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Uniform and Conditional Sales

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UNIFORM AND CONDITIONAL SALES.*

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Uniformity in the laws regulating commercial transactions is as desirable to have as it is difficult to attain. Inconsistencies and direct conflicts may be found in the decisions of almost any single jurisdiction, and when the same subject is dealt with by the courts and legislatures of forty-eight states and of the nation the opportunities for a variety of views are vastly multiplied. The importance of the subject and the intolerable conditions arising from a failure to find a solution of the trouble has attracted the attention of lawyers and judges from the beginning of our government. Judge Mitchell of the Minnesota Supreme Court thought it desirable on questions of commercial law for the state courts to conform to the doctrines of the federal courts (44 Minn. 224). Mr. Justice Holmes, in his dissenting opinion in the case of *Black & White T & T Co.* v. *Brown & Yellow T & T Co.* (276 U. S. 518; 72 L. Ed. 681), suggested a simple solution of any conflict between the state and federal courts. He argued ably that the decisions of the highest state courts should constitute the law, whether based on a statute or on the common law. But the legal profession has sought to solve the problem by a series of uniform statutes which would be the same in all the states and binding on the federal courts, which do accept the statutes of a state as construed by its highest court as the law of the state.[1] Even then the various courts differ as to the meaning of particular provisions in the standard statutes, and perfect uniformity appears to be unattainable.

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[1] *Mason* v. *U. S.*, 260 U. S. 545, 67 L. Ed. 396, 43 S. Ct. R. 200.

But the magnitude of the problem has not dampened the ardor of the profession in grappling with the difficulty. The various State Bar Associations and the American Bar Association have spent years of effort in the preparation of various uniform acts and in the pursuit of legislative approval. The lists of such acts approved by the American Bar Association is an impressive one, and the energy and ability manifested in support of the aspiration for uniformity in dealing with common problems is worthy of all praise.

The Committee that prepared the Uniform Sales Act also prepared the Uniform Conditional Sales Act and the two were designed to be companion acts to cover the whole field of sales. Strange to say, many states that readily adopted the Uniform Sales Act, failed to accept the Conditional Sales Act. Thus the Siamese twins were separated, and the courts have been struggling to administer the one act as though it covered the whole subject.

The Uniform Sales Act was adopted in this state in 1928, but the Conditional Sales Act was not adopted. The result is an imperfect coverage of the field, leaving much to be worked out by the Courts upon principles of equity.

The Court of Appeals soon encountered the difficulty met with in other states when *Munz* v. *National Bond & Investment Co.* (243 Ky. 293; 47 S.W. (2d) 1055) came up for consideration. In that case the primary question was whether a conditional sales contract had to be recorded to affect creditors or purchasers who dealt in good faith with the conditional vendee. Holding that the recording acts had not been affected, the Court said: "The authors of the Uniform Sales Act prepared a companion act entitled 'An Act concerning conditional sales and to make uniform the law relating thereto.' When the two acts are adopted together they create a harmonious regulation of the whole subject and no confusion arises, since the conditional sales act expressly provides that every provision in a conditional sale contract 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 in the act provided, unless such contract or copy is filed within ten days after the making of the conditional sale.

Williston, on Sales, (2d Ed.) Vol. 2, p. 1805. So when the Uniform Sales Act is adopted, and the conditional sales act is not, confusion arises from the effort to apply the Uniform Sales Act to matters it was not intended to embrace. But when the history, purpose and terms of the two acts are understood, it is perfectly obvious that the Uniform Sales Act did not operate to impair, alter or affect in any manner any statute then in force requiring sales contracts to be recorded." Whether such instruments are called by one name or another is wholly immaterial. It is the character and purpose, not the name, of the instrument that determines its status. Any instrument or document that was recordable before the Uniform Sales Act was enacted remained recordable thereafter, even though its name may have been changed. The Uniform Sales Act was intended to leave conditional sales in their existing conditions, except in so far as the remedies available were enlarged. Geo. G. Bogart, who was one of the authors of the Uniform Sales Act, and also of the conditional sales act, in referring to the Illinois situation, where only the Uniform Sales Act was adopted, said:

"The Legislature should now adopt the Uniform Conditional Sales Act, in order to provide a recording system and foreclosure rules. It has long required chattel mortgages to be recorded, in order to be valid against third persons. If recording is needed to protect the public in the case of chattel mortgages, it is likewise needed in the case of the conditional sale. Without public record, the possession of both mortgagor and buyer is deceptive and may lead to fraud on creditors, mortgagees and sub-purchasers. Thirty-two states now have filing or recording statutes in the case of conditional sales. A few others have statutes applying to certain conditional sales only. At least three states have adopted filing systems within the last decade, Maryland in 1916, New Mexico in 1917, and Pennsylvania in 1925. In Mississippi there is no provision for record, but the Supreme Court has urged on the legislature the need of such a system."

The two acts are too long to be minutely analyzed within the limits of this paper. The Uniform Sales Act is now Kentucky Statutes, Sections 2651b 1-78, where its terms may be studied. It is in six parts, and embraces 78 separate sections. Part I covers the formation of the contract, the formalities of the contract, the subject matter, the price, conditions and warranties and sales by sample.

Part II deals with the transfer of property as between the

seller and buyer, the transfer of title, and the rights of persons who may acquire paper issued in accordance with the act.

Part III is concerned with the performance of the contract.

Part IV defines the right of an unpaid seller against the goods, the right of stoppage in transitu, and the rights of resale and rescission by the seller.

Part V deals with actions and remedies and part VI contains the rules of interpretation to be applied to contracts coming within the law.

A copy of the Conditional Sales Act is annexed to this paper for the convenience of those interested in this matter. It is printed in Williston On Sales (2d Ed) Vol. 2 p. 1805.

The Uniform Sales Act was designed to fix and regulate the rights of the contracting parties as between themselves, and contains few provisions concerning the rights of third parties.

The act expressly excludes contracts or transactions by which personal property is made to serve as a security for debt (§ 75) Such matters are elaborately dealt with in the Conditional Sales Act, which undertakes to define the rights of third parties in property involved in a conditional sale. Until the Conditional Sales Act is adopted our law is not complete, and the Courts will be confronted constantly with difficult problems.

In addition to the Munz case already mentioned, the Court of Appeals has decided four other cases, which will be noticed.

In *Brown* v. *Woods Motor Co.*, 239 Ky. 312, 39 S. W. (2d) 507, the single question presented was the right of the seller, upon default by the buyer, to recover possession of the chattel. The Court held that such right was given by section 20 of the Uniform Sales Act. But the Court was cautious to add:

"Without any purpose of prejudging, it may be observed that having regained possession of the chattel, the rights of the buyer inuring to him from the payment of more than one-third of the purchase price of the machine, were not forfeited, anything in the contract to the contrary notwithstanding. The Sales Act undertakes to provide appropriate remedies and, when administered with the application of equitable principles, we have no doubt the rights of both parties will be conserved."

In the Munz case a reference is made to the duties of the seller and the rights of the buyer in cases of repossession, as follows:

"But when the seller under a conditional sales contract regains possession of the property it is necessary for him to give the purchaser an

opportunity to redeem, and, if not redeemed within a reasonable time, the property has to be disposed of at a fair sale, on adequate notice, and the proceeds applied, first, to satisfy the debt and expense, and second, to reimburse the purchaser to the extent of the surplus remaining." See *White Sewing Machine Co.* v. *Conner*, 111 Ky. 827.

The Conditional Sales Act, as proposed, provides a period of ten days for redemption by the buyer, within which time a payment or tender of the amount due under the contract, with interest, entitles the buyer to resume possession. In some states the period provided for redemption is not fixed, but a reasonable time is allowed. Remedies are provided for the relief of the buyer from oppressive action by the seller.

It is important for the seller to be sure of his ground for he may be subjected to substantial damages for wrongs inflicted on the buyer. Thus in *General Motors Acceptance Co.* v. *Sanders*, (Ark.), 43 S. W. (2d) 1087, a judgment awarding substantial damages to the buyer was affirmed. The Court treated as a wrongful conversion the error of the Company in repossessing the property instead of accepting a tender of the amount due. The risk of dispute is very great, and the rules to secure just treatment are very rigid. In *Pelton* v. *General Motors Acceptance Corp.* (Oregon) 7 Pac. (2d) 263, a judgment for $255 compensatory and $5,000 punitive damages was upheld. Pelton had bought a car and had defaulted on his payments, but later made the payments due which were accepted. The agent reclaimed the car over the protest of Pelton and the company was dilatory in rectifying the wrong.

In *Duval Jewelry Co.* v. *Smith*, (Fla.) 136 So. 878, a substantial judgment for malicious prosecution was reversed on the ground that the seller had acted in good faith on the advice of counsel.

In *Com.* v. *Larson*, 242 Ky. 317, 46 S. W. (2d) 83, an indictment was returned against Larson for taking possession of an automobile for his employer who was claiming a right to repossess it against a buyer in default. The Court certified the law to be that a lienholder could lawfully repossess the car under the Uniform Sales Law, but had no right to take separate personal property that was being carried in the car and upon which no lien existed. If such personalty was knowingly carried away and not returned, an offense was committed. It would seem important for a person repossessing a car to search it carefully

to see that it did not contain anything that might be the subject of larceny.

In *General Motors Acceptance Corp.* v. *Shuey,* 243 Ky. 74, 47 S. W. (2d) 968, a judgment for damages awarded a buyer of a motor car was reversed. The purchaser had paid two installments of his obligation. He left the car parked on a public street and possession thereof was taken by the holder of the contract. Due notice was given the buyer and a sale was consummated without producing a surplus. The buyer then sued for damages on the theory that the car had been unlawfully repossessed. The Court concluded that the Company had pursued merely its lawful remedy and had incurred no liability.

In *Johnson* v. *Sauerman Bros.* 243 Ky. 587, 49 S. W. (2d) 331, it appeared that an Illinois seller had delivered to a Tennessee buyer, a lot of valuable machinery. The buyer had a contract to do work in Kentucky which would require a long time to complete and the machinery was used in the work. A creditor attached the property and the seller claimed it under a reservation of title. The court held that the law of Kentucky governed the case, and since the sales contract was not recorded, and the attaching creditor was without actual notice of the seller's claim, the attaching creditor acquired a prior lien.

In *General Motors Acceptance Corporation* v. *Dickinson,* 249 Ky. 422, 60 S. W. (2d) 967, Judge Dietzman reviews with his accustomed felicity the preceding cases and states with precision the present status of the law upon this subject.

The right of redemption is for the benefit of the buyer and may not be claimed by his creditors. *Moody* v. *U. S. Fidelity Co.* (Ala.) 137 So. 308.

Ordinarily the measure of damages for the wrongful conversion of a chattel is the actual market value at the date of the conversion, less any debt due thereon from the claimant to the defendant. *Hammans Lumber Co.* v. *Fricker* (Ark.) 42 S. W. (2d) 1001. The market value is a matter to be proved, and is not affected by the result of a private sale. *General Motors Corp.* v. *Sanders* (Ark.) 43 S. W. (2d) 1087.

In Rhode Island and Illinois it seems that recording is not required in conditional sales, and the contract is enforced according to its terms against even an innocent third party. *Revere Copper, Inc.,* v. *Craig* (R. I.) 157 Atl. 879. *Sherer-*

Gillett Co. v. *Long*, 318 Ill. 472. But in most jurisdictions the law regards with jealous care the rights of innocent third parties as against "pocket liens" or secret claims of every character.

The United States Courts follow the decisions of the State courts in construing the statutes of the state (58 Fed. (2d) 681, 911). In *Finance & Guaranty Co.* v. *Oppenheimer*, 276 U. S. 10, 72 L. Ed. 443, 48 S. Ct. Rep. 209, the Supreme Court held that one holding security did not obtain a preference under the National Bankruptcy Act by taking lawful possession under the contract, although it was done within four months of the adjudication in bankruptcy.

If the General Assembly would adopt the Uniform Conditional Sales Act substantially in the form proposed by the Committee on uniform laws, our law would be harmonious and workable and the problems of the Court much simpler; but until that is done the Court of Appeals will be put to it from time to time to work out justice in particular cases on the peculiar circumstances presented with only the principles and usages of equity to guide it.

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