probably is no maturity of the bank's claim against the depositor. ([5], [6])

Several New Jersey cases indicate a relaxing of the strict rule. "The object of notice is to apprise the indorser that the note is dishonored, and that he is looked to for payment."[13] In another old case it was held generally sufficient to send notice by a mail leaving the next day after the dishonor. "A party is bound to exercise reasonable diligence only, not excessive."[14] Notice was held sufficient where it apprised the indorser of the instrument in question,[15] and if this be regarded as the purpose of giving notice, it would seem that notice should be adequate when given immediately after setting off the depositor's account. All these cases were decided before the adoption of the Negotiable Instruments Law in New Jersey, however.

In the leading case, the plaintiff got judgment for amounts deducted from his bank account. Since notice had been mailed to plaintiff immediately the set-off was made, defendant's right of action against plaintiff on the notes had accrued well before the trial, even if it had been defective when the set-off was made. It is submitted that defendant, now with a matured debt against plaintiff, ought to have counterclaimed for the amount of the notes in the same action by which plaintiff sought to defeat the premature set-off. A Maryland case holds that set-off can be made where a note comes due at or before the trial;[16] possibly such a rule would attain justice if applied to liability on an indorsement.

Conditional Sales—Reservation of Title—What Law Governs—A contract of conditional sale of an automobile was made in New York but not filed there in pursuance of New York statutes. The car was brought to New Jersey and levied upon under a judgment previously recovered by appellant against the conditional vendee. The assignee of the conditional vendor sued in replevin by reason of certain forfeiture pro-

13. Burgess v. Vreeland, 24 N.J.L. 71, 59 Am. Dec. 408 (S. Ct., 1853).
14. Sussex Bank v. Baldwin, 17 N.J.L. 487 (S. Ct., 1840).
15. Haines v. DuBois, 30 N.J.L. 259 (S. Ct., 1863); Dodson v. Taylor, 56 N.J.L. 11, 28 A. 316 (S. Ct., 1893).
16. Farmers' etc. Bank v. Franklin Bank, 31 Md. 404.

visions in the conditional contract of sale. *Held,* judgment for assignee of conditional vendor. The New York statute relating to the filing of contract of conditional sale does not follow the property into New Jersey, and the reservation of title is good here. *Commercial Credit Corp. v. Colando,* 125 N.J.L. 285, 15 A. 2d 762 (E. & A. 1940).

The evolution of the law which governs sales of movable personalty has come about by virtue of improved means of transportation and commerce. Hence it is not astonishing to find that quite often the subject of controversy is the very means of transportation itself.[1] With the advent of the motor car and truck, the migration of peoples and their personalty has become greatly facilitated;[2] and in a nation such as the United States of America, in which each state exercises certain sovereign rights,[3] it has become increasingly complex and difficult to administer with any uniformity the law covering chattels which are susceptible of easy movement.

However, the crux of the problem is the sale with the reservation of title in the vendor until some condition is satisfied, commonly known as a conditional sale. The several jurisdictions have attacked the problem from different angles, as a result of which complexity and conflict in the laws has arisen. Upon analysis, one finds that four major approaches

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1. E. I. duPont de Nemours Powder Co. v. Jones Bros., 200 F. 638 (U.S.D.C. Ohio 1912); Shelton's Garage v. Walston, 279 S.W. 959, 212 Ky. 602 (1926); Kelley v. Brack, 282 S.W. 190, 214 Ky. 9 (1926); Consolidated Garage v. Chambers, 231 S.W. 1072, 111 Texas 293 (1921).

2. Emerson v. Proctor, 97 Me. 360, 54 A. 849 (Maine 1903); Weinstein v. Freyer, 93 Ala. 257, 9 So. 285, 12 L.R.A. 700 (1890); Baldwin Piano Co. v. Thompson, 8 La. App. 212 (1928); Smith's Transfer & Storage Co. v. Reliable Stores Corp., 58 F. (2d) 511, 61 App. D.C. 106 (1932).

3. Fuller v. Webster, 95 A. 335, 5 Boyce 539, *aff'd,* 99 A. 1069 (Delaware 1916); Consolidated Garage Co. v. Chambers, *supra* note 1; Mergenthaler Linotype Co. v. Hull, 239 F. 26, 152 C.C.A. 76 (C.C.A. Porto Rico 1916); Merz v. Stewart, 211 Ill. App. 508 (Illinois 1918); *In re* Legg, 96 F. 326 (D.C. Conn. 1899); Barrett v. Kelley, 66 Vt. 515, 29 A. 809, 44 Am. Rep. 862 (1894); Ensley Lumber Co. v. Lewis, 121 Ala. 94, 25 So. 729 (1899); Weinstein v. Freyer, *supra* note 2; Commercial Credit Co. v. Higbee, 92 Colo. 346, 20 P. (2d) 543 (1933); American Equitable Ins. Co. v. Hall Cadillac Co., 93 Colo. 186, 24 P. (2d) 980 (1933); Indy v. Evans, 109 Ill. App. 154 (1903); Cunningham v. Cureton, 96 Ga. 489, 23 S.E. 420 (1895).

to the problem are discernible. First, there are the States that take the view that, if the conditional sales contract is validly executed in the state where it originates, it should be valid in every other state regardless of whether or not the contract complies with their laws.[4] Second, some jurisdictions hold that regardless of whether or not the conditional sales contract was valid in the jurisdiction of its origin it must comply with their laws in order to operate as constructive notice to subsequent purchasers and encumbrancers.[5] Third, some states hold that the law of the situs of the property governs the construction to be given the conditional sales contract regardless of where the contract was executed or where the sale was consummated.[6] The fourth approach

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4. Smith's Transfer & Storage Co. v. Reliable Stores Corp., *supra* note 2; Fuller v. Webster, *supra* note 3; Northern Finance Corp. v. Meinhardt, 209 Iowa 895, 226 N.W. 168 (1929); Kelley v. Brack, *supra* note 1; *In re* Hager, 166 F. 972 (D.C. Iowa 1909); Drew v. Smith, 59 Me. 393 (1871); Baldwin v. Hill, 4 Kan. App. 168, 46 P. 329 (1896); Emerson v. Proctor, *supra* note 2; Reising v. Universal Credit Co., 50 Ohio App. 289, 198 N.E. 52 (1935); Mershon v. Moore, 76 Wis. 502, 45 N.W. 95 (1890); Equitable Credit Co. v. Miller, 8 La. App. 254 (1928); Tenn. Auto Corp. v. Amer. Nat. Bank, 205 Ky. 541, 266 S.W. 54 (1924); Overland Texarkana Co. v. Bickley, 152 La. 622, 94 So. 138 (1922); Rodecker v. Jannah, 125 Wash. 137, 215 P. 364 (1923); Goetschius v. Brightman, 211 N.Y. S. 763, *aff'd*, 245 N.Y. 186, 156 N.E. 660 (1927); Bariboult v. Robertson & Bennett, 82 N.H. 297, 133 A. 21 (1926); Barrett v. Kelley, *supra* note 3; Cleveland Mach. Works v. Lang, 67 N.H. 348, 31 A. 20, 68 Amer. St. Rep. 675 (1893); Fry Bros. v. Theobold, 205 Ky. 146, 265 S.W. 498 (1924).

5. Boyer v. M. D. Knowlton Co., 85 Ohio St. 104, 97 N.E. 137, 38 L.R.A. (N.S.) 224 (1911); Security Sales Co. of La. v. Blackwell, 9 La. App. 651, 120 So. 250 (1929); Hinton Co. v. Rouse, 4 La. App. 471 (1927); U. S. Fidelity & Guaranty Co. v. Northwest Engineering Co., 146 Miss. 476, 112 So. 580 (1927); National Cash Reg. Co. v. Paulson, 16 Okla. 204, 83 P. 793 (1905); Commercial Credit Co. v. Higbee, *supra* note 3; Indy v. Evans, *supra* note 3; Corbet v. Riddle, 209 F. 811, 126 C.C.A. 535 (C.C.A. Va. 1913); Cunningham v. Cureton, *supra* note 3; Consolidated Garage Co. v. Chambers, *supra* note 3; Dixon v. Blondin, 58 Vt. 689, 5 A. 514 (1886).

6. *In re* Gray, 170 F. 638 (D.C. Okla. 1908); Summers v. Carbondale Mach. Co., 116 Ark. 246, 173 S.W. 194 (1915); Weinstein v. Freyer, *supra* note 2; Sawyer v. Jesse French Piano & Organ Co., 21 Tex. Civ. App. 523, 52 S.W. 621 (1899); Eli Bridge Co. v. Lochman, 124 Ore. 592, 265 P. 435 (1928); Hirsch v. C. W. Leatherbee Lumber Co., 69 N.J.L. 509, 55 A. 645 (Sup. Ct. 1903); Fiske v. Peebles, 13 N.Y. St. Rep. 743 (1888); Southern Hardware Co.

is made by those states which hold that the law of the place where the contract was executed and the law of the place where it was the intent or contemplation of the parties that the chattel was to be used, depending upon the view taken, should govern the interpretation or effect of the conditional sales contract.[7]

To this complicated state of affairs must be added the difficult problem, presented by the case under consideration,[8] of determining when the chattel is in the state to make it amenable to its laws, and when the chattel is in "transitu."[9] For example, an ice machine, sold in Pennsylvania[10] to be used in a refrigerator plant in Arkansas, raises a presumption that it will remain in Arkansas with some degree of stability; while a horse or an automobile inherently connotes motion, and the greater its sphere of operation the greater the number of jurisdictions to which the chattel may become subject while encumbered by a conditional sales contract.

For nearly half a century decisions of the New Jersey courts have been somewhat consistent. During this time the courts have spoken thus:

1. 1886. "A conditional sale of chattels followed by delivery of possession to the vendee, with a reservation of title in the vendor until payment of the purchase price, is void as against bona fide purchasers from the vendee under Pennsylvania law. But if the purchase from the vendee is entirely completed within the state of New Jersey, where such purchases are held subject to the superior title of the conditional

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v. Clark, 201 F. 1, 119 C.C.A. 339 (C.C.A. Fla. 1912); Enterprise Optical Co. v. Timmer, 71 F. (2d) 295 (C.C.A. Mich. 1934); Fry Bros. v. Theobold, *supra* note 4. *Contra*: Kennedy v. Nat. Cash Reg. Co., 279 S.W. 505 (Texas 1926).

7. *In re* Legg, *supra* note 3; Beggs v. Bartels, 73 Conn. 132, 46 A. 874 (1900); Johnson v. Sauerman Bros., 243 Ky. 587, 49 S.W. (2d) 331 (1932); Lees v. Harding Whitman & Co., 68 N.J.Eq. 622, 60 A. 352 (Ch. 1905); Wooley v Geneva Wagon Co., 59 N.J.L. 278, 35 A. 789 (Sup. Ct. 1896).

8. Commercial Credit Co. v. Colando.

9. Reising v. Universal Credit Co., *supra* note 4; Cleveland Mach. Works v. Lang, *supra* note 4; Goetschius v. Brightman, *supra* note 4; Lane v. J. E. Roaches' Banda Mexicana, 78 N.J.Eq. 439, 79 A. 365 (Ch. 1911); Tenn. Auto Corp. v. Amer. Nat. Bank, *supra* note 4; E. I. duPont de Nemours Powder Co. v. Jones Bros., *supra* note 1; Universal Credit Co. v. Knights, 261 N.Y.S. 252, 145 Misc. 876 (1933).

10. Summers v. Carbondale Mach. Co., *supra* note 6.

vendor, the bona fide purchaser's rights will be determined by the law of New Jersey, and he will take no title, although the conditional sale itself was completed in Pennsylvania and as between the parties thereto is governed by the Pennsylvania law."[11]

2. 1896. "The New Jersey laws of 1889 do not apply where the conditional sale contract is made in another state, the vendor a non-resident of New Jersey, and the property sold was not in the state at the time of sale."[12]

3. 1903. "Where a conditional sale contract is made between non-residents in New Jersey, concerning personal property situated outside the state; the contract not contemplating the removal of the property to New Jersey, general statute p. 891, section 191 requiring conditional sales to be recorded does not apply to same."[13]

4. 1904. "On the chattels being brought into New Jersey, the conditional sales contract became subject to the above statute, making same void as against a judgment creditor of the vendee having no knowledge of the contract's existence, unless properly recorded."[14]

5. 1905. Where a contract with reference to title of chattels in another is made in that state between a resident there and a New Jersey corporation, and is to be performed there, the law of that state determines the effect of the contract. Where the contract is to be fully performed in the state where made as to chattels situated there, even though are subsequently removed to New Jersey without the consent of the conditional vendor; P. L. 1898, par. 699,700, section 71-72 do not apply.[15]

6. 1911. "Under law of Indiana a conditional sale of musical instruments was made therein contemplating transitory use of the instruments in New Jersey and other states. Contract was not recorded in New Jersey. While the chattels were in New Jersey and before performance of conditions the vendee mortgaged same to a resident of

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11. Marvin Safe Co. v. Norton, 48 N.J.L. 410, 7 A. 418, 57 Amer. Rep. 560 (S. Ct. 1886).
12. Wooley v. Geneva Wagon Co., *supra* note 7.
13. Hirsch v. C. W. Leatherbee Lumber Co., *supra* note 6.
14. Cooper v. Phila. Worsted Co., 57 A. 733 (N.J. Ch. 1904).
15. Lees v. Harding Whitman & Co., *supra* note 7.

Colorado, a bona fide mortgagee, and the mortgage was recorded at once. *Held*: the title is determined by the law of the situs where contract was made, and the mortgagee acquired no title as against the conditional vendor."[16]

In the instant case, if the automobile had been attached by creditors, or purchased by a bona fide purchaser from the vendee, such attachment or sale would have been good as against the conditional vendor, because the New York Personal Property Law[17] requires such conditional sales contracts to be recorded in order to preserve the conditional vendor's lien or reservation of title. New Jersey allows ten days,[18] after notice of removal of the property from another state into this state, within which the conditional vendor or his assignees may file the contract in the filing district to which the chattel was removed. This condition was complied with, but the difficulty arose from a determination of when the car was "removed" to such filing district. The court held, the automobile was merely transitory matter and not governed by the New Jersey statute as to recordation; but that the New York law did not follow the chattel into New Jersey. It is submitted, that if the chattel is not governed by New Jersey law, because transitory matter, it should be governed by the law of New York, or at least the law of the state of its registration; if the conditional sales contract is valid there, it should be valid everywhere, until the car acquires a new state of registration. Of course, such procedure would be applicable to such chattels only as require registration to define the line of "transitory" and "removed". It might be more expedient to consider a chattel within the jurisdiction, if it can be proceeded against in admiralty, or even criminally under the police power, such as impounding a vehicle involved in tort and traffic violations.[19] This procedure, in turn, would work undue hardship upon any conditional vendor, by practically requiring filing in the forty-eight states and the United States' possessions, to say nothing of the counties therein.[20]

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16. Lane v. J. E. Roaches Banda Mexicana, *supra* note 9.
17. N. Y. Personal Property Law, Consol. Laws, C. 41, section 60 *et seq.*
18. P. L. 1919, p. 466, section 14, now N.J.S.A. 46:32-20.
19. Universal Credit Co. v. Knights, *supra* note 9.
20. Mershon v. Moore, *supra* note 4.

State sovereignty,[21] and comity,[22] between states offer little by way of solution of the problem. The two terms are somewhat contradictory of each other. A federal uniform conditional sales law, in accord with the federal view[23] with one filing district in Washington, D. C., might offer a real solution but the probability of its adoption by the "States" is very remote. Until that day arrives, the state and federal courts must necessarily continue to delve into the contracts to determine: the intent of the parties;[24] what was within their contemplation when the contract was executed;[25] when the chattel is removed with or without the conditional vendor's permission;[26] whether the situs of the property

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21. Amer. Equitable Ins. Co. v. Hall Cadillac Co., *supra* note 3; Commercial Credit Co. v. Higbee, *supra* note 3; Weinstein v. Freyer, *supra* note 2.

"The State may by positive enactment define terms on which conditional sales contracts made in other states will be upheld, or forbid their enforcement at all, and if those laws are violated, courts will not overthrow them as a matter of courtesy or comity to another state having different laws."

Fry Bros. v. Theobold, *supra* note 4.

22. Mergenthaler Linotype Co. v. Hull, *supra* note 3; Merz v. Stewart, *supra* note 3.

23. Clyde Iron Works v. Fredericks, 203 F. 637, 122 C.C.A. 33 (C.C.A. La. 1913); Mergenthaler Linotype Co. v. Hull, *supra* note 3.

24. Fry Bros. v. Theobold, *supra* note 4; Enterprise Optical Co. v. Timmer, *supra* note 6; Smith's Transfer & Storage Co. v. Reliable Stores Corp., *supra* note 2; Johnson v. Sauerman Bros., *supra* note 7; *In re* Gray, *supra* note 6; *In re* Wall, 207 F. 994 (D.C. Okla. 1910).

25. Hirsch v. C. W. Leatherbee Lumber Co., *supra* note 6; General Motors Acceptance Corp. v. Boudreaux, 10 La. App. 626, 119 So. 735 (1930); Amer. Slicing Mach. Co. v. Rothschild & Lyons, 12 La. App. 287, 125 So. 499 (1930); Beggs v. Bartels, *supra* note 7; *In re* Wall, *supra* note 24; *In re* Gray, *supra* note 6; *In re* Legg, *supra* note 3; Eli Bridge Co. v. Lochman, *supra* note 6; Cleveland Mach. Works v. Lang, *supra* note 4; Corbet v. Riddle, *supra* note 5; Johnson v. Sauerman Bros., *supra* note 7.

26. Fry Bros. v. Theobold, *supra* note 4; Johnson v. Sauerman Bros., *supra* note 7; Security Sales Co. of La. v. Blackwell, *supra* note 5; G. A. Campbell Co. v. Frets, 167 Wash. 576, 9 P. (2d) 1082 (1932); Northern Finance Corp. v. Meinhardt, *supra* note 4; Shelton's Garage v. Walston, *supra* note 1; Reising v. Universal Credit Co., *supra* note 4; Ensley Lumber Co. v. Lewis, *supra* note 3; *In re* Gray, *supra* note 6; Fuller v. Webster, *supra* note 3; Sawyer v. Jesse French Piano & Organ Co., *supra* note 6; Weinstein v. Freyer, *supra* note 2; Amer. Equitable Ins. Co. v. Hall Cadillac Co., *supra* note 3; Commercial Credit

or the situs of the contract shall govern.[27] These obstacles to a systematic solution or determination of the law co-exist with the construction to be given to the recording statutes in force in the several states.[28]

Corporations—Shareholders' Suits—Allegation of Prior Ownership—Procedural or Substantive—An application for settlement of the claim was turned down by the court and petitioners applied for permission to intervene on the grounds that the original complainant would not properly safeguard the petitioners' interests. *Held,* petition denied because of the petitioners' failure to allege that they were shareholders of the Sperry Corporation at the time of the transaction of which they complain, or that their shares devolved on them by operation of the law. *Piccard v. Sperry Corporation et al.* 36 F. Supp. 1006, (S.D. N. Y. 1941).

Several states including New York[1] permit a stockholder to sue as a representative of his corporation where it refuses to sue on its own behalf, regardless of whether the stockholder purchased his stock before or after the occurrence of the transaction complained of. The rule

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Co. v. Higbee, *supra* note 3; General Motors Acceptance Corp. v. Boudreaux, *supra* note 25.

27. Lane v. J. E. Roaches Banda Mexicana, *supra* note 9; Baldwin Piano Co. v. Thompson, *supra* note 2; Amer. Slicing Mach. Co. v. Rothschild & Lyons, *supra* note 25; Weinstein v. Freyer, *supra* note 2; *In re* Legg, *supra* note 3; Summers v. Carbondale Mach. Co., *supra* note 6; Kennedy v. Nat. Cash Reg. Co., *supra* note 6; Eli Bridge Co. v. Lochman, *supra* note 6; Corbet v. Riddle, *supra* note 5; Clyde Iron Works v. Fredericks, *supra* note 23; Barrett v. Kelley, *supra* note 3.

28. Dorntee Casket Co. v. Gunnison, 69 N.H. 297, 45 A. 318 (1898); Davis v. Osgood, 69 N.H. 427, 44 A. 432 (1899); Baldwin v. Hill, *supra* note 4; Drew v. Smith, *supra* note 4; Fry Bros. v. Theobold, *supra* note 4; Ky. Stat. sec. 496; Southern Hard. Co. v. Clark, *supra* note 6; Ala. Code. 1907, sec. 3394; Cleveland Mach. Works v. Lang, *supra* note 4; N.H. Laws 1885, c. 30; Willys-Overland Co. of Cal. v. Chapman, 206 S.W. 978 (Texas 1919); Vernon's Sayles Ann. Civ. St. 1914, Arts. 5654, 5655.

1. Pollitz v. Gould, 202 N.Y. 11, 94 N.E. 1088, 38 L.R.A. (N.S.) 988, Ann. Cas. 1912D. 1089 (1911).