CONDITIONAL SALES IN PENNSYLVANIA SINCE THE ADOPTION OF THE SALES ACT.

I.

It is necessary, at the outset, to define and limit the term, "conditional sale." A conditional sale, as considered in this article, is a contract to sell, which provides that the goods are to be delivered into the possession of the vendee, but that title in the goods is to remain in the vendor until full payment of the purchase price. Throughout this article the term, "conditional sale," will refer exclusively to such a contract. The purpose of this article is to ascertain whether or not the Sales Act has changed the law of conditional sales as it existed in Pennsylvania before the adoption of that act. Or, to put the question in another form, since the adoption of the Sales Act in Pennsylvania, can a vendor enforce the condition in a contract of conditional sale, reserving title in himself until full payment of the purchase price, against third parties after delivery of the goods to the conditional vendee?

The general principle of the common law, which was early adopted in Pennsylvania, was that in a sale of goods the vendor could convey only such title as he actually had.¹ The question naturally arose whether a conditional vendee who had come into possession of goods under a contract of conditional sale would fall under this general rule. Could a conditional vendee, in possession of goods under a contract of conditional sale, only convey such title in the goods as he had? The courts of Pennsylvania very early answered this question in the negative. Briefly stated, their answer was that the condition reserving title in the vendor until full payment of the purchase price, while good and enforceable as between the original parties, was unenforceable against creditors of, or *bona fide* purchasers

¹ Hosack v. Weaver, 1 Yeates 478 (Pa. 1795); Hardy v. Metzgar, 2 Yeates 347 (Pa. 1798); Lecky v. McDermott, 8 S. & R. 500 (Pa. 1822); Rapp v. Palmer, 3 Watts 178 (Pa. 1834); McMahon v. Sloan, 12 Pa. 229 (1849); Kusenbergh v. Browne, 42 Pa. 173 (1862).

from, the conditional vendee.² This rule of law was so well established that nothing is to be gained by merely showing that such was the law of Pennsylvania prior to the adoption of the Sales Act. This article will, therefore, be primarily directed to an attempt to show how the Pennsylvania courts reached such a conclusion; and then to determine whether the Sales Act has changed the law of Pennsylvania in this respect.

RIGHTS OF A CREDITOR OF A CONDITIONAL VENDEE.

Martin v. Mathiot,³ decided in 1826, was the first case that arose in Pennsylvania necessitating a decision as to the enforceability of the condition, reserving title in the vendor under a contract of conditional sale, against a third party after the transfer of the possession of the goods to the conditional vendee. This was an action of trespass, brought against Mathiot, a sheriff, for levying on certain goods as the property of one Michael. The evidence showed that the goods were sold and delivered by the plaintiff to Michael, with the stipulation that title was to remain in the plaintiff until the price was paid. Under a writ of execution Mathiot had levied upon and sold the goods as the property of Michael. The lower court entered judgment for the defendant, because it was of the opinion, "if vendor and vendee agree, that the possession shall pass to the vendee, but the property remain in the vendor, until the whole purchase money is paid, such agreement, as respects creditors and the sheriff, is fraudulent." On appeal, the Supreme Court affirmed the judgment of the lower court. The following quotation from the opinion of Mr. Chief Justice Tilghman will show the reasoning of the court, whereby such a conclusion was reached:

"All the world has a right to suppose that he (Michael) was the owner of the horses which he drove, and a secret

² See *Martin v. Mathiot*, 14 S. & R. 214 (Pa. 1826); *Rose v. Story*, 1 Pa. 190 (1845); *Chamberlain v. Smith*, 44 Pa. 431 (1863); *Rowe v. Sharp*, 51 Pa. 26 (1865); *Haak v. Linderman & Skeer*, 64 Pa. 499 (1870); *Stadfeld v. Huntsman & Co.*, 92 Pa. 53 (1879); *Brunswick & Balke Co. v. Hoover*, 95 Pa. 508 (1880).

³ 14 S. & R. 214 (Pa. 1826).

agreement to the contrary was an injury to society, by giving the wagoner a false credit which might induce others to trust him with their property. The cases which have generally been brought before courts of justice are those in which the seller has remained in possession. Those have been adjudged fraudulent. There are innumerable authorities on this subject, but I will refer particularly to *Clow v. Woods*, 5 Serg. & Rawle 286, and *Babb v. Clemson*, 10 Serg. & Rawle 419, because they were in this court, well considered, and recently decided. The principle which governed them was that a sale, where possession does not accompany and follow it, is fraudulent as to creditors. It was the separation of the possession from the property which made the fraud; and the principle applies to the case before us. Here the seller did not retain the possession, but was to retain the property after he had transferred the possession to the buyer. The mischief is the same—a false credit is given; and whether given to the buyer or seller, is immaterial.”

From this quotation it is seen that the court considered a conditional sale analogous to a sale with retention of possession of the goods by the vendor after the sale. Both of these transactions were considered fraudulent by the court as to creditors; and for the same reason, *viz.*, because of the separation of the possession and the title. The principle of law that made retention of possession by the vendor after the sale fraudulent as against creditors of the vendor, also rendered, in the opinion of the court, the condition in a contract of conditional sale, reserving title in the vendor until full payment of the purchase price, fraudulent and unenforceable against creditors of the conditional vendee. It is necessary, therefore, to determine why retention of the possession of goods by the vendor, after their sale, was held to preclude the vendee from asserting his title in the goods against creditors of the vendor who had levied on the goods.

Clow v. Woods,⁴ cited in *Martin v. Mathiot*,⁵ is the leading case in Pennsylvania on this point. One Hancock was the

⁴ 5 S. & R. 275 (Pa. 1819).

⁵ Note 3, *supra*.

owner of certain goods. He gave the plaintiff, Clow, a mortgage on the goods. This mortgage was not recorded, and Hancock continued in possession of the goods. One Poe became a judgment creditor of Hancock. Upon a writ of execution being issued on this judgment, Woods, as sheriff, levied on the goods as the property of Hancock. Clow thereupon brought this action of trespass against Woods. Upon the above facts appearing as a special case stated, judgment was entered for the defendant by the lower court. On appeal, the Supreme Court affirmed the judgment of the lower court. The following excerpt from Mr. Justice Gibson's opinion indicates the basis for the court's decision:

"The Stat. 13 Eliz. does not, in words, declare a conveyance of goods fraudulent, where the vendor retains possession; but in general terms renders void all conveyances made to the end, purpose, and intent of defrauding creditors. Hence it becomes incumbent on the Courts to determine, from all the circumstances of the case, whether the conveyance be, or be not, made with a fraudulent intention; and in judging of that, it is held, that any neglect in leaving the vendor in possession is fraudulent within the statute."

As shown above, in *Clow v. Woods*,⁶ creditors of a vendor, who had retained possession of the goods after the sale, were given the right to levy upon the goods by the statute of Elizabeth. Therefore, when the court decided, in *Martin v. Mathiot*,⁷ that the same reason that gave creditors of a vendor in possession of goods after the sale the right to levy on the goods, likewise gave creditors of a conditional vendee, who was in possession of goods under a contract of conditional sale, the right to levy on the goods, this right of creditors of a conditional vendee was actually based on the statute of 13 Elizabeth. In other words, creditors of a conditional vendee were allowed to levy on goods in the vendee's possession, under a contract of conditional sale, because the Pennsylvania court considered that

⁶ Note 4, *supra*.

⁷ Note 3, *supra*.

the statute of 13 Elizabeth gave the creditors that right. Or, to state the proposition in another manner, a conditional vendor was not allowed to assert his title against creditors of the conditional vendee, who had levied on the goods, while in the latter's possession, because the court considered that the statute of Elizabeth precluded the conditional vendor from doing so.

It is now proper to ascertain whether this construction of the statute of Elizabeth by the Pennsylvania court is correct. That part of the statute of 13 Elizabeth that is essential to the question at issue is as follows:

"I. For the avoiding and abolishing of feigned, covinous, and fraudulent feoffments, gifts, grants, alienations, conveyances, bonds, suits, as well of lands and tenements as of goods and chattels—devised and contrived of malice, fraud, covin, collusion or guile, to the end, purpose and intent to delay, hinder or defraud creditors and others of their just and lawful actions, suits, debts, accounts. . . .

"II. Be it therefore declared, ordained and enacted—That all and every feoffment, gift, grant, alienation, bargain and conveyances of lands, tenements, hereditaments, goods and chattels—had or made, to or for any intent or purpose before declared and expressed, shall be from henceforth deemed and taken (only as against that person or persons, his or their heirs, successors, executors, administrators and assigns—whose actions, suits, debts—shall—be in any ways disturbed, hindered, delayed or defrauded) to be clearly and utterly void, frustrate and of none effect."⁸

Briefly stated, this statute provides that all sales made by a debtor, with the intent and purpose of defrauding his creditors, are void as regards such creditors. Or to state its effect in another form, when a vendor attempts to defraud his creditors by fraudulent sales, the creditors of such vendor may treat the sales as void, unless the rights of some innocent party have intervened. The statute, however, does not touch or con-

⁸ 13 Elizabeth c. 5 (6 Statutes at Large 268). This act was made perpetual by the statute of 29 Elizabeth c. 5 (6 Statutes at Large 391). Section VI of the act protects a *bona fide* purchaser for value and prevents the act from being applied so as to upset his title in the property. It stipulates that this act shall not be applied so as to defeat the estate or interest acquired by any person as a *bona fide* purchaser for value.

cern creditors of a vendee at all. Creditors of a vendor are the only creditors that the statute of Elizabeth affects.

In *Clow v. Woods*,⁹ the Pennsylvania court applied the statute of Elizabeth correctly. Having held that retention of possession of the goods after the sale by the vendor is fraudulent as a matter of law, the court correctly decided that the statute of Elizabeth made the sale void insofar as creditors of the vendor were concerned. In *Martin v. Mathiot*,¹⁰ however, an entirely different construction was given to the statute. In this case the court construed the case of *Clow v. Woods*,¹¹ and thus ultimately the statute of Elizabeth, since this statute was the basis of that decision, as establishing the broad proposition that "a sale, where possession does not accompany and follow it, is fraudulent as to creditors. It was the separation of the possession from the property which made the fraud." It has been seen that the statute of 13 Elizabeth did not establish any such rule of law; and that the court in *Clow v. Woods*¹² did not interpret the statute as establishing any such proposition. Furthermore, in *Martin v. Mathiot*,¹³ the statute of Elizabeth, which declared fraudulent sales void as regards creditors, was construed as declaring a fraudulent sale, not void, but valid; for only by considering the conditional sale a valid sale, can creditors of the vendee levy on the goods. The Pennsylvania court, therefore, in basing the right of creditors of a conditional vendee to levy on the goods in the latter's possession under a contract of conditional sale upon the statute of 13 Elizabeth, misinterpreted the effect and scope of that statute.¹⁴

⁹ Note 4, *supra*.

¹⁰ Note 3, *supra*.

¹¹ Note 4, *supra*.

¹² Note 4, *supra*.

¹³ Note 3, *supra*.

¹⁴ That the Statute of 13 Elizabeth is the real basis for the Pennsylvania rule of conditional sales, insofar as creditors of the conditional vendee are concerned, is confirmed by later decisions. See *Rowe v. Sharp*, note 2, *supra*; *Dando v. Foulds*, 105 Pa. 74 (1884); *Edwards' Appeal*, 105 Pa. 103 (1884).

A careful search through the English cases has failed to reveal any instance where the English courts applied the statute of Elizabeth to a contract of conditional sale; or even where a litigant contended that the statute should be so applied, so that the court was compelled to consider the question.

RIGHTS OF A BONA FIDE PURCHASER FROM A CONDITIONAL
VENDEE

The rights of a *bona fide* purchaser from a conditional vendee will now be considered. The Supreme Court of Pennsylvania had been clearly indicating, by way of dictum, in a number of cases,¹⁵ that it considered the same reason that made a conditional sale fraudulent and void as regards creditors of the conditional vendee, also applicable so as to invalidate and make void the condition in such a sale as regards *bona fide* purchasers of the goods from the conditional vendee. Finally, in *Stadfeld v. Huntsman & Co.*,¹⁶ the court squarely affirmed its prior dicta as law. Huntsman & Co. had delivered furniture to one Carpenter under an agreement which the lower court held was a contract of bailment. Carpenter subsequently sold and delivered the furniture to Stadfeld, who was an innocent purchaser for value. Huntsman & Co. immediately brought an action of replevin against Stadfeld for the goods. The lower court, holding that the original transaction was a contract of bailment, allowed Huntsman & Co. to recover the goods. The Supreme Court, however, reversed the lower court. It held the original transaction to be a conditional sale, and that, as a consequence, Stadfeld acquired a good title to the goods. To quote:

"It has long been an established rule in Pennsylvania, that a sale and delivery of personal property, with an agreement that the ownership shall remain in the vendor until the purchase-money is paid, is fraudulent and void as to the creditors of the vendee, and innocent purchasers. . . . The force of the argument for the plaintiff was spent in showing that a case of bailment is not within the rule laid down for conditional sales. The principle is conceded, but it has failed in showing the existence of a bailment. On the contrary it was a sale, and comes directly within the ruling of *Clow v. Woods*, 5 S. & R. 275; *Babb v. Clemson*, 10 Id. 419; *Martin v. Mathiot*, 14 Id. 214; *Jenkins v. Eichlberger*, 4 Watts 121; *Rose v. Story*, 1 Barr 190; *Mitchell*

¹⁵ *Rose v. Story*, 1 Pa. 190 (1845); *Chamberlain v. Smith*, note 2, *supra*; *Rowe v. Sharp*, note 2, *supra*.

¹⁶ 92 Pa. 53 (1879).

v. Commonwealth to use, 1 Wright 187; *Waldron v. Haupt*, 2 P. F. Smith 408; *Haak v. Linderman*, 14 P. F. Smith 499, and similar cases."

From this quotation it is seen that the Pennsylvania court considered that a *bona fide* purchaser secured a good title to goods, purchased from a conditional vendee in possession of the goods under a contract of conditional sale, for the same reason that a creditor of a conditional vendee could levy on goods in the latter's possession under a contract of conditional sale. The language of the Pennsylvania court, down to the *Stadfeld* case,¹⁷ had consistently indicated that such was the law in Pennsylvania. Finally in that case, when called upon for a decision on the question, the prior dicta were affirmed. In this case, *Clow v. Woods*¹⁸ and *Martin v. Mathiot*,¹⁹ and cases following them, were cited as authority for the decision and the proposition of law laid down by the court. It has been seen that all of these cases were based upon the statute of 13 Elizabeth. By giving as authority decisions based on the statute of Elizabeth, the court in the *Stadfeld* case²⁰ has, therefore, likewise based the right of a *bona fide* purchaser from a conditional vendee to keep the goods under an indefeasible title, free from any claims of the conditional vendor, upon the statute of 13 Elizabeth. It has been seen that the Pennsylvania court, in *Martin v. Mathiot*,²¹ erroneously interpreted the statute of Elizabeth as declaring all sales fraudulent where the possession and the property in the goods were separated. In *Stadfeld v. Huntsman & Co.*,²² therefore, the court merely adopted this interpretation of the statute, and applied it in favor of a *bona fide* purchaser from a conditional vendee.²³

¹⁷ Note 16, *supra*.

¹⁸ Note 4, *supra*.

¹⁹ Note 3, *supra*.

²⁰ Note 16, *supra*.

²¹ Note 3, *supra*.

²² Note 16, *supra*.

²³ An examination of the statute of 13 Elizabeth shows that the statute does not apply to purchasers as such at all. This point the Supreme Court of Pennsylvania itself decided in *Foster v. Walton*, 5 Watts 378 (Pa. 1836).

II

It has been seen that in Pennsylvania, prior to the adoption of the Sales Act, a creditor of a conditional vendee could levy on goods in the latter's possession under a contract of conditional sale as the property of the conditional vendee; and that a *bona fide* purchaser of goods from a conditional vendee, who was in possession of the goods under a contract of conditional sale, acquired a good title to such goods. Both of these propositions were seen to have resulted from the interpretation given to the statute of 13 Elizabeth by the Pennsylvania courts. It remains to be determined whether the Sales Act has changed the above-stated rules of law in Pennsylvania. Under the Sales Act can a conditional vendor enforce the condition in a contract of conditional sale, reserving title in himself until full payment of the purchase price, against third persons? It is interesting to note that although the Sales Act was adopted in Pennsylvania in 1915,²³ this question has never been presented to an appellate court of this state for determination.

In discussing this question, the order in which third parties have been dealt with previously in this article will be reversed. The rights of *bona fide* purchasers from a conditional vendee will be considered first.

RIGHTS OF A BONA FIDE PURCHASER FROM A CONDITIONAL VENDEE UNDER THE SALES ACT.

The rights of purchasers are dealt with in the Sales Act in sections 23, 24 and 25, which will be considered in reverse order.

Section 25 concerns only a sale where the vendor retains possession of the goods after the sale. Since the vendor in a conditional sale does not retain possession of the goods, but possession is transferred to the vendee, section 25 is not applicable to a contract of conditional sale.

Section 24 gives a good title to a *bona fide* purchaser from a person who had a voidable title in the goods. Unless, there-

²³ Act of May 19, 1915, P. L. 543.

fore, a conditional vendee can be held to have a voidable title in goods in his possession under a contract of conditional sale, section 24 does not apply to a contract of conditional sale.

Does a conditional vendee have a voidable title in goods in his possession under a contract of conditional sale, since the adoption of the Sales Act in Pennsylvania?

Sections 18 and 19 are the sections in the Sales Act that cover the transfer of the property in goods sold. Section 19 lays down various rules for ascertaining the intention of the parties where the intention of the parties as to the passage of title does not clearly appear. Since the intention of the parties as to the passage of title in a contract of conditional sale does appear, section 19 does not apply. Section 18, therefore, is the only section applicable to the question of the passage of title in goods sold under a contract of conditional sale. This section is as follows:

"Section 18. First. Where there is a contract to sell specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

"Second. For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties, usages of trade, and the circumstances of the case."

Section 76 defines "property" as follows:

"'Property' means the general property in goods, and not merely a special property."

Since Section 18 (1) stipulates that the property shall pass as the parties to the contract intend, the intention of the parties controls the transfer of the property in goods under the Sales Act. Section 18 (2) directs that in ascertaining this intention regard shall be had "to the terms of the contract, the conduct of the parties, usages of trade, and the circumstances of the case."

By the express terms of the contract in practically every conditional sale, title is expressly reserved in the vendor until

full payment of the purchase price. In addition, there can be no doubt but that in every contract of conditional sale the parties actually intend that title is to remain in the vendor until full payment of the price. Under section 18, therefore, effect must be given to this intention. It must be held that the "property" in the goods has not passed to the conditional vendee; and that the title to the goods remains in the vendor until the price is paid. It is admitted that the contract of conditional sale passes an interest in the goods to the vendee. The point that it is wished to make is, however, that the contract does not pass the general property in the goods to the conditional vendee, nor does he have a title, voidable or otherwise, in the goods merely because he is in possession of them under a contract of conditional sale.²⁵ Since, therefore, a conditional vendee does not have a voidable title to the goods, section 24 has no application to a contract of conditional sale.

It is seen that any rights that a *bona fide* purchaser from a conditional vendee may acquire cannot be based on sections 24 or 25. Section 23, therefore, must govern the question as to what title a *bona fide* purchaser from a conditional vendee will acquire. This section is as follows:

"Section 23. First. Subject to the provisions of this act, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

"Second. Nothing in this act, however, shall affect—

"(a) The provisions of any factors' acts, recording acts, or any enactment enabling the apparent owner of

²⁵ Furthermore, the term "voidable sale" has a definite meaning in the law of sales. It means a contract under which the vendor intended to pass title to the goods to the vendee; but because of fraud on the part of either the vendor or the vendee, or of both, the vendee has not acquired an indefeasible title. It is perfectly clear that a conditional sale does not fall within this definition, since the conditional vendor has no intention of transferring title in the goods to the conditional vendee when he delivers the goods to the vendee, but only when the price has been fully paid.

goods to dispose of them as if he were the true owner thereof:

"(b) The validity of any contract to sell or sale under any special common law or statutory power of sale, or under the order of a court of competent jurisdiction."

Section 23 (2) will be considered first. Subsection 23 (2a) deals with "factors' acts, recording acts, or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof." This provision does not affect the question at issue, since it deals only with statutory provisions, of which there are none in Pennsylvania. Furthermore, as will be shown later, a conditional vendee is not the "apparent" owner of goods in his possession under a contract of conditional sale.

Subsection 23 (2b) provides that all statutory or common law powers of sale shall remain as heretofore. This provision does not apply to conditional sales, unless it be held that a conditional vendee had a power of sale in Pennsylvania prior to the adoption of the Sales Act, within the meaning and intent of the word "power" as used in this subsection of the Act. How is the word "power" used in this subsection? It is admitted that the word "power" is often used to designate a mental ability or capacity, or a physical ability or capacity, to do a certain act, whether it be lawful or unlawful for the person to do that particular act. It is submitted, however, that the word "power" is not used in this subsection in this broad sense. On the other hand, the word "power" is used in subsection 23 (2b) only to designate a mental or physical ability or capacity to do a certain act, which it is lawful for the person to do.

An examination of section 23 shows that this section was drafted with the distinction between an unlawful and a lawful ability or capacity to do certain acts in mind; and that the word "power" was used advisedly to designate only the latter class of acts. Subsection 23 (2a) preserves the pre-existing statutory ability which certain persons had, to convey a good title to goods which they did not own. The exercise of this ability, however, is unlawful, in the sense that the person exercising it is liable

to the real owner of the goods in damages. Then subsection 23 (2b) preserves the pre-existing power that certain persons had prior to the adoption of the Act to give a good title to goods which they did not own. The person, however, who exercises this power of sale is not liable to damages to the real owner of the goods for his exercise of this power.

Since subsection 23 (2b) is a *verbatim* copy of subsection 21 (2b) of the English Sale of Goods Act,²⁶ it is proper to ascertain the purpose and intent of this provision in the English Act. This is especially so, in view of the fact that the American Act is modeled after the English Act. Mr. Chalmers, the draftsman of the English Act, comments on this provision as follows:

"One person is sometimes invested by law with a special power to dispose of another person's property. For instance, a pawnbroker may sell unredeemed pledges; and a landlord, who has duly distrained for rent, may sell the goods so distrained. So, too, the master of a ship may, in case of necessity, dispose of the ship and cargo."²⁷

This quotation shows quite clearly that the word "power" is used in the section only in the sense above indicated.

The following example will illustrate not only the scope of this subsection, but also the necessity for its existence in the Act. If a sheriff levied on the goods of A, in order to satisfy a judgment against A, the vendee of the goods at the sheriff's sale secured a good title to the goods prior to the adoption of the Act. The sheriff had a power of sale in this case, which subsection 23 (2b) preserves. Without this provision in the Act, the title that a vendee of goods, sold at a sheriff's sale, acquired, would be controlled by subsection 23 (1). The result would be that, if this subsection were strictly applied, such a vendee would be held to have no title in the goods. Subsection 23 (2b) was, therefore, inserted to prevent such a result.

²⁶ The draftsman of the American Sales Act says of section 23: "This follows section 21 of the English Act, except in (2a) 'recording acts' has been added."

²⁷ Chalmers, *Sale of Goods* (8th Ed.), p. 66, and cases there cited. See also in this connection pp. 65 and 67 of the same volume; also 25 *Laws of England*, sec. 342.

Since, therefore, the word "power" in subsection 23 (2b) means only a lawful power to sell, this provision has no application to a contract of conditional sale. As thus defined, a conditional vendee in Pennsylvania, prior to the adoption of the Sales Act, did not have a power of sale of goods in his possession under a contract of conditional sale. True it is, he had an ability to sell the goods to a *bona fide* purchaser; but he had no power of sale—no lawful right to make the sale. The pre-existing law in Pennsylvania, therefore, relating to the question of the title that a *bona fide* purchaser from a conditional vendee acquires, to goods which were in the latter's possession under a contract of conditional sale, cannot be considered as still preserved by virtue of subsection 23 (2b) of the Sales Act.

The title, therefore, that a *bona fide* purchaser from a conditional vendee acquires must be governed by subsection 23 (1). Since the conditional vendor (owner) does not authorize the sale, the title that a *bona fide* purchaser from a conditional vendee acquires is governed by the provision in this section that,

"Where goods are sold by a person who is not the owner thereof, . . . the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell."

Under this provision a vendee acquires only the title of his vendor, unless the real owner has estopped himself from asserting his title. Applying this rule to a contract of conditional sale, the result is that, unless a conditional vendor has estopped himself from asserting his title, he can enforce the condition in the contract of conditional sale, reserving title in himself until full payment of the purchase price, against a *bona fide* purchaser from the conditional vendee. It is necessary, therefore, to ascertain whether a conditional vendor can be held to have estopped himself from asserting his title in goods delivered to a conditional vendee under a contract of conditional sale against a *bona fide* purchaser from the conditional vendee. It is to be noted that the conditional vendor can only be held

to be estopped from asserting his title as against a *bona fide* purchaser from the conditional vendee, if the conditional vendor has clothed the conditional vendee with the apparent ownership of the goods. For, although one may clothe another with the apparent right to sell goods as agent or as owner, it is perfectly clear that in the case of a conditional sale, this apparent right to sell is limited to an apparent right by the conditional vendee to sell the goods as owner.

Can a conditional vendor be considered as clothing the conditional vendee with the apparent ownership of the goods, by delivering the goods into the possession of the vendee under a contract of conditional sale? Will such an act on the part of a conditional vendor estop him from asserting his title against a *bona fide* purchaser from the conditional vendee?

In order to estop a person from denying the truth of a certain fact it is not only necessary to show, (1) that the third party actually relied on the conduct of the person sought to be estopped as establishing the existence of that fact,²⁸ but also, (2) that the third party had the right, on reasonable grounds, to rely on the conduct of the party sought to be estopped as establishing the existence of that fact.²⁹ Therefore, in order to estop a conditional vendor from asserting his title against a *bona fide* purchaser from the conditional vendee, it is not only necessary to show that the purchaser relied on some act of the conditional vendor as giving the conditional vendee the apparent ownership of the goods, but also that the purchaser had the right, on reasonable grounds, to rely on this act of the conditional vendor as establishing the ownership of the goods in the conditional vendee.

²⁸ Waters' Appeal, 35 Pa. 523 (1860); Weist v. Grant, 71 Pa. 95 (1872); Comegys v. Russell, 175 Pa. 166, 34 Atl. 657 (1896); Stanton v. Estey Mfg. Co., 90 Mich. 12, 51 N. W. 101 (1892); Skillern v. Arkansas Woolen Mills, 77 Ark. 172, 91 S. W. 303 (1905); Mott v. German Hospital, 55 N. J. Eq. 722, 37 Atl. 757 (1897); Barnard v. Campbell, 55 N. Y. 456 (1874).

²⁹ Parker v. Moore, 59 N. H. 454 (1879); Rogers v. P. & B. Ry., 100 Me. 86, 60 Atl. 713 (1905); Holt v. N. E. Tel. & Tel. Co., 110 Me. 10, 85 Atl. 159 (1913); see also, Pence v. Arbuckle, 22 Minn. 417 (1876); Western Land Ass'n v. Banks, 80 Minn. 317, 83 N. W. 192 (1900); De Lashmutt v. Teetor, 261 Mo. 412, 169 S. W. 34 (1914); Besson v. Eveland, 26 N. J. Eq. 468 (1875); Central R. R. of N. J. v. McCartney, 68 N. J. L. 165, 52 Atl. 575 (1902).

The only possible act of the conditional vendor, which it might be claimed has estopped him from asserting his title in the goods against a *bona fide* purchaser from the conditional vendee, is the act of transferring the possession of the goods to the conditional vendee. This is the only act which is the result of a contract of conditional sale, upon which an estoppel can be based. This act, however, does not give anyone the right to believe that the conditional vendee is the owner of the goods, so as to estop the conditional vendor from asserting his title in the goods. It is clear that the mere transfer of the possession of goods, without anything more appearing to the world, does not give a third person the right to believe that the person in possession is the owner of the goods, so as to estop the real owner from asserting his title in the goods. The transfer of the possession of goods to a servant, or agent, or bailee, does not estop the owner of the goods from asserting his title therein. Time and time again the Supreme Court of Pennsylvania has allowed a bailor of goods to assert his title against innocent third parties.³⁰ Said the court in one case:

"A bailment for hire makes it possible for a dishonest bailee to sell the goods to an innocent purchaser, but such a sale will not pass the title of the bailor, for he has done or omitted nothing that should estop him from asserting his ownership of the goods."³¹

Yet the appearance of a bailment and a conditional sale is exactly the same to third persons. In both cases all that appears to the world, and on which a third party could rely as establishing the ownership of the goods in the person in possession, is the transfer of the possession of the goods from one person to another. It must follow, therefore, that if the transfer of the possession of the goods to the bailee does not estop the bailor from asserting his title, it cannot be held to estop the conditional

³⁰ Chamberlain v. Smith, 44 Pa. 431 (1863); Becker v. Smith, 59 Pa. 469 (1868); Enlow v. Klein, 79 Pa. 488 (1875); Dando v. Foulds, 105 Pa. 74 (1884); Ditman v. Cottrell & Sons, 125 Pa. 606, 17 Atl. 504 (1889); see also, for a Superior Court decision, Miller v. Douglas, 32 Pa. Super. 158 (1906).

³¹ Miller Piano Co. v. Parker, 155 Pa. 208, 26 Atl. 303 (1893).

vendor from asserting his title in goods transferred to the possession of the conditional vendee under a contract of conditional sale. A conditional vendor, therefore, cannot be held to be estopped from asserting his title in the goods, delivered to the conditional vendee under a contract of conditional sale, against a *bona fide* purchaser from the conditional vendee.

Since a *bona fide* purchaser of goods from a conditional vendee does not come under any of the exceptions stated in section 23, the title that such vendee acquires is governed by the general provision of this section. This is, that a vendee acquires only his vendor's title. The result is, that a *bona fide* purchaser from a conditional vendee acquires only the latter's title in the goods. It follows, therefore, that under the Sales Act a conditional vendor can enforce his title in goods, delivered into the possession of the conditional vendee under the contract of conditional sale, against a *bona fide* purchaser of the goods from the conditional vendee, while the goods were in the latter's possession.

A comparison of the American Sales Act with the English Sale of Goods Act confirms the correctness of the conclusion reached above. Section 23 of the Sales Act is a copy of section 21 of the English Sale of Goods Act³² in its essential provisions.³³ The English Act, however, contains subsections 25 (2) and 25 (3); but there are no provisions similar to these to be found in the American Act. These subsections are as follows:

"(2) Where a person, having bought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect

³² The Sale of Goods Act, 1893; 56 & 57 Vict. c. 71.

³³ The American Act has the added words, "recording acts," in subsection (2a). Otherwise the sections in the two acts are the same.

of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

"(3) In this section the term 'mercantile agent' has the same meaning as in the Factors Acts."

Sections 1 (1) and 2 (1) of the English Factors Act³⁴ define a "mercantile agent" and state the effect of a sale by such an agent of goods lawfully in his possession. These sections are as follows:

"1 (1) For the purposes of this Act—

"The expression 'mercantile agent' shall mean a mercantile agent having in the customary course of his business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods.

"2 (1) Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition of the goods, made by him when acting in the ordinary course of business of a mercantile agent, shall, subject to the provisions of this Act, be as valid as if he were expressly authorized by the owner of the goods to make the same; provided that the person taking under the disposition acts in good faith, and has not at the time of the disposition notice that the person making the disposition has not authority to make the same."

The effect of these provisions is, among other things, to give to a *bona fide* purchaser of goods, in the possession of a conditional vendee as the result of a contract of conditional sale, a good title to the goods. However, the importance of these provisions for the purposes of this discussion does not lie so much in their effect, as in the significance of their existence in the English Sale of Goods Act. As a result of the English Factors Act, passed in 1889, a *bona fide* purchaser from a conditional vendee, in possession of goods under a contract of con-

³⁴ The Factors Act, 1889; 52 & 53 Vict. c. 45.

ditional sale, acquired a good title in the goods.³⁵ Evidently desiring to continue this rule of law under the Sale of Goods Act, subsections 25 (2) and 25 (3) were inserted in that Act. The only conclusion to be drawn from their existence in the English Act is that the draftsman of that Act considered that section 21 alone (American section 23) would not give a *bona fide* purchaser from a conditional vendee of goods, in the latter's possession under a contract of conditional sale, a good title to the goods. This attitude, therefore, of the English draftsman as to the effect of section 21 is important in construing the similar provision (section 23) in the American Act. It confirms the conclusion stated above, that under the Sales Act, with section 23 as the controlling section, a *bona fide* purchaser from a conditional vendee of goods in the latter's possession under a contract of conditional sale does not acquire a good title to the goods, but that, on the contrary, the conditional vendor can enforce his title in the goods against such purchaser.

RIGHTS OF A CREDITOR OF A CONDITIONAL VENDEE UNDER THE SALES ACT.

Can a conditional vendor be held to be precluded from asserting his title in goods in the possession of a conditional vendee under a contract of conditional sale, against creditors of the conditional vendee who have levied on the goods, since the adoption of the Sales Act in Pennsylvania?

Section 26 is the only section in the Sales Act which specifically concerns creditors. This section provides that, "Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods, and such retention of possession is fraudulent in fact or is deemed fraudulent under any rule of law, a creditor or creditors of the seller may treat the sale as void."

³⁵ This is so by virtue of section 9 of the Factors Act. This section is the same as subsection 21 (2) of the Sale of Goods Act, except that the words "or under any agreement for sale, pledge, or other disposition thereof" are contained only in the Factors Act. This makes that provision somewhat broader in scope than that of the Sale of Goods Act.

Since section 26 concerns only the case of retention of possession of the goods by a vendor after sale, it has no direct bearing upon the rights of creditors of a conditional vendee, as in a conditional sale possession is always transferred to the conditional vendee. This section is of great importance, however, in the question now under discussion, because of the fact that, except for section 26, the Sales Act is entirely silent about any special rights of creditors. The Pennsylvania view, that a creditor of a conditional vendee could levy on goods in the possession of the latter under a contract of conditional sale as the property of the conditional vendee, was the distinct minority view on this question in the United States in the absence of any statute.³⁶ Therefore, if the Sales Act, drafted to make the law of sales uniform in all jurisdictions adopting it, had intended to adopt, as the uniform law on this point, the minority or Pennsylvania view, it seems fair to assume that a specific provision to that effect would have been inserted in the Act. Under these circumstances the existence of section 26, and the silence of the Act as to any special rights of all other creditors, is tantamount to a specific clause in the Act rejecting the Pennsylvania view, which gave creditors of a conditional vendee the right to levy on goods in the possession of the latter under a contract of conditional sale as the property of the conditional vendee.

This view is supported by section 74 of the Sales Act, which provides that, "This act shall be so interpreted and construed, if possible, as to effectuate its general purpose to make uniform the laws of those states which enact it." This section provides that the Act shall be construed so as to effectuate its general purpose of uniformity. It has been seen that the Sales Act has overruled the pre-existing Pennsylvania law insofar as the title that a *bona fide* purchaser from a conditional vendee acquires is concerned. It has adopted the view held by the majority of jurisdictions prior to the adoption of the Act on this question.³⁷ In view of this fact it cannot be argued

³⁶ Williston on Sales, sec. 324 *et seq.*

³⁷ Williston on Sales, sec. 324 *et seq.*

that the Act, after specifically rejecting one-half of the minority or Pennsylvania doctrine of conditional sales, insofar as *bona fide* purchasers from a conditional vendee are concerned, has adopted by its silence the other half of the minority or Pennsylvania view, as regards creditors of a conditional vendee. To so hold would be to overrule the spirit and purpose of the Act as announced by section 74.

If it were held contrary to the view indicated above, that creditors of a conditional vendee can still levy on goods in the possession of a conditional vendee under a contract of conditional sale as the property of the conditional vendee, the peculiar result would follow that, under the Sales Act, creditors of a conditional vendee would be accorded greater rights than are given to *bona fide* purchasers from a conditional vendee. A *bona fide* purchaser from a conditional vendee would be held bound by the condition in the contract of conditional sale reserving title in the conditional vendor until full payment of the purchase price, while a creditor of the conditional vendee would be held not to be bound by the condition. Furthermore, such a conclusion can be reached only by indulging in the presumption that the pre-existing law in Pennsylvania, insofar as creditors of a conditional vendee are concerned, remains unchanged, because the Sales Act does not contain a specific provision to the contrary. Such a presumption, however, under section 74 of the Act is not permissible. The provision in this section that the Act shall be construed so as to effectuate its general purpose of uniformity, counteracts any idea that the Act is merely a codification of the pre-existing law of any particular jurisdiction. No presumption, therefore, can be properly indulged in, that the pre-existing law of Pennsylvania, insofar as creditors of a conditional vendee are concerned, has not been changed by the Act. It must be decided, apart from any such presumption, whether the Sales Act has enacted as the uniform law, the minority or Pennsylvania view, insofar as the rights of creditors of a conditional vendee are concerned. If the question is so approached, and if the Act is so construed, the answer must be that the Act has not done so.

Of course, even though ordinarily a creditor might only be able to levy on his debtor's interest in certain goods, yet it is possible for him to acquire greater rights if the real owner of the goods has estopped himself from asserting his title in the goods against such creditor. A creditor of a conditional vendee, however, cannot claim that a conditional vendor has estopped himself from asserting his title in the goods against creditors of the conditional vendee, for the same reasons that prevent a *bona fide* purchaser from claiming that the conditional vendor has estopped himself from asserting his title in the goods against *bona fide* purchasers of the goods from the conditional vendee. These reasons have been discussed at length earlier in this article.

It is felt advisable to discuss one final provision in the Sales Act, *viz.*, section 73. This is done, in order to meet any possible argument that might be made that, by virtue of this section, the pre-existing Pennsylvania law, insofar as the right of creditors of a conditional vendee to levy on goods in the latter's possession under a contract of conditional sale as the property of the conditional vendee is concerned, remains unchanged. This section is as follows: "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 contracts to sell and to sales of goods."

It is to be observed that this section applies only "in any case not provided for in this act."³⁸ It is submitted, however, for the reasons given before, that all creditors have been provided for by the Act. In addition, the fraud, about which section 73 speaks, is an "invalidating" fraud, while the fraud, on which the right of a creditor of a conditional vendee to levy on

³⁸ This provision, of course, eliminates any possible application of this section to the case of a *bona fide* purchaser from a conditional vendee of goods in the latter's possession under a contract of conditional sale. All purchasers, and thus necessarily purchasers from a conditional vendee, are expressly covered in the Act by sections 23, 24 and 25.

goods in the latter's possession under a contract of conditional sale as the property of the conditional vendee, prior to the adoption of the Sales Act in Pennsylvania, was based, was a validating fraud. By it the original sale of the goods was not invalidated, but was held to be a valid sale. Furthermore, it has been seen that the Pennsylvania courts only considered the delivery of goods into the possession of a vendee under a contract of conditional sale fraudulent, because of the supposed statutory direction of the statute of 13 Elizabeth. It has been seen, however, that this statute does not declare the delivery of goods into the possession of a vendee under a contract of conditional sale fraudulent. The only basis for declaring such a transaction fraudulent disappears; and the pre-existing law in Pennsylvania, insofar as creditors of a conditional vendee are concerned, cannot be held by virtue of section 73 to be still in force since the adoption of the Sales Act.

CONCLUSION.

It may seem harsh and undesirable to many persons to allow a conditional vendor to enforce the condition, reserving title in himself until full payment of the purchase price, against *bona fide* purchasers from, and creditors of, the conditional vendee. It is permissible, therefore, to point out that this result of the Sales Act can be remedied by the adoption of a statute such as the Uniform Conditional Sales Act.³⁹ This act would protect a *bona fide* purchaser from a vendee in possession of goods under a contract of conditional sale; and a creditor of a conditional vendee who had levied on goods as the property of the latter, ignorant of the fact that such goods were in the vendee's possession only under a contract of conditional sale, would also be protected, unless the original contract of conditional sale had been recorded with some designated public offi-

³⁹ This Act was recommended for adoption by the States by the National Commissioners on Uniform State Laws in 1918. It has been adopted by Alaska (1919); Arizona (1919); Delaware (1919); New Jersey (1919); South Dakota (1919); West Virginia (1921); Wisconsin (1919).

cial.⁴⁰ The result that would thus be achieved by the adoption of such a statute would be a distinct improvement over the Pennsylvania law of conditional sales, as it existed prior to the adoption of the Sales Act. In Pennsylvania, prior to the adoption of the Sales Act, although a conditional vendor could not enforce his title in goods, after they had been delivered into the possession of the conditional vendee, against innocent third parties, a bailor could enforce his title in goods, delivered into the possession of a bailee under a contract of bailment, against the whole world. The Pennsylvania courts, therefore, apparently considering their law of conditional sales harsh,⁴¹ always held doubtful cases (and some cases that were not doubtful) to be bailment leases and not contracts of conditional sale. Transactions which were conditional sales in everything but name were held to be contracts of bailment.⁴² In other words,

"The Uniform Conditional Sales Act provides that, 'Every provision in a conditional sale reserving property in the seller, shall be void as to any purchaser from or creditor of the buyer, who, without notice of such provision, purchases the goods or acquires by attachment or levy a lien upon them, before the contract or a copy thereof shall be filed as hereinafter provided, unless such contract or copy is so filed within ten days after the making of the conditional sale.'"

"For example, the following quotation from *Keystone Watch Case Co. v. Fourth Street National Bank*, 194 Pa. 535, 45 Atl. 328 (1900), is in point: "In the eighty years that have elapsed since the decision of *Clow v. Woods*, 5 S. & R. 275, the rigor of the rule laid down in that case, and it is the leading one in this State, has been greatly relaxed; nor, considering the progress in population and wealth, and the change in methods of conducting business, could it have been strictly adhered to, without great obstruction to business and hardship to individuals. Under that ruling, the cases were rare, where, as to creditors, the ownership of chattels could be in one and the possession in another; in such circumstances, with few exceptions, the transaction was constructively fraudulent as to creditors. But, in the long line of cases following it, step by step, the rule has been so softened, that now, it may be said, with few exceptions, where the purpose of the contracting parties was, as between themselves, an honest one, and there was no concealment as to creditors of its true nature, the contract is not constructively fraudulent; in other words, the law will be slow to hold the parties scamps, constructively, if the contract, in view of its purpose, was actually an honest one."

"See for example, *Rowe v. Sharp*, 51 Pa. 26 (1865); *Enlow v. Klein*, 70 Pa. 488 (1875); *Dando v. Foulds*, 105 Pa. 74 (1884); *Ditman v. Cottrell & Sons*, 125 Pa. 606, 17 Atl. 504 (1889); *Lippincott v. Scott*, 198 Pa. 283, 47 Atl. 1115 (1901); *Stiles v. Seaton*, 200 Pa. 114, 49 Atl. 774 (1901); *Link Machinery Co. v. Continental Trust Co.*, 227 Pa. 37, 75 Atl. 985 (1910); *Jones v. Wands*, 1 Pa. Super. 269 (1896); *Rieker v. Koechling*, 4 Pa. Super. 286 (1897); *Porter v. Duncan*, 23 Pa. Super. 58 (1903); *Miller v. Douglas*, 32 Pa. Super. 158 (1906); *Reading Auto Co. v. De Haven*, 53 Pa. Super. 344 (1913).

although declaring that the condition in a contract of conditional sale, reserving title in the vendor until full payment of the purchase price, was unenforceable against *bona fide* purchasers from, and creditors of, the conditional vendee, when the latter was in possession of the goods; yet, in fact, the Pennsylvania courts were enforcing such conditions by the expedient of calling the contract one of bailment, and not one of conditional sale. This result, however, would be impossible under the Uniform Conditional Sales Act, since there is included in its definition of the term "conditional sale", "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 full compliance with the terms of the contract."⁴³ A real protection against secret conditional sales would thus be furnished, instead of the somewhat illusory protection that existed in Pennsylvania prior to the adoption of the Sales Act. The desirability of enacting such a statute is indicated by the fact that thirty-two states have enacted either the Uniform Conditional Sales Act, or a statute of a similar nature.⁴⁴

The conclusions of this article may be briefly summarized as follows: In Pennsylvania, since the adoption of the Sales Act, a conditional vendor may enforce the condition in the contract of conditional sale, reserving title in himself until full payment of the purchase price, after the delivery of the goods into the possession of the conditional vendee, against a *bona fide* purchaser from, or a creditor of, the conditional vendee.

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⁴³ Section 1 of the Uniform Conditional Sales Act.

⁴⁴ The following States have adopted either the Uniform Conditional Sales Act or a similar statute: Alabama, Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Iowa, Kansas, Maine, Maryland, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming.