



UNC  
SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

---

Volume 12 | Number 1

Article 19

---

12-1-1933

## Sales -- Conditional Sales -- Registration

J. A. Kleemeier Jr.

Follow this and additional works at: <http://scholarship.law.unc.edu/nclr>



Part of the [Law Commons](#)

---

### Recommended Citation

J. A. Kleemeier Jr., *Sales -- Conditional Sales -- Registration*, 12 N.C. L. REV. 71 (1933).

Available at: <http://scholarship.law.unc.edu/nclr/vol12/iss1/19>

This Note is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized editor of Carolina Law Scholarship Repository. For more information, please contact [law\\_repository@unc.edu](mailto:law_repository@unc.edu).

situation.<sup>13</sup> It has been held that a deed void for want of mental capacity of the grantor will not be validated by proper registration even as against subsequent incumbrancers.<sup>14</sup> A married woman's conveyance without her privity examination is equally void, and it is difficult to see how a void deed acquires any additional validity for registration and notice purposes because it seems to be regular. To hold otherwise would be to give the registration acts an unintended effect by allowing them to abrogate the requirements as to a married woman's conveyance of her realty.<sup>15</sup>

The privity examination of the wife being prerequisite to a valid conveyance of her realty, it is submitted the Court is allowing indirectly that which is prohibited directly by permitting an apparently regular registration to validate a void instrument and to charge a subsequent incumbrancer with notice so as to defeat his priority. Though it is doubtful that the Court intended to go so far, it has apparently done so in affirming the decision of the lower court.

HENRY L. ANDERSON.

### Sales—Conditional Sales—Registration.

Dealer sold automobiles to customers on conditional sale and assigned the contracts to finance company, with an unrecorded agreement that repossessed cars should be purchased by dealer from finance company for the unpaid balance due from customers. Finance company was to hold title, dealer to be bailee for storage only, with duty to deliver to finance company on demand. Finance company claimed several cars so held from the dealer's receiver. *Held*, for claimant; the agreement was not a conditional sale and need not be recorded.<sup>1</sup>

Either by express statutory provision or by judicial construction the requisite of recordation has been imposed upon chattel mort-

<sup>13</sup> N. C. CODE ANN. (Michie, 1931) §1001 providing that an innocent purchaser is not affected by fraud in the treaty if the privity examination is regular, does not apply to situations where there is a complete absence of privity examination. See *Davis v. Davis*, *supra* note 13.

<sup>14</sup> *Thompson v. Thomas*, 163 N. C. 500, 79 S. E. 896 (1913).

<sup>15</sup> The requirements prerequisite to a married woman's valid conveyance of her realty are specifically set forth. N. C. CODE ANN. (Michie, 1931) §997. The registration acts (N. C. CODE ANN. (Michie, 1931) §3309) are for the protection of subsequent creditors and purchaser for value, and not for the purpose of correcting defects in the execution of an instrument of conveyance.

<sup>1</sup> *Cutter Realty Co. v. Moneyhun Co., Inc.*, 204 N. C. 651, 169 S. E. 274 (1933).

gages,<sup>2</sup> conditional sales,<sup>3</sup> and in some cases, trust receipts;<sup>4</sup> all of which, according to the weight of authority, have the common feature of some form of divided ownership.<sup>5</sup> Although by the conditional sales agreement title is retained in the vendor, it is generally recognized that such title is for security purposes only, the vendee having the beneficial ownership, as well as the possession of the property.<sup>6</sup>

The view that mere possession is not sufficient indicia of ownership to mislead third parties, however, has kept leases,<sup>7</sup> bailments,<sup>8</sup> and consignments<sup>9</sup> from inclusion in the above group. Consequently, evasion of the recordation statutes has often been attempted by drafting a sales agreement to simulate one of these transactions. In such cases the court will construe the contract according to its essential character.<sup>10</sup>

It is often difficult to distinguish a conditional sale camouflaged

<sup>2</sup> N. C. CODE ANN. (Michie, 1931) §3311.

<sup>3</sup> *Kornegay v. Kornegay*, 109 N. C. 188, 13 S. E. 770 (1891); N. C. CODE ANN. (Michie, 1931) §3312; HARING, *CONDITIONAL SALES LAWS* (3rd ed. 1927) 18 (list of states requiring recordation of conditional sales).

<sup>4</sup> *General Motors Acceptance Corp. v. Boddeker*, 274 S. W. 1016 (Tex. Civ. App. 1925); *In re Richheimer*, 221 Fed. 16 (C. C. A. 7th, 1915); *In re Bettman-Johnson Co.*, 250 Fed. 657 (C. C. A. 6th, 1918).

<sup>5</sup> VOLD, *SALES* (1931) 265 (chattel mortgages), 270 (conditional sales), 346 (trust receipts).

<sup>6</sup> *Universal Credit Co. v. Mammaing*, 214 Iowa 1135, 243 N. W. 513 (1932); *Observer Co. v. Little*, 175 N. C. 42, 94 S. E. 526 (1907) (conditional sales regarded in effect as chattel mortgages); *cf. Citizen's Bank v. Mullis*, 161 Ga. 371, 131 S. E. 44 (1925) (conditional seller is not a mere lienor, but stands in the position of absolute owner).

<sup>7</sup> *Foreman v. Drake*, 98 N. C. 311, 3 S. E. 842 (1887).

<sup>8</sup> *Shaffer v. Lacy*, 121 Cal. 574, 54 Pac. 72 (1898). *Contra: In re Tansil*, 17 F. (2d) 413 (D. C. S. C. 1922) (South Carolina statute requires recordation of bailment contracts).

<sup>9</sup> *Empire Drill Co. v. Allison*, 94 N. C. 548 (1886).

<sup>10</sup> Contracts in the form of leases held conditional sales. *Puffer and Sons Mfg. Co. v. Lucas*, 112 N. C. 378, 17 S. E. 174 (1893); *Wilcox Bros. v. Cherry*, 123 N. C. 79, 31 S. E. 369 (1898). Contracts in the form of bailments held conditional sales. *Boon v. Moss*, 70 N. Y. 465 (1877); *Hamilton v. Highlands*, 144 N. C. 279, 56 S. E. 929 (1907). Contracts in the form of consignments for sale held conditional sales. *Kellam v. Brown*, 112 N. C. 451, 17 S. E. 416 (1893); *Arbuckle Bros. v. Gates*, 95 Va. 802, 30 S. E. 496 (1898).

Much of the difficulty is eliminated by the Uniform Conditional Sales Act §1, which defines a conditional sale as "(1) any contract for the sale of goods under which the 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 option of becoming the owner of such goods upon the full compliance with the terms of the contract."

as a bailment. The most approved distinction is that a conditional sale contemplates passage of title to the vendee and payment of the price by him, while a bailment contemplates that title shall remain in the bailor and that the property shall be returned to him.<sup>11</sup> Seemingly the contract in the present case falls under the concept of a conditional sale. The provision that the finance company may demand possession before default does not prevent a conditional sale from resulting.<sup>12</sup> However, in practically all cases where an ostensible bailment was held a conditional sale the possessor had the right of use or disposal of the property to some extent, while in the principal case the possession of the dealer was limited to storage. Nevertheless, many courts have held certain trust receipt agreements in which the vendor retains title and the vendee holds the property in trust for storage only to be in effect conditional sales.<sup>13</sup>

The bailment in the principal case seems colorable. The clear intent of the parties appears to be that the claimant should not demand possession unless the dealer defaulted in payment. The facts present an especially deceptive situation, since the cars are the very ones over which the dealer has formerly exercised control by selling to customers. Good policy demands recordation of such agreements.

J. A. KLEEMEIER, JR.

### Workmen's Compensation—Subrogation—Defenses Available to Negligent Third Parties.

While driving a truck of X Company across the defendant's railroad track, an employee of the company was killed by a train. While

<sup>11</sup> *Morris v. Boston Music Co.*, 129 Minn. 198, 151 N. W. 971 (1917); *Vermont Acceptance Corp. v. Wiltshire*, 103 Vt. 219, 153 Atl. 199 (1931).

<sup>12</sup> *Emerson-Brantingham Implement Co. v. Lawson*, 237 Fed. 877 (S. D. Iowa 1916); *In re Shiffert*, 281 Fed. 284 (E. D. Pa. 1922). Certainly a right in the finance company to demand possession before default would not prevent a conditional sale under a dictum of the North Carolina court giving any conditional vendor such a right. See *State v. Stinett*, 203 N. C. 829, 167 S. E. 63 (1933) criticised in (1933) 11 N. C. L. Rev. 321.

<sup>13</sup> *In re Cullen*, 282 Fed. 902 (D. Md. 1922); *Commonwealth Finance Co. v. Schutt*, 97 N. J. L. 225, 116 Atl. 722 (1922).

However, a tripartite trust receipt agreement, in which the vendee was to hold for storage, was not to use or dispose of cars, and was to deliver to finance company on demand was held merely a bailment. *General Motors Acceptance Corp. v. Hupfer*, 113 Neb. 228, 202 N. W. 627 (1925). In *In re Otto-Johnson Mercantile Co.*, 52 F. (2d) 678 (D. N. M. 1928) the court held a similar agreement to be a bailment intimating it could not be a conditional sale because the manufacturer was the real dealer. In *Hanna, Trust Receipts* (1929) 29 Col. L. Rev. 545 it is noted that some courts regard the trust receipt as *sui generis*. See (1931) 9 N. C. L. Rev. 468.