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LEVY OF ATTACHMENT AND EXECUTION ON BUYER'S INTEREST UNDER CONDITIONAL SALES CONTRACT

Under the Uniform Conditional Sales Act¹ and the local statutes² providing for the levy of attachment and execution, the question of whether a creditor can levy upon and sell the interest of the buyer, subject to the paramount rights of the seller, is undetermined. Although the Act expressly recognizes the assignability and mortgageability of the buyer's interest,³ it is silent on the present problem. Likewise, no West Virginia cases directly on this point have been reported.⁴ In the absence of express statute, this question is generally decided adversely to the claim of the creditor.⁵ Nor does the payment of a portion of the purchase price operate to give the buyer any greater interest for this purpose than he originally took under the contract.⁶ Some few courts, however, while recognizing the general rule, hold the buyer's interest subject to levy and execution by his creditors, provided tender is made to the seller of that part of the purchase price remaining unpaid.⁷ A similar result has been attained in other states by statute.⁸

¹ W. VA. REV. CODE (1931) c. 40, art. 3.

² W. VA. REV. CODE (1931) c. 38, art. 4, §§ 1 to 32; W. VA. REV. CODE (1931) c. 50, art. 9, §§ 11, 12, 13.

³ W. VA. REV. CODE (1931) c. 40, art. 2, § 13.

⁴ In *Cook v. Citizens Insurance Co.*, 105 W. Va. 375, 143 S. E. 113 (1928), the buyer's interest was held to be an equitable property interest; while *Doheny v. Atlantic Dynamite Co.*, 41 W. Va. 1, 23 S. E. 525 (1894) holds that a mere equity of redemption cannot be levied upon and sold under a writ of *fiери facias*. In *Pisculli v. Bellanca Aircraft Corp.*, 17 Del. Ch. 151, 150 Atl. 81 (1931) the court held that a conditional sales contract is equivalent to a chattel mortgage in the sense that the title is reserved solely as security for performance by the buyer.

⁵ *Harkness v. Russell*, 118 U. S. 663, 7 S. Ct. 51 (1886); *Lucas v. Birdsey*, 41 Conn. 357 (1874); *Whitney v. Biggs*, 92 Misc. 424, 156 N. Y. Supp. 1107 (1915); *Smith v. Foster*, 18 Vt. 182 (1846); 1 WILLISTON, CONTRACTS (2d ed. 1924 § 326.) The only American states to reach a different result in the absence of statute were Pennsylvania and Illinois. *Rose v. Story*, 1 Pa. St. 190, 44 Am. Dac. 121 (1845); *McCormick v. Hadden*, 37 Ill. 370 (1865). Both states now have the general rule by statute. See *Hixon v. Ward*, 254 Ill. App. 505. ILL. REV. STAT. (Cahill, 1924) c. 121, § 23; PA. LAWS (1925) No. 325.

⁶ *King v. Cline*, 49 Cal. App. 696, 194 Pac. 290 (1920); *Buckmaster v. Smith*, 22 Vt. 203 (1850); *Sage v. Slutz*, 23 Ohio St. 1 (1872).

⁷ *Hervey v. Dimond*, 67 N. H. 342, 39 Atl. 331 (1893); *Tuitt v. Patten*, 75 Utah 567, 287 Pac. 175 (1930); *Coffin v. Northwestern Mut. Fire Ass'n*, 43 Idaho 1, 249 Pac. 89 (1926); *Deariso v. Lawrence*, 3 Ga. App. 580, 60 S. E. 330 (1908); *Nevada Motor Co. v. Bream*, 51 Nev. 89, 269 Pac. 602 (1928).

⁸ CONN. GEN. STAT. (1918) § 5870; GEN. LAWS RHODE ISLAND (1923) §§ 4445, 5263; ALA. OFF. CODE (1923) §§ 6188, 7806; CAL. STAT. (1921) § 689; ILL. REV. STAT. (Cahill, 1924) c. 121, par. 23. Clearly where the buyer

If, as in West Virginia, the buyer is held to possess an equitable property right in property sold under a conditional sales contract,⁹ there is little doubt but that such property can be subjected to the satisfaction of the lien of the buyer's creditors in a suit in equity.¹⁰ But this method is slow and is apt to prove expensive, and in West Virginia the procedure for bringing such bill is to some extent, at least, indefinite.¹¹

The need for a statute in West Virginia determining the rights of the creditors of a buyer under a conditional sales contract is apparent from a consideration of the various practices of our justices courts, some of which refuse to allow, while others allow the creditor of such buyer to levy upon and sell such property in the same manner as other personal property to which the execution debtor has legal title. This variation between the practice in the several justices' courts, possibly explainable by the confused wording of the various sections of the Code dealing with executions,¹² is nevertheless reprehensible. Such property interest as a non-defaulting buyer possesses under a conditional sales contract, while not a legal title in the strict sense, contains all rights in the property except the bare legal title and is a property right of value. In all fairness, it should be subject to legal executions for the satisfaction of his debts and a statute making it so would prevent buyers under conditional sales contracts from allowing a slight portion of the purchase price to remain owing to the seller in order to prevent execution by the buyer's creditors.

is in default and the seller has exercised his privilege to repossess, the buyer no longer has any interest in the property. See *Sage v. Sleutz*, *supra* n. 6; *Laidley v. U. S. Express Co.*, 3 Pa. Super. Ct. 149 (1896); *Powell v. Clawson*, 38 Pa. Super. Ct. 245 (1909); *Mount v. Harris*, 1 Smedes & M. 185, 40 Am. Dec. 89 (1843); *Porter v. Pettengill*, 12 N. H. 299 (1841); *Steen v. Harris*, 81 Ga. 681, 8 S. E. 206 (1888); *Moses v. Rogers*, 62 Vt. 84, 19 Atl. 118 (1889).

⁹ *Cook v. Citizens Ins. Co.*, *supra* n. 4. 1 WILLISTON, SALES (2d ed. 1924) § 326.

¹⁰ *Supra* n. 4.

¹¹ See HOGG'S EQUITY PROCEDURE (Carlin ed. 1921) §§ 626, 628, 61 for procedural method.

¹² W. VA. REV. CODE (1931) c. 38, art. 4, §§ 6, 8; W. VA. REV. CODE (1931) c. 50, art. 9, §§ 11, 12, 13.