)

9–1–5. **Foreclosure—By Action or Sale—Redemption.**—A chattel mortgage may be foreclosed in the manner provided by law for the foreclosure of mortgages upon real property, but without the right of redemption; or a chattel mortgage containing a power of sale upon default being made in the terms or conditions thereof may be foreclosed by advertisement in the manner hereinafter provided. (C.L. 17, § 471.)

9–1–6. **Id. By Advertisement and Sale—Injunction.**—When the mortgagee or his assignee has commenced foreclosure by advertisement and it shall be made to appear, by the affidavit of the mortgagor or his agent or attorney, to the satisfaction of the judge of the district court of the county where the mortgaged property is situated that the mortgagor has a legal counterclaim or any other valid defense against the collection of the whole or any part of the amount claimed to be due on such mortgage, such judge may by an order to that effect enjoin the mortgagee or assignee from foreclosing such mortgage by advertisement and direct that all further proceedings for the foreclosure be had in a court having jurisdiction of the subject matter. (C.L. 17, § 472.)

9–1–7. **Id. Notice.**—Notice that such mortgage will be foreclosed by a sale of the mortgaged property or some part thereof shall be given as follows: By advertisement published at least once a week for two successive weeks prior to the sale in some newspaper published in the county in which such sale is to take place, or, in case no newspaper is published therein, by posting notices at least ten days prior to the sale in at least five public places in such county, two of which shall be in the precinct where the mortgaged property is to be offered for sale. (C.L. 17, § 479.)

9–1–8. Id. Contents of Notice.—Every such notice shall specify: First, the date of the mortgage and where filed; second, the names of the mortgagor and mortgagee, and of the assignee of the mortgagee, if any; third, the amount claimed to be due thereon at the time of the first publication or posting of such notice; fourth, a description of the mortgaged property conforming substantially with that contained in the mortgage; fifth, the time and place of sale. (C.L. 17, § 480.)

9–1–9. Id. Sale.—All sales shall be made within thirty days after the seizure of the property, unless the same shall be postponed as hereinafter provided. All sales shall be made by public auction, and shall be commenced between the hours of 12 o'clock noon and 4 o'clock p.m., and shall be held in the county where the mortgage was first filed, or in any county where the property may have been removed by consent of parties and in which the mortgage was duly filed, and in view of the property so being sold. The mortgagee, his assignees and his or their legal representatives may fairly and in good faith purchase any of the mortgaged property offered at such sale, and when the mortgage shall have been foreclosed as herein provided any and all right and equity of redemption which the mortgagor may or might have had shall be and become extinguished. (C.L. 17, § 481.)

9–1–10. Id. Postponement of Sale.—Any sale may be postponed to a definite time by public announcement made at the time and place of sale with the consent of the mortgagor, if he is present; *provided,* that if a sale is postponed for more than one week, notice shall be given by publication or by posting as in the first instance. (C.L. 17, § 482.)

9–1–11. Id. Return on Sale—Penalty for Neglect.—Within ten days after the sale of any mortgaged property as hereinbefore provided, the mortgagee or his assignee shall make or cause to be made a statement under oath of the proceedings under such sale, specifying particularly the property sold, the amount received therefor, and the costs and expenses, which shall be itemized, and the disposition made by him of the proceeds of the sale, and shall deliver the same to the mortgagor or send the same to him by registered letter, and on failure so to do shall forfeit to the mortgagor the sum of $25 damages. (C.L. 17, § 483.)

9–1–12. Id. Disposition of Proceeds—Fees.—Out of the proceeds arising from the sale the person making the sale shall pay: First, the costs and expenses of foreclosure; second, the amount of the mortgage debt due to the person entitled thereto; third, the balance, if any, to the owner of the mortgaged property. The fees for the publication of notice shall in no case exceed the sum of $3. The fee of the person crying the sale shall be $2 per day. (C.L. 17, § 484.)

9–1–13. Wrongful Disposition of Property by Mortgagor—Penalty.—Any mortgagor, or agent, servant or employee of any mortgagor, of personal property, who shall during the time such

mortgage remains in force destroy, sell, conceal or otherwise dispose of the whole or any part of the mortgaged property, or who shall remove the same or any part thereof from the state without the written consent of the mortgagee, his legal representatives or assigns, shall be deemed guilty of obtaining money under false pretenses, and shall be punished by a fine not exceeding three times the value of the property described in the mortgage, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. (C.L. 17, § 485.)

9–1–14. **Copy of Mortgage Competent Evidence.**—A copy of any mortgage of personal property, made and filed as provided in this title, certified by the recorder in whose office the same shall be filed, may be read in evidence in any court without further proof of the execution of the original, if such original is out of the control of the person wishing to use it. (C.L. 17, § 477.)

9–1–15. **Conditional Sales Excepted—Conveyances in Nature of Mortgage Included.**—The provisions of this title shall not apply to contracts for the possession, use and conditional purchase of personal property containing a condition that title shall not pass until full payment of the purchase price; but shall extend to and include all such bills of sale, deeds of trust and other conveyances of personal property as shall have the effect of a mortgage or lien upon such property. (C.L. 17, §§ 478, 485, 487.)

9–1–16. **Removal, Surrender and Destruction of Mortgages.**—The county recorder of each county may remove from his files and surrender to the mortgagor all chattel mortgages which have been released or discharged on the record according to law and may remove and destroy or otherwise dispose of all chattel mortgages together with the releases attached thereto, if any, which have been on file in his office for ten years or more whether or not the debt secured thereby has been discharged. As amended L.1947, c. 15, approved March 19, 1947.

9–1–17. **Destruction on order of state tax commission.**

The state tax commission may order the destruction of all chattel mortgages and conditional sales contracts which have been on file for more than five years and after the indebtedness evidence thereby has been discharged for at least two years. Added L.1945, c. 1, § 2.

VERMONT

Sections of General Laws 1917 as contained in Vermont Statutes are as follows:

G.L.1917,	§§ 2830–2836, 2839	V.S. §§ 2775, 2776, 2779–2782, 2785
" " "	§§ 2047–2057	V.S. §§ 1910–1920
" " "	§§ 5131–5133	V.S. §§ 9477–9479
" " "	§§ 2837, 2838, 6896	V.S. §§ 2783, 2784, 8338

Conditional Sales Generally

Vermont Statutes

§ 2775. **How evidenced; record.**—A lien reserved on personal property sold conditionally and passing into the hands of the conditional purchaser shall not be valid against attaching creditors or subsequent purchasers without notice, unless the vendor of such property takes a written memorandum witnessing such lien, the sum due thereon and signed by the purchaser, and causes the same to be recorded within thirty days after such property is delivered, in the office of the clerk of the town where the purchaser of such property then resides, if he resides in the state, otherwise in the office of the clerk of the town where the vendor resides. If the purchaser resides in an unorganized town, gore or grant, the vendor shall cause such lien to be recorded within thirty days in the office of the clerk of the county in which such unorganized town, gore or grant is situated, in a book to be kept by such clerk for that purpose. A copy of such written memorandum or conditional sale contract certified to as a true and correct copy by the recording clerk, may be pasted or otherwise permanently attached in the record books, and when so done the same shall be legally recorded.

1937, No. 51. P.L. § 2705. 1925, No. 48. G.L. § 2830. P.S. § 2663. V.S. § 2290. R.L. § 1992. 1886, No. 95. 1884, No. 82. 1872, No. 51. 1870, No. 63, § 1.

§ 2779. **At public auction; procedure.**—The vendor or his assignee of personal property sold conditionally and with a lien reserved thereon, after thirty days from the time of condition broken, may cause the property on which the lien exists, or part thereof, to be sold at public auction by a public officer at a public place in the town where the person giving the lien resides or where such property is located, provided at least ten days' notice of the time, place and purpose of such sale has been posted in two or more public places in such town. At least ten days' written notice of the time and place of sale shall be given to the vendee or the person holding under him, delivered to him or left at his abode, if living within the town, or sent by mail if he does not reside in such town. If the property is not redeemed by payment of the amount due and costs and expense incurred by such breach of condition, the property shall be sold as posted.

P.L. § 2708. G.L. § 2833. P.S. § 2666. V.S. § 2293. 1884, No. 93, § 5.

§ 2780. **Application of proceeds.**—The proceeds of such sale shall be applied to the payment of the lien and the costs and ex-

penses of keeping the property and sale. The balance shall be paid on demand to the vendee or the person holding under him. Unless such sale is made within sixty days after possession of the property, subject to such lien, is taken by or in behalf of the conditional vendor or his assignee, such property shall be deemed to have been taken and accepted in full satisfaction of the lien. No action shall be maintained to recover the debt secured thereby, or any part thereof, except against a conditional vendee or other person liable for the debt secured by such lien who consents in writing to a continuance of such sale beyond such period of sixty days, and then only when such sale is made on a date specified in such written consent.

1941, No. 39, § 2. P.L. § 2709. G.L. § 2834. P.S. § 2667. V.S. § 2294. 1884, No. 93, § 6.

§ 2781. **Officer's return; fees.**—The officer selling the property shall make return of his doings in the same manner as required in the sale upon a mortgage of personal property. His return shall have a like effect and he shall receive the same fees.

P.L. § 2710. G.L. § 2835. P.S. § 2668. V.S. § 2295. 1884, No. 93, § 7.

§ 2782. **Property not removed from state without consent.**—Personal property sold conditionally and upon which is reserved a lien duly recorded, shall not be removed from the state without the consent of the vendor or his assignee.

P.L. § 2711. G.L. § 2836. P.S. § 2669. V.S. § 2996. 1884, No. 93, § 1.

§ 2783. **Fraud; penalty.**—A person having possession of personal property with a duly recorded lien reserved thereon, who sells the same without the consent of the vendor or his assignee before the performance of the condition precedent to the acquiring absolute title thereto, with intent to defraud, or who with such intent conceals or aids in concealing personal property subject to such a lien, or who removes the same from the state without the consent of the vendor or his assignee, shall be fined not more than double the value of the property so sold, concealed or removed, and one-half of such fine shall be paid to the party injured.

P.L. § 2712. G.L. § 2837. P.S. § 2670. 1896, No. 36, § 2. V.S. § 2297. 1894, No. 54, § 2. 1884, No. 101, § 1.

§ 2784. **Jurisdiction.**—Justices shall have concurrent jurisdiction with county and municipal courts of offenses under the preceding section.

P.L. § 2713. G.L. § 2838 1915, No. 91, § 11. 1908, No. 62. P.S. § 2671. V. S. § 2298. 1884, No. 101, § 2.

§ 2785. **Exception.**—In so far as they are inconsistent, the provisions of this chapter shall not apply to contracts of the kind mentioned in section 9477.

P.L. § 2714. G.L. § 2839. P.S. § 2672. V.S. § 3807. 1894, No. 90, § 4.

§ 2786. **Attachment; no waiver.**—A person holding personal property by a lien implied by law to insure the payment of the debt secured by such lien, may cause the property to be attached

on mesne process and sold on execution and such attachment shall not be a waiver of the lien.

P.L. § 2715. G.L. § 2840. P.S. § 2673. V.S. § 2299. R.L. § 1994. 1867, No. 6.

§ 1910. **Attachment, how made.**—Personal property not exempt from attachment, subject to a mortgage, pledge or lien, may be attached, taken in execution and sold as the property of the mortgagor, pledgor or general owner, in the same manner as other personal property, except as hereinafter otherwise provided.

P.L. § 1857. G.L. § 2047. P.S. § 1768. V.S. § 1413. R.L. § 1180. 1880, No. 33, § 1.

§ 1911. **Statement of secured debt.**—The officer making such attachment or taking such property on execution may make a written demand of the mortgagee, pledgee or the holder of such lien, for an account in writing, under oath, of the amount due upon the debt secured by such mortgage, pledge or lien, and may retain such property in his custody until the same is given without tender or payment. Upon receiving such demand, the account shall be rendered within fifteen days by a resident of the state and within thirty days by a nonresident. If the account is not rendered within the time aforesaid or if a false account is rendered, such property may be holden and sold, discharged from such mortgage, pledge or lien.

P.L. § 1858. G.L. § 2048. P.S. § 1769. V.S. § 1414. R.L. § 1181. 1880, No. 33, § 2.

§ 1912. **Payment of debt if due.**—When such debt is due at the time of rendering the account, the creditor so attaching or causing such property to be taken on execution may pay or tender, within ten days after such account is rendered, the amount so rendered to the mortgagee, pledgee or holder of such lien, and retain and sell such property free and clear of such mortgage, pledge or lien.

P.L. § 1859. G.L. § 2049. P.S. § 1770. V.S. § 1415. R.L. § 1182. 1880, No. 33, § 3.

§ 1913. **Same, if it becomes due before sale.**—When such debt is not due at the time of rendering the account, but becomes due before the time fixed by the officer making such attachment or levy of execution for the sale of the property, within ten days after the debt becomes due and before the sale, such creditor may pay or tender the amount thereof to such mortgagee, pledgee or holder of such lien, and retain and sell such property as is provided in the preceding section.

P.L. § 1860. G.L. § 2050. P.S. § 1771. V.S. § 1416. R.L. § 1183. 1880, No. 33, § 4.

§ 1914. **Creditor may pay debt if not due.**—When such debt is not due at the time fixed by the officer for sale of the property, the creditor may offer to pay the debt to the mortgagee, pledgee or holder of the lien. If such payment is accepted, the same proceedings may be had as provided in section 1912.

P.L. § 1861. G.L. § 2051. P.S. § 1772. R.1906, § 1668. V.S. § 1417. R.L. § 1185. 1880, No. 33, § 6.

§ 1915. Subrogated by payment.—When such creditor pays or tenders such debt to the mortgagee, pledgee or holder of such lien, as provided in the three preceding sections, he shall be subrogated to all the rights of such mortgagee, pledgee or holder, and may cause the same to be sold in the same manner that unencumbered personal property may be sold on mesne or final process; and the proceeds of such sale shall be applied first, in payment of the sum paid by such creditor to such mortgagee, pledgee or holder and second, to satisfy the execution.

P.L. § 1862. G.L. § 2052. P.S. § 1773. V.S. § 1418. R.L. § 1184. 1880, No. 33, § 5.

§ 1916. Property may be sold subject to lien, when.—When the mortgagee, pledgee or holder of a lien, duly renders such account, whether or not the debt is due, the attaching creditor may cause the property to be sold subject to the mortgage, pledge or lien, without first paying or tendering the amount due on the debt secured thereby.

P.L. § 1863. G.L. § 2053. P.S. § 1774. V.S. § 1419. 1888, No. 69, § 1.

§ 1917. Subrogation of purchaser.—When a mortgagor, pledgor or conditional vendee of property sold on execution under the provisions of this chapter fails or refuses to discharge such lien after it becomes due and payable, and within ten days after written notice so to do is served upon him by the purchaser of the whole or part thereof, the person so purchasing may tender and pay to the holder of such mortgage, pledge or lien, or the conditional vendor, the amount due such creditor upon the whole of such property. Upon such tender or payment, such purchaser shall be subrogated to all the rights of such original mortgagee, pledgee or conditional vendor, and may hold the same as security for the amount so paid in discharge of such original claim, together with the sum paid by him on the execution sale, with interest upon such sums. He shall have the same benefit of foreclosure, sale and disposition of such property that the original mortgagee, pledgee or conditional vendor would have had under his claim.

P.L. § 1864. G.L. § 2054. P.S. § 1775. V.S. § 1420. 1888, No. 69, § 2. R.L. § 1185. 1880, No. 33, § 6.

§ 1918. Property sold conditionally, how taken.—If property, in pursuance of the terms of a conditional sales contract, has passed into the possession of the vendee and the purchase money or part thereof remains unpaid, the creditor of the vendee may attach or levy his execution upon the property, and upon payment or tender of such unpaid purchase money to the vendor, his agent or attorney, within ten days after notice of the amount thereof remaining unpaid, may hold the property discharged from the claim of such vendor.

P.L. § 1865. G.L. § 2055. P.S. § 1776. V.S. § 1421. R.L. § 1186. G.S. 23, § 28. 1854, No. 12, § 1.

§ 1919. **Proceeds of sale, how applied.**—The officer making such attachment or levy shall hold and dispose of such property like other personal property attached or levied upon, and from

the proceeds of the sale thereof pay to the creditor the amount by him paid or tendered to the vendor and apply the residue upon the execution.

P.L. § 1866. G.L. § 2056. P.S. § 1777. V.S. § 1422. R.L. § 1187. G.S. 33, § 29. 1854, No. 12, § 2.

§ 1920. **Defense in action by vendor.**—If the vendor refuses to receive the amounts so tendered him and brings an action on account of such attachment or levy, under a general denial, the defendant may give evidence of the tender in bar of the action. On proof thereof and payment of the money tendered into court, such defendant may recover his costs, unless it appears that the amount so tendered, as the residue of such purchase money, was less than the sum due the vendor.

P.L. § 1867. G.L. § 2057. P.S. § 1778. V.S. § 1423. R.L. § 1188. G.S. 33, § 30. 1854, No. 12, § 3.

§ 1921. **Mortgagee taking possession.**—The foregoing sections of this chapter shall not be construed so as to prevent or delay a mortgagee from taking possession of the mortgaged property at any time for the necessary care and preservation of the same, nor to prevent or delay the due foreclosure of a mortgage, pledge or lien under the provisions of chapter 128.

P.L. § 1868. 1919, No. 81, § 4.

Railroad Equipment

Vermont Statutes

§ 9478. **Record; discharge; fees.** The contracts authorized by the preceding section shall be recorded by the secretary of state in a book to be kept for that purpose. On payment in full of the purchase money, and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect may be made by the vendor, lessor or bailor, or his or its assignee. Such declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument, to be acknowledged by the vendor, lessor or bailor, or his or its assignee, and recorded as aforesaid. The secretary of state shall be entitled to a fee of twenty cents a folio for recording each of such contracts and each of such declarations, and a fee of one dollar for noting such declaration on the margin of the record.

VIRGINIA

Sections of the Code of 1919 are now contained in Code 1950 as follows:

Code 1919,	§ 5189	.....	Code 1950,	§§ 55-88 to 55-90
" "	§ 5190	.....	" "	§ 55-91
" "	§ 5191	.....	" "	§ 55-92
" "	§ 4455	.....	" "	§ 18-178

Conditional Sales Generally

Code 1950.

§ 55-88. **Agreements for conditional sales, or reservation of title or lien.** Every sale or contract for the sale of goods and

chattels, wherein the title thereto or a lien thereon is reserved until the same be paid for, in whole or in part, or the transfer of title is made to depend on any condition, when possession is delivered to the vendee, shall, in respect to such reservation and condition, be void as to creditors of the vendee who acquire a lien upon the goods and as to purchasers from the vendee, for value, without notice, unless such sale or contract be evidenced by writing, signed by the vendor and the vendee, setting forth the date thereof, the amount due, when and how payable, a brief description of the goods and chattels, and the terms of the reservation or condition; and unless such writing is filed with the clerk by whom deeds are admitted to record, as provided by law, of the county or corporation in which such goods and chattels may be; provided, that if such filing be done within five days from the delivery of the goods and chattels to the vendee, it shall be as valid as to creditors and purchasers as if such filing had been done on the day of such delivery of the goods and chattels.

Such clerk shall endorse on every such contract its assigned number and the word "filed", together with the day and hour of such filing and shall affix his signature thereto. Provided that if said contract is filed in duplicate the vendor may have both copies endorsed as aforesaid; in which event the original shall be returned to the vendor and the duplicate retained by said clerk. (Code 1919, § 5189; 1919, p. 40; 1920, p. 398; 1922, p. 61; 1923, p. 193; 1940, p. 282; 1942, p. 141; 1948, p. 108; 1956, c. 227.)

§ 55–89. Agreements as to railroad equipment. No agreement for the sale or lease of locomotives, cars or other rolling stock to be used in or about the operation of any railroad, operating as a public service corporation, which provides that title shall remain in the vendor or lessor until performance of some condition, shall be valid as to creditors of the vendee or lessee who acquire a lien or as to purchasers from the vendee or lessee, for value, without notice, until and except from the time the agreement is filed in the office of the State Corporation Commission, and unless each locomotive, car or other piece of rolling stock be plainly and permanently marked with the name of the vendor or lessor, on both sides thereof, followed by the word "owner." Upon the satisfaction or discharge of any such agreement, the railroad shall promptly file with the Commission the instrument of satisfaction or discharge. The clerk of the Commission shall keep a proper index of such agreements and instruments. Such agreements shall not be subject to the requirements of § 55–88. (Code 1919, § 5189; 1919, p. 41; 1920, p. 399; 1922, p. 61; 1923, p. 194; 1940, p. 282; 1942, p. 141; 1948, p. 108; 1952, c. 197.)

§§ 55–90. Docketing agreements for conditional sales or reservation of title or lien. The clerk shall number the writings mentioned in §§ 55–88 consecutively and file the same, or an executed duplicate copy thereof, in numerical order, and shall index the same alphabetically, in the name of both the vendor and the vendee, in a separate general index book kept for that

purpose, for which service he may charge a fee of fifty cents. No recording tax shall be charged thereon.

Upon request of the vendor, if a duplicate carbon or photostatic copy of such contract is presented at the time of filing or if suit is filed on a contract and a true copy thereof is presented, the clerk shall certify the same without charge. Copies for any other purpose shall be charged for at lawful rates. (Code 1919, § 5189; 1919, p. 41, 1920, p. 339; 1922, p. 61; 1923, p. 194; 1940, p. 282; 1942, p. 141; 1948, p. 108; 1952, c. 197; 1956, c. 227.)

§ 55-91. How all such agreements may be enforced. All reservations, liens and conditions and the collection of all money mentioned in any such written contract as is referred to in §§ 55-88 and 55-89, whether recorded or not, may be enforced on a petition to a trial justice when the amount of value involved is within his jurisdiction and no other pleadings before him shall be necessary, or by bill in equity in the circuit, corporation or city court having equity jurisdiction, when the amount or value involved is within its jurisdiction. Such petition or bill shall be filed by the person entitled to recover and all other persons whose rights will be affected thereby shall be made defendants. It shall state the contract and the plaintiff's claim and describe the property with reasonable certainty. The testimony in the case shall be given orally before such court or justice. The court or trial justice shall determine all questions arising out of, or under, the contract, which are properly made by the pleadings, and render such judgment as shall seem right and proper. The property may be sold, or possession delivered, or such other disposition made of it as the court or trial justice may direct, and, in a proper case, a personal judgment may be rendered against any one or more of the defendants. Pending the litigation authorized by this section, the possession of the goods and chattels shall be determined by chapter 26 of Title 8, the provisions whereof are hereby made applicable, as far as practicable, to any proceeding under this section, except that instead of the statement required by § 8-586 "that the affiant verily believes the plaintiff is entitled to recover the same" the affiant shall state that affiant verily believes the plaintiff is entitled to recover the same, or to subject it to a lien for the purchase price thereof, as the case may be. When the proceeding is before a trial justice the defendant shall have at least five days' notice before a hearing is had and the judgment when rendered may be enforced like any other judgment before a trial justice. (Code 1919, § 5190.)

§ 55–92. Satisfaction and release of such agreements. Every vendor in a contract for the sale of personal property filed under § 55-90 shall, upon payment to him of the amount of the purchase price in full, as set forth in the contract, cause the same to be marked satisfied upon the margin of the vendee index on the line or lines where the name of each vendee appears. Such note of satisfaction, when signed by such vendor, his agent or attorney, and attested by the clerk in whose office such contract is filed, or when made and signed by such clerk, who is authorized and directed to make and sign the same upon the filing of an

affidavit by the vendor, assignee or his duly authorized agent, attorney or attorney in fact, with such clerk, to the effect that the amount of the purchase price therein secured and intended to be released or discharged has been paid in full to such vendor, his agent, attorney or attorney in fact, who was, when the purchase price was so paid, entitled and authorized to receive the same, shall operate as a release of all claims of such vendor therein. The clerk for attesting such release or for making and signing the same upon affidavit filed as aforesaid shall have a fee of twenty-five cents, to be paid by the vendee. Any vendor who shall fail to release a contract after the whole amount thereof has been paid to him for a period of fifteen days after he shall have received notice from the vendee to mark the contract satisfied shall forfeit five dollars to the vendee. If the vendee is indebted for rent of the house wherein the personal property described in such contract is stored or kept and the landlord has taken action to recover such rent, the vendor, at the request of the landlord, his agent or attorney, shall state on oath the balance due on the contract of sale, and upon the payment of the same by the vendee, or his landlord, shall mark the contract satisfied in accordance with the terms and provisions of this section and for failure so to do shall forfeit five dollars to the party making such payment. (Code 1919, § 5191; 1936, p. 380; 1956, c. 227.)

§ 55-93. Repossession and sale as discharging amount secured by reservation of title or lien. If the vendor of any personal property sold under a written contract whereby the title thereto or a lien thereon is reserved to secure unpaid purchase money, or the assignee or beneficial owner of any such contract, shall repossess and sell such personal property without legal process, such repossession and sale shall operate to cancel and fully discharge the amount of money secured by such contract, including all unpaid purchase money, notwithstanding any provision to the contrary contained in such contract. This section shall not be construed to affect in any way the provisions of § 55-91 or the rights and remedies provided therein, nor shall it apply in any case when the property repossessed shall be sold at public auction in the county or city in which the vendor has his principal place of business, or in which the vendee resides, after ten days' written notice of the time, place and terms of sale served upon or sent by registered mail to the last known postoffice address of the vendee, and after publication in some newspaper having general circulation in the county or city in which such sale is to be held, or, in lieu of such publication, after notice duly posted for five days at three or more public places in such county or city.

Nothing in this section shall affect the validity of any new contract in writing made, after default on the part of the vendee, between the vendor, assignee or beneficial owner and the vendee providing for the resale of such personal property and the vendee's liability for any deficiency. (1938, p. 749; Michie Code 1942, § 5191a.)

CRIMINAL PROVISIONS

Code 1950.

§ 18-178. Fraudulent conversion or removal of property subject to a lien or title to which is in another. Whenever any person is in possession of any personal property, including motor vehicles, in any capacity, the title or ownership of which he has agreed in writing shall be or remain in another, or on which he has given a lien, and such person so in possession shall fraudulently sell, pledge, pawn or remove (such property) from the premises where it has been agreed that it shall remain, and refuse to disclose the location thereof, or otherwise dispose of the property or fraudulently remove the same from the State, without the written consent of the owner or lienor or the person in whom the title is, or, if such writing be a deed of trust, without the written consent of the trustee or beneficiary in such deed of trust, he shall be deemed guilty of the larceny thereof.

In any prosecution hereunder, the fact that such person after demand therefor by the lienholder or person in whom the title or ownership of the property is, or his agent, shall fail or refuse to disclose to such claimant or his agent the location of the property, or to surrender the same, shall be prima facie evidence of the violation of the provisions of this section. The venue of prosecutions against persons fraudulently removing any such property, including motor vehicles, from the State shall be the county or city in which such property or motor vehicle was purchased or in which the accused last had a legal residence.

This section shall not be construed to interfere with the rights of any innocent third party purchasing such property, unless such writing shall be docketed or recorded as provided by law. (Code 1919, § 4455; 1926, p. 668.)

WASHINGTON

Sections of Pierce's Code 1919 are now contained in Remingtons' Revised Statutes as follows:

Pierce's	Code	1919,	§§ 9767, 9768.....	RCW	63.12.010, 63.12.020
"	"	"	§§ 9769, 9770.....	"	81.36.140, 81.36.150
"	"	"	§ 8881.....	"	9.45.060

CONDITIONAL SALES GENERALLY

Revised Code of Washington

63.12.010 Sale absolute unless contract filed—Exceptions. Conditional sales of personal property, or leases thereof containing a conditional right to purchase, when the property is placed in the possession of the vendee, shall be absolute as to all bona fide purchasers, pledgees, mortgagees, encumbrancers, and subsequent creditors, whether or not such creditors have or claim a lien upon the property, unless within ten days after the taking possession by the vendee, a memorandum of the sale, stating its terms and conditions, including the rate of interest and the purchase price exclusive of interest, insurance, and all other charges, and signed by the vendor and vendee, is filed in the auditor's

office of the county, wherein, at the date of the vendee's taking possession of the property, the vendee resides. Such a contract for the conditional sale or lease of personal property, except machinery, apparatus, or equipment to be used for manufacturing or industrial purposes, attached or to be attached to a building, whether or not a fixture at common law, shall be absolute as to all subsequent bona fide purchasers or encumbrancers of the building and the land on which it stands, unless the contract or lease also contains a sufficient legal description of the real estate which the building occupies, and shall be filed and recorded as provided in RCW 63.12.020: *Provided*, That nothing in this section shall require such filing or recording of a conditional sale of personal property or lease thereof containing a conditional right to purchase, wherein the total designated unpaid purchase price does not exceed the sum of fifty dollars and such contracts or leases shall be valid as to all bona fide purchasers, pledgees, mortgagees, encumbrancers, and subsequent creditors. To compute the "total designated unpaid purchase price" there shall be added to the purchase price designated in the contract the designated unpaid purchase price set forth in any other contract of conditional sale executed between the same vendor and vendee as a part of the same transaction and if the total of all exceeds the sum of fifty dollars, each of the contracts of conditional sale shall be absolute as above provided unless filed or filed and recorded as above provided. [1937, c. 196, § 1, last am'ds 1893, c. 106, § 1; RRS § 3790.]

63.12.020 Auditor to file and index contracts—Fees. The county auditor, when such a memorandum is presented to him for that purpose, shall file it, upon payment of proper fees therefor, indorse thereon the time of reception, the number thereof, and he shall enter in a suitable book to be provided by him at the expense of the county, with an alphabetical index thereto, and exclusively for that purpose, ruled into separate columns with appropriate heads, "The time of filing," "Name of vendor," "Name of vendee," "Date of instrument," "Amount of purchase price," and "Date of release." An index of the book shall be kept in the manner required for indexing deeds to real estate, and the auditor shall receive for the service required the sum of twenty-five cents for each instrument, and the money so collected shall be accounted for as other fees of his office. The instrument shall remain on file for the inspection of the public until full payment has been made thereon, and shall be satisfied in the same manner and upon payment of the same fees as chattel mortgages are satisfied. In the case of an instrument for the conditional sale or lease of personal property, except machinery, apparatus, or equipment to be used for manufacturing or industrial purposes, attached or to be attached to a building, the instrument shall, in addition to filing and indexing, be indexed and recorded in the record of mortgages in the auditor's office of the county wherein the land which the building occupies is situated; and the fees for indexing and recording shall be the same as for real estate mortgages. [1903, c. 6, § 2; 1893, c. 106, § 2; RRS § 3791.]

63.12.030 Assignment of contract—Effect. If a written contract for the conditional sale of personal property is assigned by the vendor or an assignee thereof by written instrument to se-

cure an obligation, the assignee, in the absence of a contrary intent expressed in the assignment, and whether or not it is upon its face absolute, may enforce all the vendor's remedies under the contract and shall have a lien upon the property covered thereby as against the vendor and any subsequent assignee thereof, the creditors and subsequent purchasers and encumbrancers of either, which lien may be enforced as a chattel mortgage is enforced; no filing of the assignment being necessary. No such assignment shall be invalid as against creditors and subsequent purchasers, pledgees, mortgagees, and encumbrancers of the assignor by reason of failure of any assignee to assume control over the contract so assigned or the proceeds thereof, or to contract against or to prevent the mingling by the assignor of the proceeds thereof or collections therefrom among his funds or placement of them in his bank account. [1925 Ex.S. c. 120, § 1; RRS § 3791-1.], 1937, c. 196, § 2.

CHATTEL MORTGAGES

Revised Code of Washington

61.16.040 Certificate of satisfaction of chattel mortgage.— Whenever any mortgage or contract of conditional sale of personal property, or lease thereof, which was filed or recorded with the county auditor or secretary of state, is paid, or the conditions thereof satisfied, the mortgagee or vendor or his assignee or personal representatives, shall make to the mortgagor or vendee, his assignee or personal representatives, a certificate signed and acknowledged by him, stating the date of the mortgage or contract, the names of the parties thereto, the auditor's or the secretary's file number thereof, and that it has been discharged in full, and shall file or record the certificate with the officer with whom the mortgage or contract is filed. The officer shall deliver the mortgage or contract to the person producing the certificate on payment of the proper fee for filing or recording it and shall file it in his office, endorsing thereon the date of filing, and shall keep and preserve it among the records in his office, and shall write the word "satisfied" with the date opposite the mortgage or contract, in the index in which such mortgage or contract is entered upon the heading "release." The secretary of state shall be paid a fee of fifty cents for each release or satisfaction of a chattel mortgage filed with him. L.1953, c. 214, § 4.

WEST VIRGINIA

Adopted the Uniform Commercial Code in 1963, to take effect July 1, 1964, Article 9 of which supersedes existing conditional sales statutes in respect to transactions entered into in and after said date. See Code Supp.1963, 46-1-101 et seq.

WYOMING

Adopted the Uniform Commercial Code in 1961, to take effect Jan. 1, 1962, Article 9 of which supersedes existing conditional sales statutes in respect to transactions entered into on and after said date. See W.S.1957, §§ 1-101 to 10-105.