

# Conditional Sales: Interpretation of "Creditors" in Conditional Sales Statutes

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N.W. 199 (1932), but not those defects which the host knew of and realized, or should have realized, involved an unreasonable risk to his guest, if the defect was so concealed or hidden as not to be reasonably obvious or patent to the guest, if the defect and the risk were in fact unknown to the guest, and if the host failed to warn the guest as to the defective condition and the risk involved therein. *Waters v. Markham*, 204 Wis. 332, 235 N.W. 797 (1931).

While the guest assumes the risk of the host's experience, skill and judgment, he does not assume the risk of the latter's failure to exercise that skill and judgment that he possesses. *Harter v. Dickman*, *supra*. Nor does every guest upon entering a car assume the same risks upon differing occasions. Rather one assumes the risks naturally incident to the purpose and character of the trip. Thus where a driver going to a fire in a country section to aid in fighting it did not exercise the ordinary care he was capable of, the Supreme Court found assumption of risk as a matter of law, for the guest knowing of the custom of going rather hastily to fires should have anticipated that his host would dispense with a certain degree of the care ordinarily exercised. *Sommerfield v. Flury*, 198 Wis. 163, 223 N.W. 408 (1929).

ALBERT J. GOLDBERG.

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**Conditional Sales—Interpretation of "Creditors" in Conditional Sales Statutes.**—The defendants extended credit to one H. H. Fullerton on various occasions between April 30 and June 4, 1940. On June 25, 1940, the plaintiff sold Fullerton certain machinery upon a conditional sales contract executed near Muncie, Indiana. The machinery was delivered to Fullerton in Darke County, Ohio. The conditional sale contract was not filed in Darke County nor anywhere else. In January, 1941, the defendants secured a judgment against Fullerton for non-payment of the amount due them, and to satisfy this judgment they levied execution against the machinery in Fullerton's possession. The plaintiff sued to recover the machinery and contended that even though the conditional sale contract was unrecorded, his right to the machinery was superior to that of the defendants, who extended credit to Fullerton prior to the date of the conditional sale contract. In reply, the defendants pleaded the Ohio statute which made all unfiled conditional sales contracts void "as to all subsequent purchasers and mortgagees in good faith and for value, and creditors." The trial court gave judgment for the defendants, which was affirmed on appeal to the Court of Common Pleas. On appeal to the Court of Appeals, the judgment was again affirmed. The word "creditors" in the statute was held to mean all creditors, whether subsequent or prior to a conditional sales contract. The court decided that a seizure, by attachment or by appointment of a receiver, of property under the contract renders invalid as to such creditors a conditional sale contract which was not recorded. Further, it held that the right of any judgment creditor under execution was superior to that of a claimant under an unfiled conditional sale contract even though the judgment creditor knew that the claimant held such contract. *Miller v. Raille & Morrison*, 39 N.E. (2d) 172 (Ohio 1941).

The problem of the interpretation of the word "creditors" in the Ohio statute was decided in another Ohio case and the findings were contrary to those of the principal case. In that case the plaintiff contracted to sell washing machines under a conditional sale contract to a retail dealer who, before the contract was executed and before delivery of the machines, borrowed money from the defendant and executed a promissory note wherein warehouse receipts for the machines were pledged. The defendant took the machines before they were de-

livered to the conditional vendee. In an action for the machines, the plaintiff pleaded the unfiled conditional sale contract and recovered the property against the defendants. On appeal from this judgment, the appellate court held that since the defendant became a creditor prior to the execution of the contract and prior to the securing of possession and title by the conditional vendee, the defendant was a prior creditor. "It is settled law that the statute does not protect prior creditors." *Second National Bank of Hamilton v. Ohio Contract Purchase Co. et al*, 28 O.App. 93, 162 N.E. 460 (1927). While this case was not followed in the principal case, it still stands as precedent in Ohio. Both it and the principal case were decided by intermediate appellate courts.

A large number of jurisdictions in interpreting the word "creditors" in the conditional sales acts of the respective states seem to follow the definition directly stated in the New York statute: "A conditional sale contract, whether filed or not, is valid as to all persons except an innocent purchaser, or creditor who has acquired by attachment or levy a lien on the chattels before the conditional sales contract has been filed and has no notice of the existence thereof." Per. Prop. Law N.Y. sec. 64, 65. Accordingly the New York courts have held that "ordinary creditors are not protected by recording requirements for bill of sales contracts, and such creditors acquire no superior rights to the seller on failure to file the contract." *In Re Excelsior Macaroni Co., Inc.*, 55 F. (2d) 406, (E.D. N.Y. 1931). And similarly, those jurisdictions that hold with New York, insist that "creditors" in the conditional sales act means creditors who seize property under legal process and not creditors generally. *Neils v. Bohlsen et al*, 181 Minn. 25, 231 N.W. 248 (1930); *Great Western Stage Equipment Co. v. Iles*, 70 F. (2d) 197 (C.C.A. 10th, 1934); *Quinn v. Bancroft-Jones Corp.*, 18 F. (2d) 727 (C.C.A. 2nd, 1927); *Rhodes v. Jones*, 55 Ga. App. 803, 191 S.E. 503 (1937).

The recording statute in Maryland uses the collection term "third parties" instead of the individual words "purchaser" etc. As to the application of this statute to conditional sales contracts which shall be void as to "third parties" without notice until recorded, the courts have held that the term "third parties" means subsequent creditors only, whether lien creditors or not. *Friedman v. Sterling Refrigerator Co.*, 104 F. (2d) 837, (C.C.A. 4th, 1939); *Gumby v. Mack International Truck Corp.*, 156 Mr. 19, 142 Atl. 596 (1928); *Enterprise Fuel Co. v. Jones*, 99 F. (2d) 928 (C.C.A. 4th, 1938).

In Alabama, to come within the protection of the statute, the creditor may not claim the property of the conditional sale contract unless such property is delivered and is in the possession of the conditional vendee. *Decatur Fertilizer Co. v. Decatur Motors, Inc.*, 24 Ala. App. 32, 129 So. 709 (1930). But Alabama follows the rule in the principal case in that creditors may be subsequent or prior. *Aetna Auto Finance, Inc. v. Kirby*, 198 So. 356 (Ala. 1940). Kentucky clearly states its rule as to creditors: "In order for a creditor to prevail over the conditional sales vendor who has not recorded his instrument, he must be either an antecedent creditor who at some time prior to the recording of the mortgage has secured some equity in the property, or a subsequent creditor without notice of the vendor's claim." *In Re Independent Distillers of Kentucky*, 34 F. Supp. 708 (W.D. Ky. 1940). South Carolina and Connecticut hold this same rule. *In Re Guild, Bloomfield & Jensen Inc.*, 51 F. (2d) 818 (D. Conn. 1931); *Firestone Tire and Rubber Co. v. Cross*, 17 F. (2d) 417 (C.C.A. 4th, 1927).

Besides holding that a creditor under the statute must be a lien creditor under legal process, the Minnesota court has further decided that even such a creditor "who has actual or constructive knowledge or notice of the unfiled

conditional sales contract at the time he attaches or levies on conditionally sold property is not within the protection of the statute declaring an unfiled conditional sales contract void as to creditors of the buyer and subsequent purchasers and mortgagees in good faith." *Holt Motor Co. v. R. C. A. Photophone, Inc.*, 196 Minn. 527, 265 N.W. 313 (1936).

In Illinois, where the statute uses the term "third persons," an unrecorded contract of a conditional sale has been held valid against judgment creditors in the absence of conduct that would estop the seller. In a case where the conditional vendor authorizes his vendee to sell the goods which are the subject of the contract, the vendor relinquishes his contract lien against the goods and this conduct is sufficient to estop the vendor in his claim for the goods against subsequent purchasers and creditors. *Kilgore v. State Bank of Colusa*, 372 Ill. 578, 25 N.E. (2d) 39 (1939).

In the District of Columbia, the courts have held that an unrecorded conditional sales contract is valid as against a conditional buyer's judgment creditor who levies on goods conditionally sold, since the judgment creditor did not acquire any title to the property of the judgment debtor. Such a creditor is therefore not within the classification of "third persons acquiring title to said property from said purchaser" within the meaning of the recording statute. The reasoning of this rule seems to be that in cases where title remains in the seller until the purchase price is paid, the conditional vendee does not have title and any judgment creditor, therefore, could get no greater title than the vendee has at the time the attachment or levy is made. *C. I. T. Corp. v. Carl*, 66 App. D.C. 232, 85 F. (2d) 809 (1936).

The Wisconsin rule with respect to this problem is two fold. First of all, if the creditors were not in fact misled by the failure to file the instrument, the conditional vendor is not estopped and may claim the property as against the creditors. If the creditor, before extending credit, did not in fact depend on the property in the possession of the conditional vendee as being unincumbered, he is not within the protection of the statute. Secondly, it would seem that the creditor may not be such within the meaning of the statute unless prior to the filing of the contract he shall have acquired a specific interest in the property which is the subject of the contract. *John Deere Plow Co. of Moline v. Edgar Farmer Store Co.*, 154 Wis. 490, 143 N.W. 194 (1913); *E. L. Essley Machinery Co. v. First Trust Co.*, 160 Wis. 300, 151 N.W. 814 (1915).

ANTHONY PALASZ.

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**Criminal Law—Sufficiency of Uncorroborated Testimony of Accomplice on Preliminary Hearing.**—After a preliminary examination, Eleanor Jeffrey and Robert Jeffrey were held to answer a charge of arson. From orders quashing writs of habeas corpus and remanding them to custody Eleanor Jeffrey and Robert Jeffrey appealed. The relators, who are mother and son, and one Weaver, were charged with setting fire to the mother's chicken hatchery. The incendiary origin of the fire and the fact that the relators were parties to causing the fires were established solely by the testimony of Weaver, who was an admitted accomplice. Relators contended that they were illegally held in custody upon the ground that the uncorroborated testimony of an accomplice was insufficient to justify a magistrate in committing a prisoner to answer for a felony. The Minnesota Statutes provided that the prisoner should be held by the magistrate whenever at the close of an examination it appeared that an offense has been committed, and that there was probable cause to believe the