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Article 6

Uniformity of Uniform Laws

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NOTES

UNIFORMITY OF UNIFORM LAWS

A recent amendment of section 11 of the Uniform Conditional Sales Act, Sec. 122.11 of the Wisconsin Statutes, by the Legislature, for the apparent purpose of destroying its uniformity, has run counter to the judicial principle of uniformity of uniform laws, and hence may have failed to achieve non-uniformity.

The principle of uniformity is stated as follows in a very recent opinion of the U. S. Circuit Court of Appeals of the Seventh Circuit, which Circuit embraces Wisconsin:

> "In the interpretation of . . . uniform laws, the decisions of other jurisdictions on such points as have not been decided by the courts of the forum, are not merely persuasive, but are as binding as would be a decision of the highest court of the forum."[1]

So important do the Courts consider this principle of uniformity, that it has even been applied to restore to uniformity a section of uniform law which had been mutilated by a legislature.

An example of this occurred in Ariona. Under the authority of Chap. 35 of the Session Laws of 1925, the statutes of that State were codified, and the codifiers unfortunately made no distinction between uniform laws and non-uniform laws in their attempts at "improving" the language. Sec. 5 of the Uniform Conditional Sales Act provided that a contract of conditional sale is void as against rights of certain third parties which attach before the contract is filed, but that filing within ten days after making the sale shall relate back as to intervening rights. The revisers either wholly misinterpreted this ten-day proviso, or thought that an idea of their own was better. At any rate, they changed it to read that the contract would be void as to all persons except the buyer, unless filed within the ten days.

The first necessity for judicially interpreting this change arose in a suit in Kansas, rather than in Arizona. A conditional sale contract of an automobile sold in Arizona had been filed in the proper county of Arizona, but not until *fourteen* days after the sale. The car was then illegally sold by the conditional vendee outside Arizona, and eventually found its way into Kansas, in the hands of a person from whom an assignee of the original vendor sought to replevy it.

The Supreme Court of Kansas applied the principle of uniformity to the Arizona law, in spite of its perfectly clear and categorical non-

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[1] *In re Halferty*, 136 F. (2d) 640, 643 (C.C.A. 7th, 1943).

uniform language, held that the filing had been timely, and awarded the car to the plaintiff.[2]

The same question later came up in another suit, this time in Arizona itself. The Supreme Court of Arizona cited the above Kansas opinion, quoting the syllabus thereof as follows:

> "Notwithstanding statute making conditional sale void as to others than buyer if not recorded within ten days, belated recording protects rights of holder as against one acquiring interest after recordation."

The Arizona Court then purported to find an ambiguity in the amended section, and hence an opportunity to construe the section in the interests of uniformity, instead of cutting the Gordian knot as the Kansas Court had done.[3]

The effect of the *Castenada* case is considerably weakened by the fact that the Arizona revisers did such a poor job that the Supreme Court of Arizona has repeatedly felt called upon to restore the original meaning of the statutes, even as to *non*-uniform laws.[4] However, I believe that these cases can be distinguished in two respects: (1) the *Castenada* opinion expressly mentioned and relied upon the doctrine of uniformity; (2) in *all* the cases the Court asserted that a *clearly* intended change would stand, and that they would revert to the original meaning only in event of ambiguity, and yet in the *Castenada* case the pressure of the doctrine of uniformity caused the Court to call ambiguous an instance of clear change.

Accordingly let us consider the amended section. It read:

> "Every provision in a conditional sale reserving property in the seller after possession of the goods is delivered to the buyer, is valid as to all persons, except as hereinafter provided; it is 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 or lien upon them, before the contract or a copy thereof be filed as hereinafter provided; and is void as to all persons except the buyer unless such contract or copy thereof is so filed within ten days after the making of the conditional sale."

There is here no possible ambiguity or conflict. The quoted section provides: conditional sales are valid, except that for ten days after making, until filed, they are void as against purchasers without notice and attaching creditors without notice; and, if not filed within such ten days they are void as against everyone but the buyer.

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[2] Commercial v. Gaiser, 7 P. (2d) 527, 134 Kan. 557 (1932).
[3] Castenada v. National, 29 P. (2d) 730, 43 Ariz. 119 (1934).
[4] Nethken v. State, 104 P. (2d) 159, 56 Ariz. 15 (1940) and cases cited. State v. Glenn, 131 P. (2d) 363, 366 (Arizona, 1942).

The Kansas Court had expressly declined to follow this express language, reverting instead to the pre-amendment wording, to the effect that when filed, no matter how late, the contract is valid against all adverse rights arising thereafter.

The Kansas Court did this on the sole strength of the principle of uniformity. The Arizona Court, although relying on that principle, bolstered up the case by a fiction of ambiguity and an assumed consequent need for reconciliation and interpretation.

All the foregoing is preparatory to a discussion of the 1943 amendment to Wisconsin's Section 11 of the Uniform Conditional Sales Act (Sec. 122.11 of the Wisconsin Statutes).

In the 1941 Statutes, this section read as follows (italics mine):

> "*Refiling.* The filing of conditional sale contracts provided for in sections 122.05 to 122.07 shall be valid for a period of three years only. The filing of the contract provided for by section 122.08 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 with the register of deeds *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 register of deeds shall be entitled to a like fee as upon the original filing."

This is the standard wording of the Commissioners of Uniform Laws.

Chapter 210 of the Laws of 1943 rewrote the last two sentences of this section to read as follows (italics again mine):

> "The validity of the filing may in each case be extended for successive additional periods of one year from the date of [sic] by filing with the register of deeds within thirty days next preceding th expiration of each period, *with* [*sic*] *a statement signed by the seller,* his agent or attorney showing that the contract is in force and the amount remaining to be paid thereon. Such statement shall be entered in the same manner as the contract or copy originally filed and shall be attached thereto by the register of deeds who shall be entitled to a like fee as upon the original filing."

The intent of this amendment is obvious, namely to do away with the necessity of filing a copy of the original contract with the renewal statement. But so, too, was the intent of the Arizona amendment even more obvious.

The Wisconsin amendment, taken literally, does *not* carry out its intent, for it provides that a contract may be renewed by filing *with* a renewal statement. Thus we have here an ambiguity, whereas the Arizona amendment was perfectly clear and categorical.

The Arizona Court held that, in event of an *ambiguous* alteration of a uniform law, the original meaning must still be followed. So the Arizona case applies to the Wisconsin situation.

The Kansas Court held that, in event of even a *clear* alteration of a uniform law ,the original meaning must still be followed. So the Kansas case is an *a fortiori* authority for following the original meaning in an ambiguous situation, such as the present.

The Supreme Court of Wisconsin has in the past strongly adhered to the principle of uniformity.[5]

If, guided by the Kansas and Arizona precedents cited, the Wisconsin Court applies this principle of uniformity to the present situation, they will hold that the 1943 amendment made no change whatever in Sec. 122.11.

At any rate, it would be the part of discretion for conditional vendors to assume that no change was effected, and hence to file a copy of the original contract with each renewal statement.

Incidentally this situation, like the Arizona situation, should be a lesson to legislators to leave uniform laws alone. The language of a uniform law, like the language of any other statute, can of course in many instances be improved. But, in the interests of uniformity, is this ever advisable?

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[5] Mlodzik v. Ackerman, 191 Wis. 233, 212 N.W. 790 (1926); Fidelity v. Planenscheck, 200 Wis. 304, 227 N.W. 397 (1930); Forgan v. Smedal, 203 Wis. 564, 234 N.W. 896 (1931).

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