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The Proposed Uniform Conditional Sales Act

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History of the Act

In August, 1915, the National Conference of Commissioners on Uniform State Laws referred to its Committee on Commercial Law the drafting of a uniform act on the subject of conditional sales. In February, 1916, this committee employed the writer to draft such an act. In May, 1916, a tentative draft of the statute was submitted to the committee at Philadelphia and in August, 1916, this first draft was submitted to the conference at Chicago and was debated section by section. Numerous changes were then made and the act was recommitted to the Committee on Commercial Law for redrafting. During the Winter of 1916-17 and the Spring of 1917 the statute was revised by the committee and draftsman after consultations with a number of business men who have had much experience with conditional sales. A second tentative draft was then printed and it was submitted to the conference at Saratoga Springs in August, 1917. The statute was debated again, section by section, and various alterations were directed to be made. The act was again recommitted to the Committee on Commercial Law with instructions to redraft it. This committee has not as yet met for that purpose. The larger number of the sections were tentatively approved by the conference in August, but a few sections await remodeling by the committee. The form in which they are here presented is the form in which the draftsman will recommend to the committee that they be approved.

Need of the Act

The large volume of business done on the conditional sale plan and the great conflict with respect to state laws on that subject

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make highly desirable the enactment of some uniform statute. In twenty-nine states the conditional sale contract is required to be filed in order to be valid as against certain purchasers and creditors. In other states the contract is valid as against these purchasers and creditors irrespective of the question of filing. In still other states, such as Pennsylvania and Illinois, the validity of the conditional sale contract is not recognized. In some states no difference is recognized between conditional sale contracts and chattel mortgages. In other states the courts recognize that, while the practical effect of these two transactions is the same, their legal theories are different.

There is wide dissimilarity between the statutes of those states now requiring the filing of conditional sale contracts. In some states the place of record is a county office; in others a town office. In some states the place of record is determined by the residence of the buyer; in others by the place of the delivery of the goods or their location at the time of sale. In some states the contract is required to be acknowledged or attested. In others no such formality is required. In some states the original contract must be filed, while in others the original *or a copy* may be filed. There is also great variety in the provisions in the various statutes with respect to the persons against whom the contract is invalid if it is not filed. Various descriptions of the purchasers, mortgagees and creditors protected exist. In one state (New York) creditors are not protected by the filing act.

Further reason for the adoption of a uniform statute is found in the existence of peculiar statutes relating to fixtures in four states (Massachusetts, New York, Oregon and Pennsylvania) and other special statutes applying to conditional sales of railroad equipment and rolling stock.

The states recognizing the validity of conditional sale contracts have also widely differed upon such questions as whether the buyer is entitled to remove the goods or sell his interest therein before full payment, and, if he may remove or sell, upon what conditions he may do so; whether the buyer is entitled to redeem the goods after they have been retaken by the seller because of default; whether the buyer forfeits his part payments where the goods are retaken; whether the retaking of the goods constitutes an election to rescind the contract and prevents a later action for the price; and whether the buyer may waive the provisions of a conditional sale statute which are intended for his benefit.

Proposed Act and Comments Thereon

SECTION I. (Definitions.) The term "conditional sale", as used in this act, 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 shall become, or shall have the option of becoming, or is obligated to become, the owner of such goods upon full compliance with the terms of the contract.

The term "seller" as used in this act means the person who sells or leases the goods covered by the conditional sale, or any legal successor in interest of such person.

The term "buyer" as used in this act means the person who buys or hires the goods covered by the conditional sale, or any legal successor in interest of such person.

The term "goods" as used in this act means all chattels personal other than things in action and money, and includes emblements, industrial growing crops, and things attached to or forming a part of land which are agreed to be severed before sale or under the conditional sale.

The term "filing district" as used in this act means the subdivision of the state in which conditional sale contracts, or copies thereof, are by this act required to be filed.

The phrase "performance of the condition" as used in this act means the occurrence of the event upon which the property in the goods is to vest in the buyer, whether such event is the performance of an act by the buyer or the happening of a contingency.

The proposed definition of "conditional sale" has two objects which may properly be the subject of comment. It is intended to cover cases where the delivery of the goods to the buyer occurs either before the contract is made or at the time the contract is made or after the contract is made. The essential feature is that the property in the goods is to vest in the buyer at a time subsequent to delivery. It should be noticed also that the definition is broad enough to cover cases where the condition to be performed by the buyer is some other act than the payment of money or the payment of the price in other property than money. The performance of the condition on which the property is to vest may be the cancellation of a mortgage, the building of a house, or some act without the control of the buyer, such as, for example, the failure of a competitor in business. The definition also aims to cover the leasing contracts which are so frequently used

by conditional sellers in an attempt to evade the conditional sale statutes. Wherever these bailment contracts or leases have as their practical effect a conditional sale, they should be treated by the law as such, no matter what heading or title they are given by the parties.

The definition of "goods" in Section 1 follows closely that of the draftsman of the English Sale of Goods Act and the draftsman of the American Sales Act.

Considerable objection was raised in the conference to the use of the word "property" in this section as defining the rights which are to vest in the buyer as a result of the performance of the contract. Several commissioners preferred the use of the word "title". It seemed best, however, to retain the word "property" in view of the use of that word with this meaning in the English Sale of Goods Act and the American Sales Act, and the conference so voted after some discussion.

SECTION 2. (Contract to be Filed.) Except as provided in Section 11, no provision reserving property in the seller, while the possession of the goods is in the buyer, shall be valid as against subsequent purchasers, mortgagees, or pledges from the buyer, for value and without notice of the seller's title; or as against any creditors of the buyer who levy upon or attach the goods without notice of such title; unless such contract is in writing and the original or a copy thereof shall have been filed as hereinafter prescribed, previous to such sale mortgage, pledge, levy or attachment. Nor shall such reservation be valid, while the possession of the goods is in the buyer, as against any creditors of the buyer whose rights accrue subsequent to the conditional sale and who have extended credit to the buyer without notice thereof, even though the conditional sale contract or a copy thereof shall have been filed prior to the levy or attachment by such creditor. Except as provided in Section 5, it shall not be necessary to the validity of such conditional sale contract, or in order to entitle it to be filed, that such contract be acknowledged or attested.

A provision requiring the filing of conditional sale contracts is an essential part of the modern statute law on that subject. The possession of the goods by the conditional buyer deceives the public into thinking that the buyer is the owner of the goods, unless some notice of the conditional seller's retained ownership is made public. The statutes of twenty-nine states now require these contracts to be filed and in four other states conditional sale contracts of certain classes of goods are required to be filed.

Considerable debate occurred in the committee and the conference with respect to the question whether *immediate* filing should be required

or whether the seller should be allowed a short period, either ten, twenty or thirty days, within which to file his contract. At the conference in August it was voted to require immediate filing. The majority of the commissioners believed that it would be exceedingly dangerous to the commercial public to allow secret reservations of title to personal property to be effective, even for short periods of time. The argument on behalf of the sellers that these contracts frequently have to be mailed to points considerably distant from the seller's place of business for filing, did not seem to be of much weight, since the seller can protect himself by refusing to deliver the goods until he is in a position to file the contract.

Some difficulty has been experienced in wording the section with respect to the question as to what purchasers, mortgagees, pledgees and creditors shall be protected if no filing occurs. This section, as stated above, has been reworded by the draftsman in accordance with what seemed to be the prevailing opinion at the conference at Saratoga Springs in August. The new wording will necessarily be submitted to the committee and the conference for approval. It seems desirable to protect purchasers, mortgagees, pledgees and creditors, who innocently and for value acquire rights in the goods prior to filing. The question is, When do they acquire rights? Purchasers, mortgagees, and pledgees from the buyer obviously acquire rights when they contract with the buyer and pass valuable consideration to him. Creditors of the buyer, on the other hand, are necessarily divided into two classes, namely, (1) those who levy upon the goods or attach them before the filing, and (2) those who levy or attach after the filing. Obviously those who levy or attach after the filing should not be protected unless they extended credit to the buyer after the conditional sale, upon the faith of the buyer's appearance of ownership and without knowledge, either actual or constructive, of the conditional sale. It is believed that it is necessary to reword section 2 in the manner indicated above, in order clearly to define the various classes of purchasers and creditors involved.

A further problem not yet decided, but to be submitted to the committee at its next meeting, is whether section 2 should not positively declare that conditional sale contracts are valid as between the parties in all cases and as against others if the required filing is made. The wording of the section, as it now stands, is negative in form, and assumes that such contracts are valid at common law. However, the peculiar situation in Pennsylvania and Illinois is that conditional sale contracts are not recognized as valid at common law. It is questionable whether the adoption of the act, as here printed, would not result in an anomalous situation in Pennsylvania and

Illinois by leaving conditional sale contracts still invalid and spreading on the statute books of those states a lengthy act which had no application to them.

The last sentence of the section may, at first sight, seem open to objection on the ground that it is negative in that it states that no acknowledgment or attestation is necessary. This clause undoubtedly violates one principle of statute making, but it is considered desirable on account of the peculiar provisions in some states requiring attestation or acknowledgment of conditional sale contracts. There can be little doubt that, if this last sentence is omitted and the Uniform Conditional Sales Act is adopted in these few states, the courts of these states will still require attestation or acknowledgment. This will result in lack of uniformity. It is highly desirable for conditional sellers doing interstate business to know either that all contracts must be acknowledged or attested, or that everywhere acknowledgment or attestation is superfluous.

SECTION 3. (Place of Filing.) The conditional sale contract or copy shall be filed in the office where deeds of real property are recorded in the (city,) county, (or registration district) in which the goods are delivered for use. This section shall not apply to the contracts described in Section 5.

Considerable discussion arose in the conference as to whether the place of filing should be the office where real property instruments are recorded, or the chattel mortgage filing office. A number of commissioners were of the opinion that, since chattel mortgages and conditional sale contracts have the same practical effect and are used to accomplish the same purpose, they should both be found in the same office. The Committee on Commercial Law and the draftsman feel very strongly that it is desirable to retain as the filing office the real property office. This office is in practically all cases a county office. In the few instances where it is not a county office in name it is practically so. These instances occur where a filing district for real property instruments is half of a county, as in some cases in Massachusetts, or is a city as in New York, Baltimore and St. Louis, or is a district equivalent to a county as in the case of the parishes in Louisiana. These county offices will be well kept, orderly offices, where documents will be properly filed and indexed, and where the danger of loss or destruction is slight.

If the section were made to read that a conditional sale contract should be filed in the office where chattel mortgages are now required to be filed, a great lack of uniformity would result. In many states

chattel mortgages are filed in a county office and in many other states they are filed in a town office. In some states the filing district is determined by the residence of the chattel mortgagee; in other states by the location of the goods. If the chattel mortgage office is selected as the office for filing conditional sale contracts, it will be necessary for every seller desiring to file such a contract to examine the laws of the state concerned to see what the provisions regarding the filing of chattel mortgages are. There will be no uniformity as to the place of filing. On the other hand, if the county office is selected a great deal of trouble will be obviated.

The words "city" and "registration district" are inserted in parentheses in this section because of peculiar local conditions in three or four states. In a great majority of states these words can be omitted in the adoption of the statute. The cities of Baltimore and St. Louis are not in any counties but constitute counties of themselves, and therefore, in the states of Maryland and Missouri, the insertion of the word "city" would be necessary. In Massachusetts there are certain registration districts for deeds which are smaller in size than counties and the words "registration district" would need to be inserted in that state. In Louisiana the existence of the sub-division known as a "parish" would render the same insertion necessary.

The committee and the conference found difficulty in determining how the filing district should be chosen. It might be either the filing district where the buyer lived at the time of the sale or it might be the filing district where the goods were delivered. After some debate the committee recommended that the filing district "in which the goods are delivered for use" should be the one in which filing is to be required. The reason for this was that transactions with respect to the goods between the buyer and innocent purchasers or creditors are more apt to occur in the filing district in which the goods are delivered for use than in the filing district of the buyer's residence, where the two are different. The object of this portion of the statute is to protect innocent purchasers, mortgagees and creditors, who rely on the appearance of ownership which the conditional sale gives the buyer. If the buyer resides in Albany and the goods are delivered for use in Buffalo, it is the business men of the City of Buffalo who will be deceived by the apparent ownership of the conditional buyer. For this reason it is believed that the most desirable provision is the one set forth in the section quoted above. If any difference exists between the residence of the buyer and the place of delivery for use, the latter district should control.

The use of the words "for use" is not entirely satisfactory, but some such words are necessary. It would not do to require filing simply

where the goods were delivered. If the goods are shipped by common carrier from the seller to the buyer and the buyer pays the freight, the goods are delivered to the buyer when they are placed in the hands of the common carrier, but filing at that place would obviously be absurd. The district where filing should occur is the district where the buyer receives possession of the goods for use and where they are to be kept with some degree of permanence. The committee will consider at its next meeting whether a more desirable phrasing of this sentence can be found.

SECTION 4. (Fixtures.) If the goods are so affixed to realty at the time of a conditional sale or thereafter as to become part thereof, the reservation of property shall be void after the goods are so affixed, against owners and against subsequent purchasers or mortgagees of the realty for value and without notice of the conditional seller's title, unless the conditional sale contract or a copy thereof, together with a statement signed by the seller briefly describing the realty and stating that the goods are or are to be affixed thereto, shall be filed in the office where a deed of the realty would be recorded.

This section is inserted in the act to make special provision for cases where articles to be affixed to real property are sold under a conditional sale contract. Frequently heating apparatus, machinery, electric equipment and similar articles are sold on the conditional sale plan and subsequently the rights of persons having interests in the real property conflict with the claims of the conditional seller of the chattel. The general American rule is that a conditional seller who has reserved the property in a chattel which is affixed by the buyer to the buyer's real property, has no rights against a subsequent purchaser or mortgagee of the real property, if the latter has no notice of the conditional sale of the chattel. It seems desirable to perpetuate this rule, but also to enable the conditional seller of the fixture to give constructive notice of the conditional sale so that he may have an opportunity of protecting himself. Such a provision has been made in recently adopted statutes of Massachusetts, New York, Oregon and Pennsylvania. Under these statutes a conditional seller who sells an article which is to be attached to real property must, in order to protect himself, file with the conditional sale contract a statement which will warn dealers with the real property involved. This will require searchers of real property titles to examine an additional book, but that book will be located in the office where the real property records are found and no great added burden on title searchers will ensue. The justice of allowing the conditional seller of the

fixture to reserve title in himself, if he gives a notice to the world of such reservation, is apparent.

At the conference at Saratoga criticism of this section was made on the ground that the words "as to become part thereof" in the second line were too broad. It was urged that these words would authorize the conditional sale of the boards or nails to form a part of a house. It is the opinion of the draftsman that this criticism is not just. The section must, of course, be read in the light of the existing law of real property. That law declares that articles of personal property which are so affixed to real property as to lose their identity become irrevocably real property. By such rule of the law of real property it is impossible to have a conditional sale of an article which loses its identity by annexation. This section can obviously only apply to goods which are affixed to real property but do not lose their identity. However, some changing of the phraseology so as to convey this idea with absolute clarity seems necessary, and will probably be made by the committee at its next meeting.

SECTION 5. (Railroad Equipment or Rolling Stock.) No conditional sale of railroad, street or interurban railway equipment or rolling stock shall be valid as against the purchasers, mortgagees, pledgees and creditors described in Section 2, unless the contract shall be acknowledged by the buyer or attested in like manner as a deed of real property, and the contract, or a copy thereof, shall be filed in the office of the Secretary of State; and unless there shall be plainly and conspicuously marked upon each side of any engine or car so sold the name of the seller, followed by the word "owner".

This section follows very closely statutes now in force in forty-six states. These existing acts are said to have been passed as a result of the efforts of the Baldwin Locomotive Works and other corporations interested in the sale of railway equipment to railroads under conditional sale contracts, sometimes called "equipment trust contracts". It has seemed desirable to the committee and the draftsman to make complete this statute concerning conditional sales by inserting a special section here with reference to this peculiar class of goods. It is desirable that the act cover conditional sales of all kinds of personal property. If peculiar classes of goods such as fixtures or railway equipment require peculiar filing provisions, sections covering such matters should be inserted in the act. This is preferable to excluding fixtures and railway equipment from the operation of the act and allowing the common law or previously existing statutes to control such property.

The large amount of money involved in these car trust contracts seems to justify the added formality of acknowledgment or attestation and also to warrant the requirement of filing in a state office. The section as presented above and as tentatively approved by the conference, is a condensation of the existing 46 statutes and will work but slight change in the law of any state if adopted.

SECTION 6. (Conditional Sale of Goods for Resale.) When goods are sold under a conditional sale contract, and the seller expressly or impliedly consents that the buyer may resell them prior to performance of the condition, the condition 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 according to the provisions of this act; but, if filed as herein required, the condition shall be valid as against all other purchasers, mortgagees, pledgees or creditors, described in Section 2.

In certain instances goods have been sold under conditional sale contracts with the object of resale, and the seller has expressly or impliedly consented that the buyer might resell the goods before the performance of the condition. Such a conditional sale is obviously an act consisting of two inconsistent parts. In one breath the conditional seller states that he reserves the property until the conditional buyer has paid the price, and in the next breath he states that he consents that the buyer may make some one else the owner of these goods before the condition is performed. Such a transaction is obviously a fraud on members of the public who may act upon the appearance of ownership and the right to resell. Filing should not in such a case as this be effective to reserve the property in the buyer. For example, a number of horses are sold to a retail dealer in horses under a conditional sale contract, but the buyer is given the right to resell the horses. X visits the retail dealer's stables and purchases one of the horses previously sold under the conditional sale contract. It would be unreasonable to expect X to examine records in the county clerk's office to ascertain whether these horses were the property of the retail dealer. The conduct of the conditional seller ought to estop him to assert his ownership as against such a sub-purchaser.

This section states the generally prevailing rule as it has been fixed in a large number of decisions. It should be noted that according to the last clause of this section, which was inserted at the conference at Saratoga Springs, the filing of the conditional sale contracts,

described in section 6, is valid as against certain purchasers and creditors. It is only invalid as against "purchasers from the buyer for value in the ordinary course of business".

SECTION 7. (Filing.) The filing officer shall mark upon the contract or copy filed with him the day and hour of filing and shall file the contract or copy in his office for public inspection. He shall keep a book in which he shall enter the names of the seller and buyer, the date of the contract, the day and hour of filing, a brief description of the goods, the price named in the contract and the date of cancellation thereof; except that in entering the contracts mentioned in Section 5 the Secretary of State shall record either the sum remaining to be paid upon the contract or the price of the goods. Such book shall be indexed under the names of the seller and of the buyer. For filing and entering such contract or copy the filing officer shall be entitled to a fee of (ten cents), except that for filing and entering a contract described in Section 5 the Secretary of State shall be entitled to a fee of (one dollar).

In only nine of the American states do the filing statutes appear to provide expressly concerning the method of filing and entering the conditional sale contract. Doubtless in many states the method of filing and entering is governed by custom; in others general filing statutes are held to control conditional sales as well as other contracts.

It seems desirable to be explicit regarding the details of filing and entering. Filing consists of marking the paper and retaining it in a proper place in the office. Entering consists of noting the existence of the contract and certain facts concerning it in a proper book. The contract is not to be recorded in the sense of being copied in full into a book. Notes are to be made of its existence in the index book and the paper is to be subject to inspection in the files.

Section 8. (Refiling.) The filing of conditional sale contracts provided for in Sections 2, 3 and 4 shall be valid for a period of three years only. The filing of the contract provided for by Section 5 shall be valid for a period of fifteen years only. The validity of the filing may in each case be extended for successive additional periods of one year from the date of refiling by filing in the proper filing district a copy of the original contract within thirty days preceding the expiration of each period, with a statement attached signed by the seller, showing that the contract is in force and the amount remaining to be paid thereon. Such copy, with statement attached, shall be filed and entered in the same manner as a contract or copy filed and

entered for the first time, and the filing officer shall be entitled to a like fee as upon the original filing.

In but five of the states do there appear to be express provisions for the refiling of the conditional sale contract after a lapse of a certain length of time. Provision for such refiling, however, seems desirable. The life of these contracts is ordinarily brief. They are performed or rescinded usually within a few months or within three years at the most. Searchers who are examining the records concerning personal property should not be obliged to look back over a long period of years. They should be warranted in assuming that the apparent owner of personal property is the actual owner thereof, if his title appears clear for a period of three years. Conditional sellers who desire to reserve their rights for longer than three years cannot object to the slight additional burden of refiling their contracts.

SECTION 9 (Cancellation of Contract.) After the performance of the condition, upon written demand delivered personally or by registered mail by the buyer or any other person having an interest in the goods, the seller shall execute and deliver to the demandant a statement that the condition in the contract is performed and that the buyer has become the owner of the goods. If for ten days after such demand the seller fails to mail or deliver such a statement of satisfaction, he shall forfeit to the buyer five dollars (\$5.00) and be liable for all damages suffered. Upon presentation of such statement of satisfaction the filing officer shall file the same and note the cancellation of the contract and the date thereof on the margin of the page where the contract has been entered. For filing and entering the statement of satisfaction the filing officer shall be entitled to a fee of (ten cents), except that the Secretary of State shall be entitled to a fee of (fifty cents) for filing and entering a statement of the satisfaction of a contract described in Section 5.

This section in connection with Sections 7 and 8 completes the statement of the duties of the filing officer regarding conditional sale contracts. It contains a number of rules which are obviously fair and just and might by some be considered to be too obvious for statement in the act. However, it is the belief of the draftsman that nothing should be left to implication. Every step in the transactions concerning conditional sales should be covered by express provision.

When the buyer has performed his contract obviously it is equitable that he should be entitled to a statement to the effect that such performance has occurred and that the buyer has now become the

owner of the goods. This statement clears the buyer's title and leaves him free to dispose of the goods. He should be entitled to demand a statement of this sort from the seller and be entitled to file it. If the seller maliciously or carelessly refuses to render such a statement and thereby deprives the buyer of his power to dispose of the goods or to use them freely, the seller should be penalized.

SECTION 10. (Prohibition of Removal or Sale Without Notice.)

Unless the contract otherwise provides, the buyer under a conditional sale contract may, without the consent of the seller, remove the goods from any filing district and sell, mortgage or otherwise dispose of his interest in the goods; but prior to the performance of the condition, no such buyer shall remove the goods from a filing district in which the contract or a copy thereof is filed, except for temporary uses for a period of not more than thirty days, unless the buyer not less than five days before such removal shall give the seller personally or by registered mail written notice of the place to which the goods are to be removed and the approximate time of such intended removal; nor shall the buyer, prior to the performance of the condition, sell, mortgage or otherwise dispose of his interest in the goods, unless the buyer or the person to whom he is about to sell, mortgage or otherwise dispose of his interest in the goods, shall notify the seller in writing personally or by registered mail of the name and address of the person to whom his interest in the goods is about to be sold, mortgaged or otherwise transferred, not less than five days before such sale, mortgage or other disposal. If any buyer does so remove the goods, or does so sell, mortgage or otherwise dispose of his interest in the goods without such notice, the seller may retake possession of the goods and deal with them as in case of default in payment of part or all of the purchase price. The provisions of this section regarding the removal of goods shall not apply, however, to the goods described in Section 5.

Dishonest persons holding goods under conditional sale contracts frequently endeavor to defraud the sellers thereof by removing the goods from the district where they were originally delivered or by transferring their interest to third persons. The object of section 10 is to require notice of such removal or sale in order that the seller may protect himself against fraud.

The right to remove the goods and the right to dispose of his interest therein is one which should be, of course, accorded to the buyer. The seller is not allowed to prohibit such removal or sale unless the buyer acquiesces in such prohibition in the contract, but it

does not seem unreasonable to require of the buyer, as a condition of exercising the right of removal or sale, that he give the seller five days notice thereof. Such notice will enable the seller to trace the goods and to take such steps as are necessary to protect his rights.

In order that the section may have some force and may be acquiesced in by buyers, it is necessary to place a penalty upon the buyer if he does not give the notice specified. The penalty of being considered in default and of making the goods subject to retaking by the seller does not seem too drastic when the dangers to the seller are considered. For example, if a buyer of a piano under a conditional sale contract in Chicago contemplates moving to Texas and taking the piano with him, it is obviously of great importance to the seller to know of its removal. The seller will desire to learn of the buyer's new residence in order that he may collect future part payments. If the buyer is then in default, the seller may then wish to exercise the right of retaking, whereas he would not exercise such a right if the goods were to remain in Chicago.

SECTION 11. (Refiling on Removal.) When, prior to the performance of the condition, the goods are removed by the buyer from a filing district in this state to another filing district in this state in which such contract or a copy thereof is not filed, or are removed from another state into a filing district in this state where such contract or copy is not filed, the reservation of the property in the seller shall be void as to the purchasers, mortgagees, pledgees and creditors described in Section 2, unless the conditional sale contract, or a copy thereof, shall be filed in the filing district to which the goods are removed, within thirty days after the seller has knowledge of the filing district to which the goods have been removed. The provisions of this section shall not apply, however, to the goods described in Section 5. The provisions of Section 8 regarding the duration of the validity of the filing and the necessity for refiling shall apply to contracts or copies which are filed in a filing district other than that where the goods were originally delivered for use.

As previously stated the filing provision is of but little importance unless the record exists in the county where the goods are located. Previous provisions of the act require filing in the county where the goods are originally delivered for use and keeping, but the statute allows removal of the goods to a new filing district, and actual experience shows that such removal very frequently occurs. Therefore, if the innocent public in the new filing district is to be protected, a second filing must occur in such new district. Persons taking chat-

tel mortgages on the goods or purchasing the goods in the new district cannot be expected to ascertain the district where the goods were originally delivered and have a search made there. Such chattel mortgages and creditors ought to be protected if they make a search in the filing district where the goods are located at the time they deal with them.

This situation does not seem to be covered by the statutes of many states, but there is precedent for it in the statutes of five states, and it seems a desirable provision to insert in the uniform statute. A large amount of litigation has arisen concerning goods sold under conditional sale contracts and removed from one state to another, great difficulty has been experienced by the courts in establishing rules to cover such cases, and the controlling principles are not even now clearly defined. It is submitted that the general adoption of a uniform act containing Section 11 would obviate this litigation and clarify the situation. If all sellers were required to refile when the goods were removed, as a condition of retaining their rights, the public in the new filing district would be protected by filing or else the seller would have no standing as against innocent dealers in the new filing district.

SECTION 12. (Fraudulent Injury, Concealment, Removal or Sale.)
Wherever prior to the performance of the condition the buyer maliciously or with intent to defraud shall injure, destroy or conceal the goods, or remove them to a filing district where the contract or a copy thereof is not filed, without having given the notice required by Section 10, or shall sell, mortgage, or otherwise dispose of such goods under claim of full ownership, he shall be guilty of a crime and upon conviction thereof shall be imprisoned in the county jail for not more than one year or be fined not more than (\$500) or both.

This section is in accord with existing law in the great majority of American states. Statutes very commonly make it a crime on the part of conditional buyers or chattel mortgagees to injure, destroy, conceal or remove the goods with a fraudulent intent.

In section 10 a civil penalty was placed upon the buyer for the removal or sale of the goods without notice. The removal there provided for might be either innocent or fraudulent. The penalty provided was that the seller might treat the buyer as in default and retake the goods. The penalty provided in section 12, on the other hand, is a criminal penalty and is imposed only where there is malice or fraud. Some cases have arisen of malicious destruction of the goods by buyers for the purpose of preventing the sellers from retak-

ing and it has, therefore, seemed wise to insert the word "maliciously," as well as to provide for cases where the buyer intends to enrich himself by defrauding the seller.

SECTION 13. (Retaking Possession.) Wherever the buyer under a conditional sale shall be in default in the payment of any sum due under the contract, or in the performance of any other condition which the contract requires him to perform in order to obtain the property in the goods, or 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 thereof. Unless the goods can be retaken without breach of the peace, they shall be retaken by legal process.

With this section begins the discussion of the remedies open to the seller and to the buyer in the various stages of performance of the conditional sale contract. The remedy given to the seller by section 13 is one universally recognized by the common law, by existing statutes and by contracts between the parties which are generally in use. The right to retake the goods is granted to the buyer, whether he expressly provides for it in the contract or not. The essence of the conditional sale is that the seller reserves to himself the property in the goods as security for the payment of the price. If installments of the price are not paid or other defaults occur on the part of the buyer, the seller should be at liberty to avail himself of his security by taking possession of the goods and making his ownership of the goods effectual for their protection.

SECTION 14. (Notice of Intention to Retake.) Not more than forty nor less than twenty days prior to such retaking, the seller may serve upon the buyer personally or by registered mail a notice of intention to retake the goods on account of the buyer's default. Such notice shall state the sum due under the contract and the time of intended retaking, and shall briefly and clearly state what the buyer's rights under this act will be in case the goods are retaken. If such notice is so served and the buyer does not perform his obligations under the contract before the day set for retaking, the seller may retake the goods and hold them subject to the provisions of Sections 16, 17, 18, 19, and 20 regarding resale, but without any right on the part of the buyer to redeem the goods.

This section was inserted at a late date in the history of the act, namely, in the spring of 1917, as a result of criticisms of the act by

numerous business men who have had large experience with conditional sales. They represented to the committee that a provision similar to that stated in section 14 would be very useful to sellers and would work no hardship on buyers. Their representations seemed to have merit. Frequently a situation arises where a buyer is in default and he has the goods at a town or city at some distance from the seller's place of business. The seller desires to compel the buyer to return the goods or to continue with his payments. The seller does not wish to be obliged to make one trip to the buyer's place of business for the purpose of seizing the goods and a second trip to the same place for the purpose of selling them after a period of days. By giving to the buyer a notice that the goods will be retaken unless the back payments are made up, the seller can accomplish his object with but one trip to the buyer's place of business. The notice of intention to retake gives the buyer a period of grace similar to the period of redemption ordinarily allowed. In either case the buyer has a reasonable time in which to collect the funds necessary to make up his back payments. It is immaterial to the buyer whether this period of grace is before or after retaking. Hence the seller ought to be allowed to extend the period of grace prior to retaking, if it will save him trouble and expense.

This section has no precedent in statute law but seems to accord with business practice and common sense.

SECTION 15. (Redemption.) If the seller does not give the notice of intention to retake described in Section 14, he shall retain the goods for ten days after the retaking within the state in which they were located at the time of the retaking, during which time the buyer, upon payment or tender of the amount due under the contract at the time of retaking and interest, or upon performance or tender of performance of such other condition as may be named in the contract as precedent to the passage of the property in the goods, or upon performance or tender of performance of any other promise for the breach of which the goods were retaken, and upon payment of the expenses of retaking, keeping and storage, may redeem the goods and become entitled to take possession of them and to continue in the performance of the contract as if no default had occurred. Upon written demand delivered personally or by registered mail by the buyer, the seller shall furnish to the buyer a written statement of the sum due under the contract and the expenses of retaking, keeping and storage. For failure to furnish such statement within a reasonable time after demand, the seller shall forfeit to the buyer (\$10), and also be liable to him for all damages suffered because of such failure. If the goods

are perishable so that retention for ten days as herein prescribed would result in their destruction or substantial injury, the provisions of this section shall not apply, and the seller may resell the goods immediately upon their retaking. The provision of this section requiring the retention of the goods within the state during the period allowed for redemption shall not apply to the goods described in Section 5.

This section incorporates the so-called "chattel mortgage theory" into the act. It was the view of the draftsman, nearly all the members of the committee and a large majority of the members of the conference that the rules applicable to chattel mortgages and conditional sales should be made as near alike as possible. In a chattel mortgage the title to the goods passes to the mortgagee subject to a right on the part of the mortgagor to defeat the title of the mortgagee by doing the act for the performance of which the mortgage is given as security. After the foreclosure of the mortgage, the mortgagor has the right of redemption. Similarly in a conditional sale, the seller of the goods reserves to himself the property in them while giving to the buyer possession. In both cases the seller of goods secures himself for the payment of the price. In the chattel mortgage by passing the property to the buyer and receiving back a defeasible title, in a conditional sale by retaining originally the property in the goods. The right of redemption exists in a chattel mortgage and it ought to exist in the analogous transaction, the conditional sale.

This chattel mortgage theory of the conditional sale, giving the right of redemption to the buyer, has been accepted by some modern statutes on the subject such as those of New York and Tennessee and it has received approval from many courts in recent decisions. It seems reasonable and equitable to allow a conditional buyer who has defaulted and from whose possession the goods have been retaken a brief period within which he may reclaim the goods and proceed with the performance of the contract, upon the making up of his back payments. The business men who have given advice concerning this statute state that the right of redemption is rarely exercised. Nevertheless it should exist to provide against cases of injustice and to give the buyer a slight leeway in the performance of his contract.

SECTION 16. (Compulsory Resale by Seller.) If the buyer does not redeem the goods within ten days after the seller has retaken possession, and the buyer has paid fifty per cent or more of the purchase price at the time of the retaking, the seller shall sell them at public auction in the state where they were at the time of the retaking,

such sale to be held not more than thirty days after the retaking. The seller shall give to the buyer not less than ten days' written notice of the sale, either personally or by registered mail in a post-paid envelope directed to the buyer at his last known place of business or residence. The seller shall also give notice of the sale by at least three notices posted in different public places within the filing district where the goods are to be sold, at least five days before the sale. If at the time of the retaking \$500 or more had been paid on the purchase price, the seller shall also give notice of the sale at least five days before the sale by publication in a newspaper published within the filing district where the goods are to be sold. The seller may bid for the goods at the resale. If the goods are of the kind described in Section 5, they may be sold at any place, within the time, in the manner and upon the notice prescribed in this section.

The question of protecting the equity of the buyer in the goods where they are retaken by the seller is one which has given courts and legislatures much trouble. The strict common law theory was that the buyer who defaulted in his payments should forfeit them and that he was entitled to no equity in the goods retaken. This is a harsh rule. It takes from a poor man who has paid 50 or 60 per cent of the purchase price of an article by small installments all his part payments when he is obliged to default, due to sickness or other unavoidable reason.

Three classes of schemes have been adopted in various states for providing against this hardship. There are first the states which provide that the seller may not retake the goods for default, unless he returns to the buyer the part payments, less a reasonable amount for the use of the property and damage to it. Such systems prevail in Missouri and Ohio. In Missouri the right to the return of part payments on retaking exists in all cases; in Ohio only when the buyer has paid an amount in excess of twenty-five per cent of the purchase price must the seller return part payments on retaking. This scheme is open to the objection that it is difficult to determine what the value of the use of the goods has been and whether they have been damaged or not. The seller is apt to impose on the buyer and retain too much of the part payments under a claim of rent and alleged damage to the goods.

In Massachusetts and Pennsylvania the right to have a resale is optional with the buyer. In Massachusetts, where seventy-five per cent or more of the price has been paid, the buyer may demand a resale, and will be entitled to the surplus in the hands of the seller.

after the payment of the full price and expenses. This statute applies only to furniture and other household effects. In Pennsylvania the statute respecting the conditional sale of chattels to be attached to real property provides that the buyer may, within 10 days after the retaking, demand a resale of the property and shall be entitled to any surplus in the hands of the seller after the satisfaction of the price and expenses. In Vermont the seller may resell the goods and, if he does so, the buyer shall be entitled to the surplus thus created. The option in Vermont is with the seller.

In a third class of states resale is compulsory. These states are New York and Tennessee. In these states the seller is obliged, after retaking the goods, to resell them and return to the buyer the excess in his hands after the payment of the price and the expenses of resale. This compulsory resale insures the return of all part payments equitably due him.

Neither the system of return of part payments, nor that of a resale optional with the buyer, nor that of a sale compulsory in all cases is deemed desirable. A compromise plan is provided in sections 16, 17 and 18. If the buyer has paid 50 per cent or more of the purchase price at the time of the retaking, he has a very considerable equity which is not apt to be entirely eaten up by depreciation of the goods, storage, retaking and resale expenses. It seems desirable to *compel* a resale in this case, for in this case a resale is practically sure to be advantageous to the buyer. The buyer may not possess the knowledge or prudence to demand a resale, but the policy of conditional sale statutes has been to protect installment buyers, even though they themselves did not act. If the amount paid upon the purchase price at the time of retaking was less than fifty per cent, the likelihood of there being any surplus left for the buyer in case of a resale is greatly reduced, and as will be seen in section 17, a resale is rendered optional with either party.

SECTION 17. (Resale at Option of Parties.) If the buyer has not paid at least fifty per cent of the purchase price at the time of the retaking, the seller shall not be under a duty to resell the goods as prescribed in Section 16, unless the buyer serves upon the seller, within ten days after the retaking, a written notice delivered personally or by registered mail demanding a resale. If such notice is served, the resale shall take place within thirty days after the service, in the manner, at the place and upon the notice prescribed in Section 16. The seller may voluntarily resell the goods on behalf of the buyer on compliance with the same requirements.

This section is part of the general scheme outlined in the notes to section 16. Where the buyer has paid less than 50 per cent of the price at the time of the retaking, the resale will not ordinarily be advantageous to him. Depreciation in the goods due to wear and tear and the cost of retaking, storage, and resale will ordinarily eat up the entire resale price. Under such circumstances a resale will usually be a profitless formality. But the buyer should have a right to demand a resale if he thinks he has an equity which will be thus protected. And also the seller should be allowed to resell the goods, if he deems it desirable, even though the buyer does not demand such resale.

SECTION 18. (Rights of Parties Where There is no Resale.) If the buyer has not paid at least fifty per cent. of the purchase price at the time of the retaking, and there is no resale of the goods according to the provisions of Section 17, the seller may retain the goods as his own property without obligation to account to the buyer, and the buyer also shall be discharged of all obligation.

This section is to be read in connection with sections 16 and 17. If no resale has occurred, due to the fact that none was compulsory and none was demanded by either party, the retaking of the goods by the seller ought to put an end to the transaction. If the buyer considers that he has any equity in the goods and any chance to realize anything by reason of the resale, he has an opportunity to protect himself by such resale. If he does not exercise this right, it is to be deemed a confession that the goods as retaken by the seller are worth less than the amount due under the contract.

SECTION 19. (Proceeds of Resale.) The proceeds of the resale shall be applied, first, to the payment of the expenses thereof, secondly to the payment of the expenses of retaking, keeping and storing the goods, and thirdly, to the satisfaction of the balance due on the purchase price. Any sum remaining, after the satisfaction of such claims, shall be paid to the buyer.

The provisions of this section are self-explanatory and it would seem are obviously just.

SECTION 20. (Deficiency on Resale.) If the proceeds of the resale are not sufficient to defray the expenses thereof, and also the expenses of retaking, keeping and storing the goods and the balance due upon

the purchase price, the seller may recover the deficiency from the buyer, or from anyone who has succeeded to the obligations of the buyer.

This section is a necessary complement to the foregoing sections relating to retaking, redemption and resale. Just as the chattel mortgagee who forecloses his mortgage and has a deficiency judgment should be entitled to recover the amount of it from the chattel mortgagor, so the conditional seller who resells for the purpose of estimating the value of the goods as retaken should be allowed to recover any deficiency from the buyer. He has lost his goods. He should get the price agreed upon.

Several commissioners in the conference have objected to this section on the ground that it is not in accord with the present American authorities and that the weight of opinion is that, after retaking the goods, the seller is not entitled to sue the buyer for the whole or any part of the price.

It is submitted that the objection to this section from the point of view of authority is based on a misconception. Many cases, it is true, have held that the conditional seller cannot, after retaking the goods, recover any part of the price from the buyer. But these cases were decided under a theory of conditional sales entirely different from that proposed in the act. The theory under which these cases were decided was that the retaking was a rescission of the contract, that all obligations under the contract were discharged by such act of retaking, that the consideration for the buyer's promise to pay the purchase price had failed. The seller, under this theory, kept the goods as his own. He had no duty to resell the goods for the benefit of the buyer.

On the other hand, under the proposed act the theory of retaking is wholly different. It is not a theory of rescinding the contract, but of foreclosing a mortgage. The right to retake is a right to enforce a security which the seller reserved to compel the performance of the promise to pay the purchase price. The result of the retaking is not, as it was at common law or under the old statutes, to leave the seller in possession and ownership of the goods. The seller must, under the act, after retaking the goods resell them, as a chattel mortgagee would foreclose a mortgage. The ultimate result of retaking under the act is that the seller loses the goods, and is left with the resale price and the part payments of the original buyer in his hands. It is elementary justice that the seller who has parted with his goods should have the contract price of them. If the resale price plus the part payments previously made does not equal the contract price, the buyer should pay the deficiency.

The fallacy in arguing that by the weight of common law authority there is no right to recover a deficiency judgment, and that there ought, therefore, to be no right to a deficiency judgment under the act, is that at common law the seller ended up after the retaking with the goods in his possession and absolutely his property. Of course, he cannot have both the goods and the price. But under the proposed act the seller loses the goods by a compulsory resale and has in his possession only the resale price and the previously made part payments.

The only decisions under the common law and the old statutes which ought to be of weight on this subject are those where the chattel mortgage theory of a conditional sale was applied. These decisions all sustain the provisions of the proposed act. So also do the provisions of the two statutes which now provide for a compulsory resale after retaking, namely, the statutes of New York and Tennessee. N. Y. Pers. Prop. Law, sec. 67; Code of Tenn., sec. 3668.

The holding in the cases relied upon by the opponents of this section can properly be summarized as follows: "A conditional seller who retakes the goods and retains them as his own may not thereafter recover the purchase price from the buyer". The proposed provision of the act is not, as some opponents of this section would have suggested, the opposite of this holding. It is, on the other hand, properly condensed as follows: "A conditional seller who retakes the goods and resells them and applies the resale price on the purchase price may recover from the buyer any balance still due."

No attempt is being made in section 20 to work a revolution in the existing law or to go against the great weight of authority in the United States. On the other hand, section 20 states the existing law as it has been adjudicated in all cases where the exact question involved has arisen. Where the chattel mortgage theory of the conditional sale has been adopted, the deficiency judgment has followed as a matter of course. And the chattel mortgage theory of the conditional sale is increasingly receiving the approval of the courts, of legislature and of legal writers.

SECTION 21. (Action for Price.) The seller may sue for the whole or any installment of the purchase price as the same shall become due under the conditional sale.

This section needs no explanation. It is inserted for the sake of the complete enumeration of the rights of the seller against the buyer. The question has been raised whether this section should not contain some provision for the case where notes given for the purchase

price have been discounted by the seller. In such case the owner of the notes undoubtedly ought to be allowed to sue the buyer for the price and the retention of title by the original seller should be considered to be for the benefit of the owner of the notes. The ownership of the notes should draw the security with it as an incident.

SECTION 22. (Election of Remedies.) The retaking of possession, as provided in Section 13, shall be deemed an election by the seller to rescind the conditional sale, and the buyer shall not be liable thereafter for the price except as provided in Section 20. 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 judgment in such action, nor the collection of a portion of the price, shall be deemed inconsistent with a later retaking of the goods as provided in Section 13. But such right of retaking shall not be exercised by the seller after he has collected the entire price, or after he has claimed a lien upon the goods, or attached them, or levied upon them as the goods of the buyer.

This section is inserted for the purpose of settling a long standing conflict of authority. What act or acts upon the part of the seller show an election on his part to rescind the conditional sale and prevent him from retaking the goods is a much debated question. The prevailing view is that the commencement of an action for the entire price prevents a retaking of the goods at a later time. *Butler v. Dodson & Son*, 78 Ark. 569; *Waltz v. Silveira*, 25 Cal. App. 717; *North Robinson Dean Co. v. Strong*, 25 Idaho 721; *Smith v. Barber*, 153 Ind. 322; *Richards v. Schreiber*, 98 Iowa 422; *Bailey v. Hervey*, 135 Mass. 172; *Alden v. Dyer*, 92 Minn. 134; *Frederickson v. Schmittroth*, 112 N. W. (Neb.) 564; *Orcutt v. Rickenbrodt*, 42 App. Div. (N. Y.) 238; *Dowagiac Mfg. Co. v. Mahon*, 13 N. D. 516; *Sioux Falls Adjustment Co. v. Aikens*, 142 N. W. (S. D.) 651; *Winton Motor Carriage Co. v. Broadway Automobile Co.*, 118 Pac. (Wash.) 817. The contrary view has been maintained in *E. E. Forbes Piano Co. v. Wilson*, 144 Ala. 586; *Jones v. Snider*, 99 Ga. 276; *Foster v. Briggs Co.*, 98 S. W. (Ind. Terr.) 120; *Westinghouse Co. v. Auburn Co.*, 76 Atl. (Me.) 897; *Campbell Mfg. Co. v. Rockaway Pub. Co.*, 56 N. J. L. 676. The latter view is adopted in the proposed uniform act. In support of the former view it may be said that the only theory on which the seller can demand the full price is that the buyer has become the owner of the goods. That is the express stipulation of the contract, that passage of property and payment of the price are to be concurrent. When the seller, by bringing an action for the price,

affirms that the price is due, he must accept the logical consequent, namely, that the goods belong to the buyer.

But the minority view and the one adopted in section 22 seems more reasonable and in accord with the chattel mortgage theory of a conditional sale. If an action for the price bars a later retaking of the goods, the seller will never dare to sue for the price and run the risk of getting a worthless judgment and losing his claim upon the goods. Just as an action for the chattel mortgage debt does not bar the foreclosure of the chattel mortgage at a later time, so an action for the purchase price under a conditional sale should not bar a later reliance on the reservation of the property in the goods as security.

SECTION 23. (Recovery of Part Payments.) If the seller fails to comply with the provisions of Sections 15, 16, 17, 18 and 19 after retaking the goods, the buyer may recover from the seller all payments which have been made under the contract, with interest.

This section imposes a penalty on the seller if he fails to carry out the provisions of the statute regarding retaking, redemption and resale. Some sellers have objected to it as harsh, but the conference has deemed it necessary to insert a serious penalty in order to enforce strict compliance with the statute.

SECTION 24. (Waiver of Statutory Protection.) No act or agreement of the buyer at the time of the making of the contract, nor any agreement or statement by the buyer in such contract, shall constitute a valid waiver of the provisions of Sections 15, 16, 17, 18 and 19.

This section is supported by decisions in three of the states having resale and redemption provisions for the benefit of the buyer. *Desseau v. Holmes*, 187 Mass. 486; *Drake v. Metropolitan Mfg. Co.*, 218 Mass. 112; *Crowe v. Liquid Carbonic Co.*, 208 N. Y. 396; *Massillon Engine & Thresher Co. v. Wilkes*, 82 S. W. (Tenn.) 316. In the absence of such a provision unscrupulous sellers would do away with the effect of the statute by waivers printed in small type in the contract. No act should constitute a waiver unless performed after the contract of conditional sale is complete. It seems desirable to provide against waivers outside the contract, but made at the time of the making of the contract. Such a waiver, by means of a separate receipt, was attempted in *Desseau v. Holmes*, *supra*.

It does not seem desirable to go so far as to forbid a waiver by the buyer of the provisions of the act after the making of the contract. No duress can be exercised upon him then. He has the goods and

has the advantage over the seller. If under such circumstances the buyer sees fit to waive the provisions of the statute, whether with or without consideration, he should be allowed to do so.

SECTION 25. (Additional Rights of Buyer.) The buyer under a conditional sale shall have the right when not in default to retain possession of the goods, and he shall also have the right to acquire the property in the goods on the performance of the conditions of the contract. The seller shall be liable to the buyer for the breach of all promises and warranties, express or implied, made in the conditional sale contract, whether the property in the goods has passed to the buyer at the time of such breach or not.

This section is inserted merely for the sake of completeness. The remedies which are common to all buyers of goods, whether the contract be conditional or unconditional, are left to the Uniform Sales Act or to the prevailing common law. The courts have found some difficulty in fixing the rights of the parties where a warranty has been made in a conditional sale contract. *Rogers & Thornton v. Otto Gas Engine Works*, 7 Ga. App. 587; *W. W. Kimbal Co. v. Massey*, 126 Minn. 461; *Peuser v. Marsh*, 167 App. Div. (N. Y.) 604; *Cooper v. Payne*, 186 N. Y. 334; *Blair v. A. Johnson & Sons*, 111 Tenn. 111. If the seller's promise with respect to the goods has been broken, it is submitted that the buyer ought to be allowed to recover damages suffered by that breach, whether the buyer has become the owner of the goods or not.

SECTION 26. (Loss and Increase.) After the delivery of the goods to the buyer and prior to the retaking of them by the seller, the risk of injury and loss shall rest upon the buyer. The increase of goods sold under a conditional sale shall be subject to the same conditions as the original goods.

The rule with respect to risk of loss is that adopted by the Uniform Sales Act and by a great majority of the states. Uniform Sales Act, Sec. 22; *Blue v. American Soda Fountain Co.*, 43 So. (Ala.) 709; *Hollenberg Music Co. v. Barron*, 140 S. W. (Ark.) 582; *O'Neil-Adams Co. v. Eklund*, 89 Conn. 232; *Phenix Ins. Co. v. Hilliard*, 52 So. (Fla.) 799; *Jessup v. Fairbanks, Morse & Co.*, 78 N. E. (Ind.) 1050; *Burnley v. Tufts*, 66 Miss. 48; *Tufts v. Wynne*, 45 Mo. App. 42; *Charles A. Stickney Co. v. Nicholas*, 152 N. W. (Neb.) 554; *Collard v. Tully*, 78 N. J. Eq. 557; *Nat. Cash Reg. Co. v. South Bay Club House Ass'n*, 64 Misc. (N. Y.) 125; *Whitlock v. Auburn Lumber Co.*,

145 N. C. 120; *Harley v. Stanley*, 105 Pac. (Okla.) 188; *Carolina, etc. Co. v. Unaka Springs Lumber Co.*, 130 Tenn. 354; *Lavalleyv. Ravenna*, 78 Vt. 152; *Exposition Arcade Corp. v. Lit Bros.*, 75 S. E. (Va.) 117. It seems desirable to insert this section in the Uniform Conditional Sales Act, although there may be a duplication of legislation in states where the Uniform Sales Act is already in force. The Uniform Sales Act does not expressly refer to conditional sales, but only to sales where the title is reserved as security for the payment of the price. Furthermore, states which have not adopted the Uniform Sales Act may adopt the Uniform Conditional Sales Act.

It is well established that the increase of goods sold under a conditional sale remain the property of the seller until the performance of the condition and then pass to the buyer with the original goods. *Anderson v. Leverette*, 116 Ga. 732; *Allen v. Delano*, 55 Me. 113; *Desany v. Thorp*, 70 Vt. 31.

SECTION 27. (Act Prospective Only.) This act shall not apply to conditional sales made prior to the time when it takes effect.

SECTION 28. (Rules for Cases not Provided for.) In any case not provided for in this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall continue to apply to conditional sales.

This section is modeled after sec. 73 of the Uniform Sales Act and is inserted for the sake of completeness and clarity.

SECTION 29. (Uniformity of Interpretation.) 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.

SECTION 30. (Title of Act.) This act may be cited as the Uniform Conditional Sales Act.

SECTION 31. (Inconsistent Laws Repealed.) (Here repeal all existing acts in the field of conditional sales.) But the laws repealed by this section shall apply to all conditional sales made prior to the time when this act takes effect.

SECTION 32. This act shall take effect.