

SALES—CONDITIONAL SALE—CONFLICT OF LAWS.—
Kennedy et al. v. National Cash Register Co., 279 S. W. 505
(Court of Civil Appeals of Texas, 1926).

One Bryant, who lived and operated a cafe business in Texarkana, Arkansas, addressed an order to the National Cash Register Co., of Dayton, Ohio, requesting shipment of a \$300 cash register for which he agreed to pay certain installments. It was specified that the register should remain the property of the cash register company until the price or any judgment for same was paid in full. After the arrival of the cash register, Bryant executed his note for the balance due as per terms of order. A few months later he executed a chattel mortgage on certain personal property, including the cash register, to secure a debt to a bank in Texarkana, Texas. This mortgage was duly recorded in Arkansas. Two months later Bryant sold his business and furniture and fixtures, including the cash register, to one Brower. In the purchase from Bryant, Brower assumed the indebtedness of Bryant, including the debt to the bank and the balance due on the cash register. Brower lived in Texas, but conducted the business in Arkansas. Brower became bankrupt and filed a voluntary petition for bankruptcy in the U. S. District Court in Texas. The trustee took charge of Brower's personal property, which was located in Arkansas. The bank had also become bankrupt and the defendant was appointed to take charge of the assets of the bank. As between the bank and the trustee of Brower it was agreed that the defendant should take charge of the cash register. Defendant accordingly took possession of the cash register and brought it into the state of Texas, where he now holds it as part of the assets of the bank. Statute of Ohio provided for the recording of conditional sales to make them valid as against subsequent purchasers and mortgagees in good faith. This statute of Ohio had never been complied with. The cash register company brought suit in the state of Texas to recover the value of the register. The common law rule applicable to conditional sales is in force in Arkansas. Defendant contends that inasmuch as the order was accepted in Ohio, the Ohio statute regarding recording of conditional sales should have been complied with so as to defeat defendant's title, and also that as the suit is brought in Texas, the courts of Texas should apply the Texas law which requires registration of conditional sales so as to be valid against subsequent purchasers and mortgagees without notice.

Held: The issues of law must be determined by the legal rights which the bank acquired when it took the mortgage on the cash reg-

ister from Bryant. The contract was finally consummated in Arkansas, and is governed by the laws of that state. If this controversy were in the State of Arkansas, the courts there would hold that the plaintiff's rights were unaffected by the failure to comply with the registration laws of Ohio. This controversy is governed by the laws of Arkansas, and not the laws of Texas, because the property was brought into the state of Texas by the unauthorized act of the defendants. The mortgage to the bank was an Arkansas contract, although actually executed in Texas. A purchaser cannot go into another state, take possession of property, bring it into this state, and then claim the benefit of the laws of this state to the exclusion of the laws of the state from which he wrongfully carried the property. As the laws of Arkansas do not require a conditional sale of this character to be registered, or recorded, in order to protect the vendor against subsequent purchasers and mortgagees without actual notice, and as this case is governed by the laws of Arkansas, the Texas court allowed the plaintiff below (the cash register company) to recover the cash register.

The points decided in this case are in accordance with the weight of authority, although some states hold otherwise. The apparent confusion in these conditional sales cases is due to the fact that such sales are often made in one state while the goods remain in or are taken to another state, and because some states by statute make conditional sales void as to creditors and subsequent purchasers in good faith unless recorded, while in other states such sales are void against third persons without recording statutes, and in still other states the common law rule prevails that such contracts are valid even against third persons without notice.

R. S. Mo. 1919, Sec. 2284, provides that conditional sales are void as to subsequent purchasers in good faith and creditors, unless recorded. Many other states have such statutes. 35 Cyc. 682; 24 R. C. L. 465.

In Colorado conditional sales are not recognized as against interested parties without notice, on the ground that transactions of this kind are opposed to public policy. *Turnbull v. Cole*, 70 Colo. 364, 201 Pac. 887, 25 A. L. R. 1149.

In almost all states where there is no statute to the contrary, conditional sales contracts are valid as against third persons even without notice. 35 Cyc. 664; 24 R. C. L. 454.

The general rule is in accordance with the principal case, that if at the time of a conditional sale the chattel sold is not in the state in which the sale is made, the laws of the state in which it is situated will determine the effect of the contract. 24 R. C. L. 452; *In re Meyer &*

Judd, 1 F. (2nd) 513, loc. cit. 524; Fry Bros. v. Theobald (Ky.) 265 S. W. 498; Cable Co. v. McElhoe (Ind.) 108 N. E. 790.

On the question of conflict of laws when the property has been removed to another state, see 35 Cyc. 669; 24 R. C. L. 453; Harrison v. Broadway Motor Co., 128 Miss. 766, 91 So. 453, 25 A. L. R. 1148; Turnbull v. Cole, 70 Colo. 364, 201 Pac. 887, 25 A. L. R. 1149; Parker-Harris Co. v. Stephens, 205 Mo. App. 373, 224 S. W. 1036; Tenn. Auto Corp. v. American Nat. Bank, 205 Ky. 541, 266 S. W. 54; Fry v. Theobald, 265 S. W. 498; In re Meyer & Judd, 1 F. (2nd) 513.

C. S. N., '27.

SEARCH AND SEIZURE—INTOXICATING LIQUORS— ODOR FROM FERMENTING MASH.—State v. Pigg (Missouri), 278 S. W. 1030.

A police officer in the city of Columbia on smelling the odor of fermenting liquors coming from an unoccupied automobile parked at the side of the street, searched the car, finding liquor, seized it, and subsequently, the owner claiming his car was arrested. *Held*, such search and seizure was not unreasonable nor the arrest illegal being based on such probable cause as not to be in conflict with Secs. 11 and 23 of Art. II of Missouri constitution pertaining to illegal search and seizure.

The question of what are reasonable grounds to believe that a misdemeanor is being committed so as to justify search and arrest without a warrant has aroused much conflicting judicial opinion. Freedom from illegal search and seizure has been a privilege zealously guarded throughout English history. At ancient common law, the right of search and seizure was never recognized, and as late as Lord Coke, the right of issuing search warrants before indictment was denied. The Fourth Amendment to our Federal Constitution prohibits unreasonable searches and seizures, but there is no prohibition against searches which are reasonable, and an unreasonable search and seizure is said to be one for which there is in law a want of probable cause. *United States v. Snyder*, 278 Fed. 650. Such is the case when a legal warrant has been issued or in instances where public security demands an arrest without warrant as in the case when a breach of the peace is committed in the presence of an officer. *Stittgen v. Rundle*, 99 Wis. 78. The guaranty of the Fourth and Fifth Amendments to the Federal