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Notes

SOME CHANGES IN PENNSYLVANIA LAW BY THE UNIFORM CONDITIONAL SALES ACT

Pennsylvania has had its Uniform Conditional Sales Act since the 12th of May, 1925.¹ The legislature in most respects adopted the phraseology of the Act as drawn by Dean George Gleason of the Cornell University School of Law. But in some of the most vital instances the Pennsylvania legislature failed to enact certain provisions as formulated by the commissioners. It is the purpose of this article to note some of the changes in the law of Pennsylvania resulting from the adoption of the Act in 1925, and also to note the changes made in the Uniform Act before its adoption in Pennsylvania.

Section 1 of the Act contains its most important provision; i. e., the definition of a conditional sale and the meaning of the other leading words used throughout the act. It is in this section that the Pennsylvania legislature made its most illogical and regrettable move. As drawn by the commissioners this section provided the following:

“Section 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 bailment 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

¹Act of May 12, 1925, P. L. 603.

option of becoming the owner of such goods upon the full compliance with the terms of the contract".²

In adopting section 1 the Pennsylvania legislature omitted subsection 2.³ At the time it was stated that this section would work too sudden a change in existing Pennsylvania law in relation to bailment leases, yet subsection 1 caused an even greater change in the pre-existing law of conditional sales. A primary purpose of the commissioners was defeated when subsection 2 was omitted. By including contracts of bailment or leasing of goods under the definition of a conditional sale it was hoped by the commissioners to abolish the many differences which have developed between the law of conditional sales and that of bailment leases, particularly in states like Pennsylvania. This advance step promulgated in the uniform draft was cast aside by the legislature, with the result that the law in Pennsylvania in regard to bailment leases has undergone no direct change by reason of our Conditional Sales act. Since the cases in Pennsylvania on conditional sales and bailment leases before 1925 are in inextricable confusion the omission of subsection 2 is deplorable. Such a provision would have aided in clarifying Pennsylvania law in reference to the particular phase.

Prior to and since 1925 the decisions in Pennsylvania have failed to make any clear cut distinction between conditional sales and bailment leases. What might be ruled to be a conditional sale in one case has often been held to be a bailment lease in a succeeding case by the same court. This situation has been complicated by the fact that it has

² U. L. A. No. 1, p. 2. As to what constitutes a conditional sale see also 17 A. L. R. 1421; 27 Mich. Law Rev. 591; 8 Minn. Law Rev. 162; Williston on Sales p. 324 et seq.

³ See Act May 12, 1925, P. L. 603, sec. 1; and *Stern v. Paul*, 96 Pa. Super. Ct. 112 (1928), in which the court, at page 117, stated: "although not conclusive, this action of the legislature (in omitting subsection 2) is strongly persuasive in favor of the view that it was deemed unwise to make any change in the existing law relative to bailment leases".

always been important to determine whether a particular set of facts constituted one or the other, for, due to a well settled rule of law peculiar to Pennsylvania, the separation of title and possession in conditional sales was fraudulent per se,⁴ and, therefore, one who made delivery under a conditional sale contract was estopped to claim title as against innocent purchasers for value from or levying creditors of the conditional buyer, though in most jurisdictions the contrary was and is the law.⁵ But one who makes delivery under a bailment lease, whether there be an option to purchase or not, has always been protected against innocent purchasers for value or levying creditors of the bailee.⁶

The first decision of the Supreme Court relative to a conditional sale was that of *Martin v. Mathiot*.⁷ In this case Chief Justice Tilghman, in holding that a condition reserving title in the vendor until full payment of the purchase price while good and enforceable as between the original parties, was unenforceable against creditors of or innocent purchasers for value from a conditional vendee, said:

“The cases which have generally been brought before the courts of justice, are those in which the seller has remained in possession, those having been adjudged fraudulent. There are innumerable authorities on this subject, but I will refer particularly to *Clow v. Woods*, 5 S. & R. 286, and *Babb v. Clemson*, 10 S. & R. 419 The principle which governed them, was that a sale, where possession does not accompany and follow it, is fraudulent as to the creditors. It was the separation of the possession from the property which

⁴24 R. C. L. 449, 450.

⁵J. P. McKeehan: Effect of Uniform Sales Act on Pre-Existing Law in Pennsylvania, 26 Dick. Law Rev. 151, 161.

⁶*Rowe v. Sharp*, 51 Pa. 26 (1865); *Enlow v. Klein*, 79 Pa. 488 (1875); *Ditman v. Cottrell*, 125 Pa. 606 (1889); *Miller v. Douglas*, 32 Pa. Super. Ct. 158 (1906); *Reading Auto Co. v. De Haven*, 53 Pa. Super. Ct. 344 (1913).

⁷14 S. & R. 214 (1826).

made the fraud; and the principle applies to the case before us. Here the seller did not retain the possession but was to retain the property after he had transferred possession to the buyer. The mischief is the same—a false credit is given; and whether given to a buyer or seller, is immaterial . . . It is the rule of general policy which declares possession to be the evidence of property, and the presumption is, that every man is trusted according to the property in his possession”.

In the *Martin* case a creditor of the buyer had levied on goods in the buyer's possession under a conditional sale contract.

With such an eminent authority as Justice Tilghman pointing out the policy of the Pennsylvania courts against secret liens and interests arising from the separation of title and possession, an imposing array of decisions in Pennsylvania has refused to uphold the validity of conditional sales as against bona fide purchasers or incumbancers for value or subsequent levying creditors of the buyer.⁸

There is no question but that the law as enunciated in *Martin v. Mathiot*,⁹ was harsh, and Justice Dean in *Keystone Watch Co. v. Fourth Street National Bank*¹⁰ made note of this.

⁸Rose v. Story, 1 Pa. 190 (1845); Haak v. Linderman, 64 Pa. 499 (1870); Stadfeld v. Huntsman, 92 Pa. 53 (1879); Thompson v. Paret, 94 Pa. 275 (1880); Brunswick Co. v. Hoover, 95 Pa. 508 (1880); Peek v. Heim, 127 Pa. 500 (1889); Stephens v. Gifford, 137 Pa. 219 (1890); Farquhar v. McAlevy, 142 Pa. 233 (1891); Ott v. Sweatman, 166 Pa. 217 (1895); Schmalz v. York Mfg. Co., 204 Pa. 1 (1902); Duplex Printing Co. v. Clipper Co., 213 Pa. 207 (1906); Schmidt v. Bader, 284 Pa. 41 (1925); Deere Plow Co. v. Hershey, 287 Pa. 92 (1926), in which the sale occurred and the controversy involved was in litigation prior to the passage of the Uniform Conditional Sales Act of 1925. An apparent exception to the above line of cases is *Bank v. Motor Car Co.*, 235 Pa. 194 (1912); but see comment on this case in *Hawk v. Frey*, 228 Fed. 779 (E. D. Pa.—1916). For a softening of the rigor of the Pennsylvania rule concerning separation of title and possession see Justice Sadler's opinion in *Shipler v. New Castle Paper Corp.*, 293 Pa. 412, 421 (1928).

⁹Supra.

¹⁰194 Pa. 535 (1900).

Inasmuch as the courts themselves recognized the rigor of this rule, it was to be expected that they would invariably hold doubtful cases to be bailment leases and not conditional sales.¹¹ Many cases which on their facts were in reality conditional sales in all but name were held not to be conditional sales, but, on the contrary, to be bailment leases.¹²

Thus by the expedient of calling the contract a "lease" and providing for the payment of "rent", many sellers avoided the rigor of the conditional sale rule in Pennsylvania prior to 1925. Whenever the amount of rent contracted to be paid is equal substantially to the value of the goods and the buyer is to become the owner after all the rent is paid or has the option to become the owner by paying a nominal sum after the last installment has been paid, the courts ought to disregard the form and consider the transaction to be a conditional sale.¹³ If the buyer promises to pay all the installments, the aggregate of which is equivalent substantially to the value of the goods, there should be no doubt of the transaction being a conditional sale.

¹¹Muller: *Conditional Sales in Pennsylvania Since the Uniform Sales Act*, 72 U. Pa. Law Rev. 123, 146.

¹²Rowe v. Sharp, 51 Pa. 26 (1865); Becker v. Smith, 59 Pa. 469 (1868); Enlow v. Klein, 79 Pa. 488 (1875); Ditman v. Cottrell, 125 Pa. 606 (1889); Lippincott v. Scott, 198 Pa. 283 (1901); Stiles v. Seaton, 200 Pa. 114 (1901); Cincinnati Equipment Co. v. Strang, 215 Pa. 475 (1906); Link Co. v. Continental Trust Co., 227 Pa. 37 (1910); Jones v. Wands, 1 Pa. Super. Ct. 269 (1896); Porter v. Duncan, 23 Pa. Super. Ct. 58 (1903); Miller v. Douglas, 32 Pa. Super. Ct. 158 (1906); Reading Auto Co. v. De Haven, 53 Pa. Super. Ct. 344 (1913). Due to the holdings by the courts of transactions which are in reality conditional sales to be contracts of bailment, there has been developed what is known in other jurisdictions as the "Pennsylvania Rule". This is, that in Pennsylvania, if a party receives possession of goods under an agreement that he is to retain them for a definite period of time, and if, at or before the expiration of that period, he pays for them, he is to become the owner,—otherwise to pay for the use of them,—this constitutes a bailment, and title to the property even as against creditors remains in the bailor: 17 A. L. R. 1421, 1441.

¹³Williston on Sales, p. 336, and cases cited under note 66; 36 Harv. Law Rev. 489.

Despite language to the contrary in *Ott v. Sweatman*,¹⁴ many Pennsylvania cases look only to the form of the transaction in determining whether the transaction is a conditional sale or a bailment lease.¹⁵

It is to be remembered that a bailment lease contemplates only the use of the property for a specified period, at the end of which it is to return to the lessor, unless there is an option to buy which is exercised. The installments or rent should compensate for the use and deterioration of the property, and the amount mentioned in the option to buy should approximate the actual value of the property, rather than be a mere nominal sum. On the other hand, a conditional sale anticipates the ultimate assumption of ownership by the conditional buyer plus the right to intermediate use. If there is anywhere in the agreement a promise on the part of the buyer to pay a certain number of installments the aggregate of which equals the value of the goods there should be a conditional sale, but many Pennsylvania cases hold the contrary.

Perhaps the most notorious case in which a seller, desirous of making a conditional sale, yet anxious to avoid the Pennsylvania law prior to 1925, resorted to the device of making the contract in the form of a lease with an option to the buyer to purchase for a small consideration provided all the so-called "rent" were paid, is that of the *Cincinnati Equipment Co. v. Strang*.¹⁶ In this case, the plaintiff leased to the defendant a quantity of rails together with a steam shovel and a number of dump cars. The stated rent, payable in installments, amounted to over six thousand dollars. The contract stated that if the defendant paid all the rent installments as they became due, the defendant would then have the option of purchasing said

¹⁴166 Pa. 217, 221 (1895), ruling that Pennsylvania courts will construe the essential character of the contract rather than its form. See also *Hays v. Weikel & Marks*, 76 Pa. Super. Ct. 465 (1921).

¹⁵*Brown Bros. v. Billington*, 163 Pa. 76 (1894); *Stiles v. Seaton*, 200 Pa. 114 (1901); *Re Morris*, 156 Fed. 597 (M. D. Pa.—1907); *Cincinnati Equipment Co. v. Strang*, 215 Pa. 475 (1906).

¹⁶215 Pa. 475 (1906).

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goods and of becoming the owner thereof on the payment of the trifling sum of ten dollars. Nothing could be more obvious than the fact that the ten dollars provision and the provision for rent were mere devices, yet the Supreme Court ruled that the transaction was a bailment lease with option to purchase. This conclusion resulted from merely viewing the form of the contract rather than grasping its essential nature which clearly was that of a conditional sale.¹⁷

It is therefore readily apparent that despite the fact that the Pennsylvania courts have often stated the proposition that the reservation of title after delivery of the goods as security for the price in a conditional sale is unenforceable against creditors of and innocent purchasers for value from the conditional buyer, yet as a practical matter the courts have been enforcing the condition reserving title in the seller by the expedient of holding such contracts to be bailment contracts rather than contracts of conditional sale.¹⁸

Subsection 2 of Section 1 of the commissioner's draft would have precluded the further arising of such expedients and subterfuges. This subsection by including bailment lease contracts within the operation of the Uniform Conditional Sales Act would have made the law uniform, and an effective protection would have been given against secret conditional sales no matter what their form. But, as noted, the Pennsylvania legislature emasculated section 1 by omitting subsection 2.

With the omission of said subsection the present situation in Pennsylvania amounts to this. All conditional sales to be effective as against innocent third persons must be recorded. But there are a great number of situations in

¹⁷See Williston on Sales, p. 336, note 67, for a criticism of the Strang case. For cases in which so called "leases" have been held to be contracts of conditional sale see *Kelly Roller Co. v. Spyker*, 215 Pa. 332 (1906); *Weiss v. Lichter*, 113 N. Y. S. 999 (1909); *Smith v. Aldrich*, 180 Mass. 367 (1902); *Lauter v. Isenrath*, 72 Atl. 56 (N. J.—1909).

¹⁸72 U. Pa. Law Rev. 147.

which it is doubtful whether the transaction is a contract of conditional sale or one of bailment. In such cases presumably the Pennsylvania courts will continue their past tendency of indirectly protecting the rights of the seller in such cases and will therefore construe questionable cases as contracts of bailment rather than conditional sales. But they might not do this. Therefore, the careful practitioner, in doubtful cases, would do well to record the transaction. If it turns out to be a contract of conditional sale, all well and good. If it is decided to be a bailment lease, nothing has been lost but the payment of trivial filing fees. In drawing up a bailment lease, with or without option to purchase, it is best to follow closely the language of such contracts declared to be valid bailment leases in Supreme Court decisions. The same would apply to the making of conditional sale contracts.

Besides the omission of subsection 2 there were other changes made in section 1 of the Conditional Sales Act before its enactment in Pennsylvania.¹⁹

Section 2 of the Act gives the buyer the right to possession when he is not in default and it also gives him the right to the title in the goods upon performance of the condition. The buyer's remedies are governed by the Uni-

¹⁹(1) Pa. Act omits the words "or hires" in the definition of buyer. (2) Pa. Act omits the words "or leases" in the definition of seller. (3) Pa. Act changed the first clause in the definition of goods to read: "Goods means all chattels personal, other than things in action and money and machinery attached to or to be attached to real estate". It is to be noted in this connection that Pennsylvania had a separate statute (Act of May 14, 1925, P. L. 722) "concerning conditional sales of chattels attached, or to be attached, to realty, and regulating the filing and effect thereof". However, in 1927 the legislature by the Act of May 12, 1927, P. L. 979, repealed the Act of May 14, 1925, P. L. 722, and amended the definition of goods in the first section of the Act of May 12, 1925, P. L. 603, by eliminating the words "and machinery attached to or to be attached to real estate". The net result of these statutory changes is to include machinery attached to or to be attached to real estate under the Uniform Conditional Sales Act of 1925, P. L. 603, as amended. See *Beloit Iron Works v. Lockhart*, 294 Pa. 376 (1928), in litigation before the passage of the Act of May 12, 1927, P. L. 979.

form Sales Act.²⁰ A conditional buyer can rescind the contract under the Uniform Sales Act.²¹

The Pennsylvania Supreme Court in the case of *Anchor Concrete Machinery Co. v. Pennsylvania Brick and Tile Co.*,²² said:

"It will be further noted that the Sales Act did not purport to deal with conditional sales, which were made the subject of a separate uniform law, adopted by the commissioners the same year though not enacted as a statute in this state until 1925 (May 12, P. L. 603)".

Such a statement is inaccurate, for the Uniform Conditional Sales Act does not cover all the law of conditional sales, while on the other hand, the Sales Act does apply in many instances, except of course where there are factual differences preventing due to the separation of title and possession inherent in a conditional sale. In fact section 22(a) of the Uniform Sales Act specifically deals with the risk of loss in conditional sales. The commissioners of the Conditional Sales Act, in their Commentaries on the Uniform Conditional Sales Act frequently make reference to the Uniform Sales Act as applying to cases which the Conditional Sales Act does not cover.²³

Section 3 of the Uniform Conditional Sales Act provides that the buyer is liable to the seller for the purchase price or installments as they become due. There are two principal remedies open to the unpaid seller. He can sue for the price under section 63 (2) of the Uniform Sales Act,²⁴ or retake the goods,²⁵ or both.²⁶ The unpaid seller

²⁰Act of May 19, 1915, P. L. 543.

²¹Russo v. Lavender, 215 N. Y. S. 642 (1926). See also article by Vold on the Divided Property Interest in Conditional Sales, 78 U. Pa. Law Rev. 713; and the Effect of the Uniform Sales Act on Rights of Purchaser from Conditional Buyer, 39 Harv. Law Rev. 660.

²²292 Pa. 86 (1928).

²³Notes in 2 U. L. A. No. 2; 2A U. L. A. p. 45; 2 U. L. A. p. 41.

²⁴Act of May 19, 1915, P. L. 543. See also Remedies of Seller in Conditional Sales, 36 Harv. Law Rev. 481.

²⁵Section 16, Uniform Conditional Sales Act, *infra*.

²⁶Section 24, *ibid*.

in a recorded conditional sale can also bring trover or replevin as against third persons.²⁷ However, under section 63 (3) of the Uniform Sales Act,²⁸ where there is a conditional sale of goods having a ready market, if the conditional buyer has agreed to pay the price only upon the condition that the property in the goods be passed to him and the buyer refuses to accept the goods and take title, it has been held that the conditional seller cannot tender the goods, force the title on the buyer and collect the price. All the seller has is an action for damages for breach of contract. The Uniform Conditional Sales Act gives the seller no right to the price in this case and said section 63 (3) of the Sales Act limits such a right to cases where the goods have no ready marketability.²⁹

The rights of a conditional seller against third persons are the same as those of any owner of an interest in goods, and so far as a third person converts the goods the third person is liable for no more than the value of the goods converted.³⁰

Section 4 of the Uniform Conditional Sales Act makes a conditional sale valid as to all persons except in so far as the requirements of filing qualify it. This is a distinct change from prior Pennsylvania law, although it is in accord with the common law of other jurisdictions.³¹

In Pennsylvania³² and in most jurisdictions³³ a conditional sale has always been held valid as between the seller and buyer, i. e., the parties to the transaction. But as stated earlier, the bona fide purchaser from or creditor of the conditional buyer has always been preferred over the conditional seller in Pennsylvania, due to the policy of the

²⁷Section 29, *ibid.*

²⁸May 19, 1915, P. L. 543.

²⁹*United Machinery Co. v. Etzel*, 89 Conn. 336, 94 Atl. 356 (1915).

³⁰*Rose v. Story*, 1 Pa. 190 (1845).

³¹*Carter v. Kingman*, 103 Mass. 517 (1870); *Fifield v. Elmer*, 25 Mich. 48 (1872); *Marvin Safe Co. v. Norton*, 48 N. J. L. 410 (1886); *Austin v. Dye*, 46 N. Y. 500 (1871); 2A U. L. A. No. 47, pp. 57, 58.

³²*Powell v. Clawson*, 38 Pa. Super. Ct. 245 (1909); *Martin v. Mathiot*, 14 S. & R. 214 (1826).

³³2A U. L. A. No. 46.

courts in this state against secret liens and interests arising from a separation of title and possession.³⁴

Therefore, the result of section 4 in Pennsylvania is to repudiate the idea that conditional sales are subject to attack on the ground of fraud or estoppel. This brings the law of this state into line with that of the great majority of other states in which a conditional sale is valid³⁵ as to all persons subject to the filing requirements.

Section 5 furnishes some of the principal limitations upon section 4 in that it provides that:

“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 provisions, purchases the goods or acquires by attachment or levy a lien on them, before the contract or copy thereof shall be filed . . . within ten days after the making of the conditional sale”.

Persons who rely on the recordation of the conditional sale are thus amply and effectively protected. The place of filing in Pennsylvania is the prothonotary's office.³⁶

In making a recorded conditional sale valid as against creditors of and purchasers from the buyer the prior law of Pennsylvania has been radically changed. Where before 1925, innocent third persons were the ones protected, today under a recorded conditional sale the conditional seller is effectively protected.³⁷ Thus by mere recording the effect

³⁴See cases cited under note 8 supra.

³⁵See *In Re Gelatt & Sons*, 24 Fed. (2d) 215, (M. D. Pa.—1928), in which a conditional sale was held valid, and title to property acquired by bankrupts thereunder did not pass to trustee. Cf. 36 Harv. Law Rev. 104: Property Passing to Trustee in Bankruptcy; also 39 Harv. Law Rev. 660: Effect of Uniform Sales Act on Rights of Purchasers from Conditional Buyers.

³⁶Section 7, Uniform Conditional Sales Act, *infra*.

³⁷*Riccardi Motor Car Co. v. Weinstein*, 98 Pa. Super. Ct. 41 (1929); *Anchor Concrete Machinery Co. v. Pa. Brick & Tile Co.*, 292 Pa. 86, 92 (1928). As to necessity for filing trust receipt of conditional sale see 39 Harv. Law Rev. 658; 40 *Ibid.* 658. A case note on, *When Is a Record of a Conditional Sale Not a Record nor Even a Notice*, is to be found in 28 Mich. Law Rev. 351. For Sufficiency of Description in Filing see 16 Va. Law Rev. 96.

of the long line of cases beginning with *Martin v. Mathiot* is overcome; the seller being directly favored by the act.

But it is important to note that in Pennsylvania goods in the possession of a conditional buyer under a recorded conditional sale contract are not exempt from distress for rent, on the theory that the landlord's lien is of common law origin and is unaffected by the Uniform Conditional Sales Act, which in no way purports to deal with a landlord's lien.³⁸

Section 6 provides that the place of filing shall be in the prothonotary's office in the county in which the goods are first kept for use by the buyer after the sale.³⁹ It is not a condition precedent to filing that the conditional sale contract be acknowledged or attested.

Section 7, relating to fixtures (i. e., goods which are to be or are attached to land), provided that in conditional sales of fixtures, where the parties intended that the fixtures should keep their character as personalty, it was necessary in order to be valid against innocent third persons to record such a contract in the office of the recorder of deeds, this type of notice reaching particularly dealers in real property. However, the Act of May 12, 1927⁴⁰ repealed this section and provides that the filing of conditional sales of fixtures shall take place in the prothonotary's office as provided for under section 6.

Section 9 provides that:

"When goods are delivered under a conditional sale contract and the seller expressly or impliedly consents that the buyer may resell them before the per-

³⁸Hobart Mfg. Co. v. Scheeren, 75 Pitts. 842 (1927); Berg v. Langan, 14 D. & C. 159 (1930); Steinman v. Musketnuss, 14 D. & C. 743 (1931). In this connection see sections 30 and 32 of the Uniform Conditional Sales Act, which are the only sections which might be relevant to this problem. See also case note on right to distrain on goods held under conditional sale contracts in 38 Harv. Law Rev. 830.

³⁹For conflict of laws on situs of conditionally sold property see 26 Mich. Law Rev. 99 and 29 Harv. Law Rev. 217.

⁴⁰P. L. 979, amending sections 1 and 7 of the Act of May 12, 1925, P. L. 603, and also repealing the Act of May 14, 1925, P. L. 722. See *Beloit Iron Works v. Lockhart*, 294 Pa. 376 (1928).

formance 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".

Since the Pennsylvania courts prior to 1925 held conditional sales to be void against innocent purchasers from or creditors of the conditional buyer, it would appear by analogy that conditional sales with the right of resale would not have been treated with any more favor and would have been void as against innocent third person. The latter is the result under this section and therefore this section somewhat approximates previous Pennsylvania law.

As the commissioners, themselves, point out, where a seller attempts to reserve property in himself and yet allows a resale by a retailer in the ordinary course of business, he is doing two inconsistent things.⁴¹ To demand that a purchaser from a retailer examine the records every time he desires to make a purchase, no matter how large or small, would clog and disrupt present economic machinery, and therefore it is only proper that the constructive notice obtained by filing should be of no effect insofar as a purchaser from a retailer in the ordinary course of business is concerned. But mortgagees and pledgees are not purchasers in the ordinary course of business and consequently they, as well as creditors of the retailer, are bound by section 5 of the Act. The word retailer is used here as synonymous with conditional buyer; e. g., a wholesale dealer sells to a retailer under a conditional sale giving the retailer a right to resell. Even though recorded, such a conditional sale, as noted above, is of no effect as against purchasers in the ordinary course of business from the retailer.

Section 10 provides additional filing requirements, and section 11 provides that the filing of the usual type of conditional sale contracts shall be valid for three years. The

⁴¹2 U. L. A. No. 10, commissioner's note at p. 16.

filing of conditional sale contracts of railroad equipment or rolling stock shall be valid for fifteen years. This section also provides for refiling, and refiling in each case may be extended for successive additional periods of one year each from the date of the refiling.

Section 16 states that when the buyer is in default in (1) the payment of any sum due under the contract or (2) in the performance of any condition, or (3) 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 of the goods. Unless the goods can be retaken without a breach of breach, they shall be retaken by legal process.⁴² This makes the right to retake a statutory right rather than one depending upon contractual provision.

Section 17 provides that the seller may give the buyer twenty to forty days' notice of intention to retake, thus giving the buyer a reasonable time to raise the payments in arrear.

Section 18 states that after retaking, if there has been no notice of intention to retake under section 17, the seller must then retain the goods for ten days. It is seen then that under either section 17 or 18 the buyer has a period of grace during which he may perform and recover the goods.

Sections 19 to 23 provide what is to be done with the goods after the seller retakes them and under what situations the buyer is to receive back part payments or the proceeds of a resale of the goods. If a seller retakes and

⁴²In Pennsylvania in proceedings to retake property which was the subject of a conditional sale or bailment lease, the seller could always retake if he could do so without force; but when the taking was resisted he could not use force but had to proceed at law: *Abel v. Pickering Co.*, 58 Pa. Super. Ct. 439 (1914). The measure of damages for wrongful retaking by a conditional seller of a machine to be attached to realty in the hands of a receiver is its then replacement value: *Beloit Iron Works v. Lockhart*, 294 Pa. 376 (1928). Replevin is the proper remedy for enforcement of conditional sale contracts between the original parties: *Ridgway Dynamo Co. v. Werder*, 287 Pa. 358 (1926).

is so foolish as not to follow the provisions of sections 23 and 25 as to resale, the buyer may recover from the seller his actual damage if any, and in no event less than one quarter of the sum of all the payments with interest, which have been made under the conditional sale contract.

Section 24 deals with the seller's election of remedies and provides that after the retaking of possession,⁴³ the buyer shall be liable for the price only after a resale.⁴⁴ 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 a judgment, nor the collection of part of the price is inconsistent with the right to retake under section 16. Once the seller has collected the entire price he cannot retake; moreover, the seller cannot retake after he has claimed a lien on the goods or attached or levied upon them as the goods of the buyer.⁴⁵ This changes the previous Pennsylvania law on this point. Before 1925 the Supreme Court held that the retaking of the goods by the seller constituted an election which prevented him from later suing for the purchase price.⁴⁶

Section 26 provides that no agreement by the conditional buyer before or at the time of the making of the contract shall constitute a waiver of the buyer's statutory rights. There is an exception to this rule, since the section provides that a conditional buyer may agree to the stipulation that on his default under section 16 the seller may rescind the contract of sale. In this manner a conditional buyer is protected from unscrupulous sellers when he most needs protection, i. e., at or before the time the conditional sale contract is made.

Section 27 states that the risk of loss before retaking by the seller is on the buyer. This is the same rule as

⁴³Section 16, Uniform Conditional Sales Act, *supra*.

⁴⁴*Ibid*, section 22. See also 29 Mich. Law Rev. 387; 29 *Ibid*. 528.

⁴⁵Rights and Remedies as between Parties to a Conditional Sale after the Seller has Repossessed Himself of the Property: 37 A. L. R. 91. As to bringing action for price as waiver of right to reclaim the property see 12 A. L. R. 503.

⁴⁶Kelly Springfield Roller Co. v. Schlimme, 220 Pa. 413 (1908).

section 22 of the Uniform Sales Act. In addition, this section provides that until the condition is fulfilled the increase of the goods shall remain the seller's property.

Section 29 states rules for cases not provided for previously in the Act and is closely analogous to section 63 of the Uniform Sales Act.

Section 30 provides that:

"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".

All the uniform commercial acts contain this provision,⁴⁷ the purpose of which is to lead Pennsylvania courts in construing the Acts not only to follow Pennsylvania precedents but also those of other jurisdictions.

There is no provision in the Pennsylvania Act providing for a repeal of prior inconsistent legislation corresponding to section 32 of the commissioner's draft.⁴⁸

Nicholas Unkovic

EVIDENCE OF OTHER CRIMES IN MURDER TRIALS

Since the *Act of 1925, P. L. 759*, the law in Pennsylvania has been hazy and unsettled regarding the admission of evidence of prior, unrelated crimes in the trial of a specific offense. It has long been the established rule that "evidence of unrelated crimes is not admissible in the trial of a particular offense",¹ and this has been supported by the *Act of 1911, P. L. 20*.² As juries had been very reluctant to bring in a verdict of "guilty", with the death

⁴⁷Uniform Sales Act of May 19, 1915, sec. 74, P. L. 543; Uniform Bills of Lading Act of June 9, 1911, sec. 52, P. L. 838; Uniform Warehouse Receipts Act of March 11, 1909, sec. 57, P. L. 19; Uniform Stock Transfer Act of May 5, 1911, sec. 19, P. L. 126. See also *Swift v. Tyson*, 16 Peters 1, 19, 20 (1842).

⁴⁸See Section 32, 2 U. L. A. No. 32, p. 42.

¹Wigmore on Evid., Vol. I, (Ed. II) Par. 193; *Jamestown Iron & Metal Co., v. Knofsky*, 154 Atl. 15 (Pa. 1931); *Comm. v. Jones*, 280 Pa. 368 (1924); *Comm. v. Wilson*, 186 Pa. 1 (1898).

²Sec. 1, 19 P. S. sec. 711, p. 147.