

No. 395.

## AN ACT

Concerning conditional sales of chattels attached, or to be attached, to realty, and regulating the filing and effect thereof; and providing remedies and penalties.

Conditional sales of chattels attached to realty.

Section 1. Be it enacted, &c., That every provision in a conditional sale contract in writing, reserving to the seller the property in chattels attached, or to be attached, to realty until the price of the whole or any portion thereof shall be paid or until the performance or happening of any other condition or contingency, shall be valid as to all persons, except as hereinafter otherwise provided. "Writing," as used in this section, includes manuscript, typewriting, and printing. "Persons," as used in this section, includes individuals, partnerships, corporations, and any other associations.

"Writing" defined.

"Persons" defined.

## EXCEPTIONS

Void against owner of realty not party and not assenting unless filed.

Section 2. First. As against the owner of realty to which chattels are attached, who is not a party to the contract or has not assented to the reservation of property in the chattels, such reservation shall be void as to any chattels which are so attached to the realty as to form a part thereof, unless the contract, or a verified statement thereof, shall be filed, as required in section three, before the chattels are so attached to the realty.

Void against subsequent purchaser, &c., unless filed.

Second. As against a subsequent purchaser, subsequent mortgagee, or other subsequent encumbrancer, of the realty for value and without notice of the reservation of property in the chattels, such reservation shall be void as to any chattels so attached to the realty as to form a part thereof, unless the conditional sale contract, or a verified statement thereof, shall be filed, as required in section three, before such purchase is made or such mortgage is given or such encumbrance is effected. "Subsequent," as used in this paragraph, refers to the time of attaching the chattels to the realty.

As against prior encumbrancer if chattels not severable without damage.

Third. As against a prior mortgagee or other prior encumbrancer of the realty, who has not assented to the reservation of property in the chattels, if any of the chattels are so attached to the realty as not to be severable without material injury to the freehold, the reservation of property in the chattels so attached shall be void, notwithstanding the filing of the contract or statement, unless such injury, although material, be

such as can be completely repaired, and the seller before retaking such chattels furnishes or tenders to such prior mortgagee or encumbrancer a good and sufficient bond conditioned for the immediate making of such repairs. "Prior," as used in this paragraph, refers to the time of attaching the chattels to the realty.

Bond to be furnished.

"Prior" defined.

#### FILING

Section 3. First. The conditional sale contract, or a verified statement thereof, shall be filed in the office of the prothonotary of the county wherein the realty affected is situate, and an abstract entered in a docket to be kept for that purpose and called "Conditional Sales Docket," and shall be indexed in said docket by placing the name of the buyer in a column for defendants and the name of the seller in a column for plaintiffs.

Filing.

Docket.  
Index.

Second. Such contract, in order to entitle it to be filed, must be verified by the oath or affirmation of either the seller or the buyer or the agent or attorney of either to the effect (1) that it is an existing bona fide contract; (2) the amount remaining unpaid thereon; (3) and if the contract does not contain a sufficient description for the identification of the realty affected, the verification must also contain such description.

Verification.

Third. Such statement in order to entitle it to be filed must set forth (1) the date of the contract, if it bears a date; (2) the names of the seller and the buyer and their places of residence, if shown in the contract; (3) a description sufficient for identification of the chattels and the realty affected; (4) a copy of the condition or contingency upon performance or happening of which the property in the chattels is to vest in the buyer; (5) that it is an existing bona fide contract; (6) and the amount remaining unpaid thereon—all of which must be verified by the oath or affirmation of either the seller or the buyer or the agent or attorney of either.

Contents of statement.

#### FEEES

Section 4. The fees for filing, indexing, and other services in connection with conditional sale contract, shall be the same as for like services in connection with mechanics' liens.

#### RAILROAD EQUIPMENT OR ROLLING STOCK

Section 5. This act shall not apply to any conditional sale of railroad, or street or interurban railway, equipment or rolling stock.

## RELEASE OR SATISFACTION

Duty of seller to  
release or satisfy.

Section 6. Upon the performance or happening of the condition or contingency, it shall be the duty of the seller to release or satisfy the conditional sale contract of record or to execute, acknowledge, and deliver to the buyer a proper release or satisfaction; and the filing clerk, upon presentation of such release or satisfaction, shall file the same and note the release or satisfaction on the conditional sale docket where the contract is noted and also mark it satisfied on the index. For failure or refusal by the seller for ten days after demand by the buyer to perform this duty, the seller shall forfeit to the buyer five dollars and be liable for all damages suffered.

Effect of failure  
or refusal.

## RETAKEING POSSESSION

Proviso.

Notice to be  
served on buyer of  
intention to re-  
take.

Section 7. When the buyer 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 chattels, or in the performance of any promise, the breach of which is by the contract expressly made a ground for the retaking of the chattels, the seller may retake possession of and deal with the chattels, as provided in sections eight, nine, ten, and eleven: Provided, The seller, not more than forty nor less than twenty days prior to the retaking, shall have served upon the buyer personally or by registered mail a notice of intention to retake the chattels on account of the buyer's default. Said notice shall also state the default and the period at the end of which the chattels will be retaken, and if the buyer shall perform during said period the obligations in which he made the said default, the chattels shall not be retaken.

## RESALE BY SELLER

Redemption by  
buyer.

Advertisement.

Seller may  
purchase.

Section 8. Within sixty days after the chattels are retaken under any of the provisions of this act the seller may and, if at least twenty-five per centum of the purchase price of the chattels shall have been paid, he shall advertise and sell them at public auction in the county wherein they were located at the time of the retaking unless the buyer before the day fixed for the resale shall redeem them by performance of the conditions and payment of the costs and expenses of severing, retaking, removing, keeping, storing, and advertising. Such advertisement shall be for at least ten days by five or more notices posted in different public places in the county where the chattels are to be sold, and by publication in a newspaper published or having general circulation in said county. The seller may bid for and become the purchaser of the chattels at such resale.

## PROCEEDS OF RESALE

Section 9. The proceeds of the resale shall be applied (1) to the payment of the costs and expenses thereof; (2) to the payment of the costs and expenses of the severing, retaking, removing, keeping, and storing of the chattels; and (3) to the satisfaction of the amount remaining unpaid under the contract. Any sum remaining after the satisfaction of such claims shall be paid to the buyer.

## DEFICIENCY ON RESALE

Section 10. If the proceeds of the resale are not sufficient to defray the costs and expenses provided for in section nine and to satisfy the amount remaining unpaid under the contract, the seller may recover the deficiency from the buyer or from any one who has succeeded to the obligations of the buyer.

## RIGHTS OF PARTIES WHERE THERE IS NO RESALE

Section 11. Where there is no resale the seller may retain the chattels as his own property without obligation to account to the buyer, except in cases where at least twenty-five per centum of the purchase price of the chattels shall have been paid before the retaking. In such cases, if the seller does not advertise and resell, as provided in section eight, he shall be liable to the buyer for actual damages, if any, and in no event for less than one-fourth of the sum of all payments made prior to the retaking, with interest thereon.

Where 25% of  
purchase price  
paid.

## RISK OF LOSS AND INJURY

Section 12. After delivery of the chattels to the buyer the risk of loss or destruction and of injury to them shall rest upon the buyer, except that after the chattels are retaken by the seller, and until resold, as provided herein, it shall be his duty to exercise reasonable care for their safety.

## INCONSISTENT LAWS REPEALED

Section 13. Except so far as it is applicable to conditional sales made prior to the passage of this act, the act entitled "An act concerning conditional sales of chattels attached or to be attached to realty, and regulating the recording and effect thereof; and providing remedies, and penalties," which became a law on the first day of May, one thousand nine hundred and twenty-three (Pamphlet Laws, one hundred seventeen), is intended to be supplanted by this act and is therefore hereby repealed.

Act of May 1,  
1923 (P. L. 117),  
repealed.

APPROVED—The 14th day of May, A. D. 1925.

GIFFORD PINCHOT.