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Editorial Notes

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Notes

REMEDIES OF THE SELLER IN A CONDITIONAL SALE OF CHATTELS

Almost all modern installment payment plans depend on the use of either the conditional sale or an absolute sale with an immediate giving back of a chattel mortgage.¹ "The retention of title by the seller, notwithstanding possession, use, and apparent ownership by the buyer, is the characteristic feature of a conditional sale . . . The passage of property in the goods to the buyer is always subject to the performance of some condition precedent."² The chattel mortgage proceeds upon an entirely different theory, although it may lead to much the same results through the incorporation of special clauses. In the latter form title passes absolutely to the buyer at once and the seller is given back a mere lien on the goods.³ Despite the view of some recent writers⁴ that the conditional sale is essentially a chattel mortgage, it is still in the absence of special statutes vitally important

¹ For a laudatory account of installment selling, cf. Seligman, *THE ECONOMICS OF INSTALLMENT SELLING* (1927).

² Bogert, *COMMENTARIES ON CONDITIONAL SALES* (1924) 5. The Uniform Conditional Sales Act says, "In this Act 'Conditional Sale' means (1) any contract for the sale of goods under which possession is delivered to the buyer and the property in the goods is to vest in the buyer at a subsequent time upon the payment of a 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 bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation a sum substantially equal to the value of the goods and by which it is agreed the bailee or lessee is bound to become or has the option of becoming the owner of such goods upon full compliance with the terms of the contract." Uniform Conditional Sales Act, sec. 1. The Uniform Act has been adopted in eight jurisdictions. Alaska Laws 1919 c. 13; Ariz. Laws 1919 c. 40; Del. Laws 1919 c. 192; N. J. Laws 1919 c. 210; N. Y. Laws 1922 c. 642; Pa. Laws 1925 no. 325; S. D. Laws 1919 c. 137; W. Va. Laws 1925 c. 64; Wis. Laws 1919 c. 672.

³ 5 R. C. L. 383-384.

⁴ 1 Williston, *ON SALES* (2nd ed. 1924) 771; Vold, *ON SALES* (1931) 289-295.