

further, if such was the intent whether the retired farmer should be excluded for the reason that he is primarily engaged in no occupation.

The amendment provides that a farmer, as the term is used in sections 4b, 74 and 75, includes a deceased farmer's personal representative. Since the farmer is exempted, by section 4b, from involuntary bankruptcy, the personal representative would also be entitled to his immunity. Therefore, it would seem that the sole purpose of this provision is to permit the deceased farmer's personal representative to file a voluntary petition under section 74 and 75.<sup>30</sup>

It is now provided that a farmer shall be deemed a resident of any county in which his farming operations occur. Formerly the farmer's residence was a question of fact to be determined from the circumstances of the case.<sup>31</sup> Now it seems that farming within the county is sufficient for jurisdiction.

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## CONDITIONAL SALES

### CONDITIONAL SALE — UNRECORDED — PRIORITY OF VENDEE'S RECEIVER OVER VENDOR

Defendant and McWeb's, Inc., entered into a conditional sales agreement for the sale of a beer cooler, title to remain in the vendor until payment of the purchase price. The property was delivered, but payments were not made nor the contract filed for recording. At the request of one of the creditors of McWeb's, Inc., one Doyle was appointed receiver for that company. The defendant was made a party to the suit with leave to plead and he filed a cross petition claiming the beer cooler. The Supreme Court held that failure to file the conditional sales contract rendered it invalid as to creditors of the vendee, and that the appointment of the receiver amounted to an equitable execution, and his seizure of the property to an equitable levy. *Doyle v. Yoho Hooker Youngstown Co.*, 130 Ohio St. 400, 200 N.E. 123, 20 Ohio Abs. 17 (1936).

At common law the right and title of a conditional vendor are in no way affected by the appointment of a receiver for the conditional vendee for the reason that the receiver stands in the shoes of the vendee 'farming operations' of share croppers or other tenants; and, among these landlords, to persons who are merely capitalist absentees." See 15 Oregon L. Rev. 62 (1935).

<sup>30</sup> See *In re Day*, 10 Fed. Supp. 229 (D.C. Ill. 1935).

<sup>31</sup> Collier On Bankruptcy (13 Ed., 1923), p. 61.

and has no better title. In a number of states in this country the common law still prevails. *Praeger v. Emerson, Brintingham Implement Co.*, 122 Md. 303, 89 Atl. 501, Ann. Cas. 1916A 1225 (1914); *Gresham Mfg. Co. v. Carthage Buggy Co.*, 152 N.C. 663, 68 S.E. 175 (1910). But in other states statutes have been enacted providing that when a conditional sale contract is not filed as therein provided, the contract shall be invalid as to certain claimants specified therein. The Ohio statute provides that the conditions in regard to the title remaining in the vendor until payment "shall be void as to all subsequent purchasers and mortgagees in good faith and for value, *and creditors* [writer's italics] unless the conditions are evidenced in writing," signed by the conditional vendee and a statement of the amount of the claim or a true copy verified by affidavit, is "deposited" with the recorder of the proper county. Section 8568, General Code.

The courts have found comparatively little difficulty in passing on cases dealing with subsequent mortgagees and purchasers in good faith since the statute specifically exempts them. Difficulty arises, however, when the interpretation of the word "creditor" is sought. Seemingly the Ohio Legislature has attempted to lay down a broad, inclusive policy designed to protect parties dealing with conditional vendees and relying upon their possession of certain goods. But we find that the courts, in interpreting these statutes, have hedged in this legislation with many limitations. These have taken two major forms: (1) limitations as to the time when the credit relation was created, and (2) limitations as to whether or not the creditor has had his claim adjudicated and established by the judgment of a competent court. It has been held in most jurisdictions that statutes requiring filing are designed to protect subsequent creditors only and that prior creditors are not afforded protection thereby. *Hamilton Second National Bank v. Ohio Contract Purchase Co.*, 28 Ohio App. 93, 162 N.E. 460 (1927), *Bornstein v. Allen*, 127 Wash. 314, 220 Pac. 801 (1923); *Gunby v. International Motor Truck Corp.*, 156 Md. 19, 142 Atl. 596 (1928). Contra: *Oester v. Sitlington*, 115 Mo. 247, 21 S.W. 820 (1893). This is necessarily so in some jurisdictions because the statutes expressly designate "subsequent purchasers" as the persons whom they are designed to protect. But the courts have also applied this interpretation where statutes have merely designated the persons to be protected as "creditors." *Hamilton Second National Bank v. Ohio Contract Purchase Co.*, *supra*; *In re Atlanta News Publishing Co.*, 160 Fed. 519 (USCCA. 5th, 1907). As limited by the requirement that one must have had his claim established by a court of competent jurisdiction, it has been held

that the word "creditors" as used means one who has obtained a lien by attachment, execution, or otherwise. *International Harvester Co. v. Poduska*, 211 Iowa 892, 232 N.W. 67, 71 A.L.R. 973 (1930). In the case of judgment creditors, this is subject to the limitation that the judgment must have been taken subsequent to the time when the conditional sale was made. *In re Vandewater*, 219 Fed. 627 (USCCA. 4th. 1915). It has been held that the reason for requiring a lien is because a debtor may transfer his property in satisfaction of his bona fide indebtedness without giving any general creditor the right to object thereto, and therefore the word "creditors" as used in the statutes must have been used in view of this principle. *Malmö v. Washington Rendering Co.*, 79 Wash. 534, 140 Pac. 569, L.R.A. 1917C 440 (1914). Certain persons, however, standing in the position of the vendee have, without having acquired an actual legal lien, been given the status of a lien creditor. *Baum v. Harrison*, 9 Ohio N.P. (N.S.) 257 (1909), (assignee); *James v. Molster*, 11 Ohio C.C. 432 (1896), (administrator); *In re Master Knitting Corp.*, 7 Fed. (2nd) 11 (CCA. 2nd. 1925), (trustee in bankruptcy).

The Ohio Court has followed the requirement that attachment of a lien is necessary before the creditor's rights are superior to those of the vendor. *Hamilton Second National Bank v. Ohio Contract Purchase Co.*, supra. It has found such a lien to exist in an "equitable execution" by drawing analogy from the Ohio rule on the rights of a receiver for the benefit of creditors as against an existing unfiled mortgage. This latter rule grants priority to the receiver. *Cheney v. Maumee Cycle Co.*, 64 Ohio St. 205, 60 N.E. 207 (1901); *Greenfield v. Hill City Land, Loan, and Lumber Co.*, 141 Minn. 393, 170 N.W. 343 (1919); *Button Co. v. Spielman*, 50 N.J.E. 120, 24 Atl. 571 (1892); *Observer Co. v. Little*, 175 N.C. 42, 94 S.E. 526 (1917); *Cincinnati Equipment Co. v. Seguan*, 184 Fed. 834 (CCA. 6th. 1910). Contra: *Quinn v. Bancroft-Jones Corp.*, 18 Fed. (2nd) 727 (DCA N.Y., 1927).

It seems that it should be of no importance what term is used to designate the taking and holding of the property. A creditor who has sued out an order in a court of equity that a receiver be appointed and that he take possession of all the property of the debtor for the purpose of its administration, sale and distribution, and who has placed the order in the hands of a receiver and caused him to seize the property, is not less armed with legal process than a creditor who has caused a sheriff to levy upon the goods. Indeed, a receiver is armed with a more comprehensive and effective process—a process by which all the property of

the debtor may be seized, administered and distributed. Not only this, but it is just and equitable that the receiver whose appointment prevents the creditors from exercising their right to affix a legal lien upon the goods should exercise that right for them. At any time before the receiver is appointed, the creditor has the right to levy execution or attachment on the property. The appointment of the receiver and his seizure of the property thereunder, however, prevents him from exercising this right under penalty of being held in contempt of court, *Bank v. Berkingham*, 12 Ohio St. 419 (1861), unless he applies to and has the court release such property in order that a levy may be made. *Groy v. Marshall*, 3 Ohio C.C. 489, 2 Ohio C.D. 280 (1888).

It was the purpose of the legislature in enacting the registration laws to require publicity to be given to certain transactions for the protection of persons dealing with the possessor of the property. *Betz v. Snyder*, 48 Ohio St. 482, 28 N.E. 234, 13 L.R.A. 235 (1891). It is undoubtedly true that one and perhaps the most important purpose of the act, so far as it applies to creditors, was to protect persons giving credit to the conditional vendee in ignorance of the existence of the lien upon his property. But the legislative policy was broader than this single purpose. It is impossible to say that only creditors who became such during the existence of the conditional sale may be injured by keeping the lien secret. It is certainly not improbable that in many cases antecedent creditors may be lulled into security and forbear the collection of their debts at maturity, by the apparently unencumbered possession and ownership by the debtor of property covered by an undisclosed conditional sales contract. In *Thompson v. Van Vetchen*, 27 N.Y. 586 (1863), the word "creditors" as used in the New York Mortgage Statute was held to include creditors whose debts were created prior to the mortgage. In *Karst v. Game*, 136 N.Y. 316, 32 N.E. 1073 (1893), it was held that when the Chattel Mortgage Statute required immediate filing a six weeks' delay made the mortgage void against a creditor, even though the mortgage was filed before the creditor took his judgment. The Ohio Conditional Sales Act, however, specifies no definite time for the act of filing.

It would seem desirable that an arbitrary time limit be set for the requirement of filing such contracts in Ohio. If the legislature were to do this, the necessity for acquiring any sort of lien by attachment upon the goods of the debtor-vendee would be obviated. The vendor, by his failure and neglect to file the agreement within the period specified, could be held to be estopped from asserting his lien to the detriment of those creditors who dealt with the vendee relying upon his possession

and apparent ownership of the goods and the lack of registration of any lien thereon.

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## DEFAMATION

### LIBEL BY PUBLICATION OF PICTURE

A petition alleged that the defendant published an article concerning a convict in the state penitentiary connected with the Lindbergh kidnapping and that in the article was the plaintiff's picture with the convict's name thereunder. The lower court sustained a demurrer to the petition. Held, such a petition states a good cause of action for libel. *Petransky v. Repository Pub. Co.*, 51 Ohio App. 306, 200 N.E. 647 (1935).

A libel is a publication, expressed in printing or writing or by signs and pictures, tending to injure the reputation of a person and to expose him to public hatred, contempt, or ridicule. *Burns v. Telegram Pub. Co.*, 89 Conn. 549, 94 Atl. 917 (1915); *Willets v. Scudder*, 72 Ore. 535, 144 Pac. 87 (1914). It is well settled that a libel can be made by a picture, portrait, or caricature. *McGeary v. Leader Pub. Co.*, 52 Pa. Super Ct. 35 (1912); *Ellis v. Kimball*, 16 Pick. (Mass.) 132, (1834); *Snively v. Record Pub. Co.*, 185 Cal. 565, 198 Pac. 1 (1921). Motion pictures may constitute the basis of an action for libel. *Brown v. Paramount Publix Corp.*, 270 N.Y.S. 540, 340 App. Div. 520 (1934).

In the principal case the defendant contended that since a person reading the whole article would see that it meant someone other than the plaintiff, it was not libelous. In support of this contention he relied on *Woolf v. Scripps Pub. Co.*, 35 Ohio App. 343 (1930), in which case the defendant published the plaintiff's picture in an article about a third person involved in an alienation of affections suit, with the name of the third person under the picture. The court held that the controlling question is not whether the article referred to the plaintiff, but whether it was calculated to lead persons reading it to believe that it referred to the plaintiff. This is the only other Ohio case in point, and is supported by *Ball v. Evening American Pub. Co.*, 237 Ill. 592, 86 N.E. 1097 (1909). There seems to be little other authority for this proposition.

The court in the principal case, in overruling the Woolf case, held that the only question is whether the mode of defamation which has