



UNC
SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 10 | Number 4

Article 11

6-1-1932

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Recommended Citation

Naomi Alexander, *Conditional Sales -- Registration -- Effect on Vendor in Possession*, 10 N.C. L. REV. 388 (1932).

Available at: <http://scholarship.law.unc.edu/nclr/vol10/iss4/11>

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Conditional Sales—Registration—Effect on Vendor in Possession.

The vendee executed a conditional sale contract for an automobile on January 16, the car to be retained by the vendor until a down payment was made and vendee's old car turned in as a part of the purchase price. The vendee continued to use his old car. On the same day the vendee executed and recorded a chattel mortgage on the car to plaintiff. No reference is made in the reported case to the registration of the conditional sale contract.¹ The money was handed over on the chattel mortgage on January 18. Down payment and delivery of the car under the conditional sale were also made on that day. *Held*, the chattel mortgage takes priority over the conditional sale contract.²

To prevent a conditional sale vendee from obtaining credit on the appearance of title to goods in his possession, to which the common law recognized the title of the vendor,³ a statute⁴ was passed requiring a conditional sale to be recorded as if it were a chattel mortgage.⁵

Two different situations existed in the instant case which should be considered in determining the applicability of the statute. On the 16th, the date the chattel mortgage was executed and recorded, the car was in the possession of the vendor, and there was no appearance of title in the vendee. On the 18th the delivery of possession of the car to the vendee created the appearance of title by reason of which the money may have been handed over on the chattel mortgage. But since a chattel mortgage takes effect from the date of registration,⁶

¹ From information gained *dehors* the reported case it was learned that the conditional sale contract was never recorded.

² *Jordan v. Wetmur*, 202 N. C. 279, 162 S. E. 610 (1932).

³ *Brown Carriage Co. v. Dowd*, 155 N. C. 307, 71 S. E. 721 (1911); *JONES, CHATTEL MORTGAGES* (5th ed. 1908) §276; 1 *WILLISTON, SALES* (2d ed. 1924) §324.

⁴ N. C. CODE ANN. (Michie, 1931) §3312; §3311 requiring the recordation of a chattel mortgage reads in part: "No deed of trust or mortgage for real or personal estate shall be valid at law to pass any property as against creditors or purchasers for a valuable consideration from the . . . mortgagor, but from the registration of such deed of trust or mortgage. . . ."

⁵ See *Empire Drill Co. v. Allison*, 94 N. C. 548, 553 (1886) (states purpose of statute was to cure the following evil: the vendee "having possession of the property, and being the apparent owner, easily obtained credit on the faith of it, and, when it became necessary to resort to it to satisfy just debts, he would take shelter behind the (vendor), who retained the title").

⁶ *Sills v. Ford*, 171 N. C. 733, 88 S. E. 636 (1916) (this case holds that a deed takes effect from the date of registration; see *Francis v. Herren*, 101 N. C. 497, 507, 8 S. E. 353, 358 (1888) to the effect that the similarity of language of the statutes requiring the registration of deeds and of chattel mortgages gives them the same import and scope).

the chattel mortgagee would seem to have become a creditor prior to the time that the vendee acquired possession.⁷ This removes the case from the reason of the statute and suggests the desirability of a result contrary to that reached.⁸ Three analogous types of cases, in which the statute has been held inapplicable, point to the same conclusion: first, cases in which a mortgagee is in possession;⁹ second, cases in which a judgment creditor obtains a judgment before the execution of a conditional sale contract and the transfer of possession of property thereunder;¹⁰ and third, cases in which there was a mortgage on after acquired property. In the last situation liens already on the property when it came into the hands of the mortgagor were held not to be displaced.¹¹

The provision of the Uniform Conditional Sales Act, protecting purchasers from or creditors of the buyer, is drafted to protect both prior and subsequent creditors who have acquired a lien on the goods by levy or attachment and would take care of several of the problems raised in the instant case.¹²

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Criminal Procedure—Use of Suspended Sentence to Secure Civil Redress.

In a criminal prosecution¹ for assault with a deadly weapon the defendant was convicted, fined \$250, and sentenced to two years imprisonment. Capias was not to issue, however, if payment of \$2500 was made to prosecutrix in \$50 monthly installments, the same to be

⁷ North Carolina recording statute protects lien creditors only and not general creditors. See *Francis v. Herren*, *supra* note 6, at 507, 8 S. E. at 358; *National Bank of Goldsboro v. Hill*, 226 Fed. 102, 115 (E. D. N. C. 1915).

⁸ ALA. CODE (Michie, 1928) §6898 (recording statute protects "judgment creditors" generally); GA. CODE ANN. (Michie, 1926) §3318 (recording statute protects "third parties"); both of these statutes have been construed to protect a subsequent and not a prior creditor, in the following respective cases: *Elliott v. Palmer*, 9 Ala. App. 483, 64 So. 182 (1913); *Conder v. Holleman*, 71 Ga. 93 (1883).

⁹ *Cowan v. Whitener*, 189 N. C. 684, 128 S. E. 155 (1925); *JONES, op. cit. supra* note 3, §§178, 236; *Note* (1910) 25 L. R. A. (N. S.) 110, 115.

¹⁰ *Note* (1928) 55 A. L. R. 1137; *Second National Bank v. Ohio Contract Purchase Co.*, 28 Ohio App. 93, 162 N. E. 460 (1927).

¹¹ *Standard Dry Kiln Co. v. Ellington*, 172 N. C. 481, 90 S. E. 564 (1916).

¹² UNIFORM CONDITIONAL SALES ACT §5: "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."

¹ *State v. Barnhardt*, June term, 1927, Forsyth Superior Court.