

THE GENERAL STATUTES OF NORTH CAROLINA

1967 SUPPLEMENT

Completely Annotated, under the Supervision of the Department
of Justice, by the Editorial Staff of the Publishers

UNDER THE DIRECTION OF
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Volume 1D

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Preface

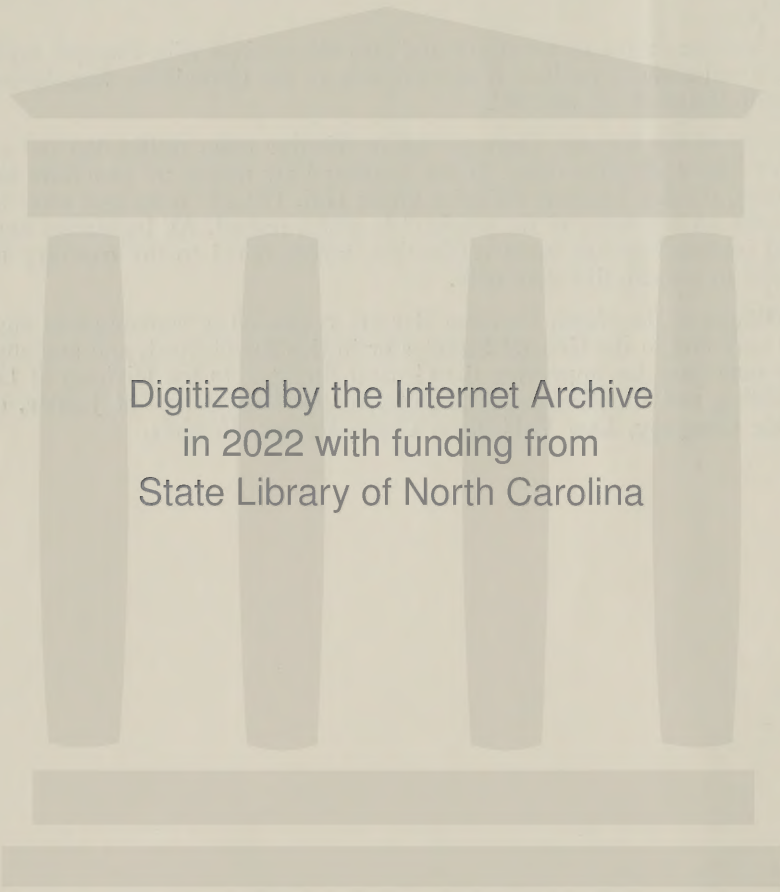
This Supplement to Replacement Volume 1D contains the general laws of a permanent nature enacted at the 1967 Session of the General Assembly, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the changes effected by the amendatory acts.

Chapter analyses show new sections and also old sections with changed captions. An index to all statutes codified herein appears in the Cumulative Supplement to Replacement Volumes 4B and 4C.

A majority of the Session Laws are made effective upon ratification but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after thirty days after the adjournment of the session" in which passed. All legislation appearing herein became effective upon ratification, unless noted to the contrary in an editor's note or an effective date note.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplement, and any suggestions they may have for improving the General Statutes, to the Division of Legislative Drafting and Codification of Statutes of the Department of Justice, or to The Michie Company, Law Publishers, Charlottesville, Virginia.



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Scope of Volume

Statutes:

Permanent portions of the general laws enacted at the 1967 Session of the General Assembly affecting Chapters 21 through 27 of the General Statutes.

Annotations:

Sources of the annotations:

- North Carolina Reports volumes 265 (p. 217)-271 (p. 226).
- Federal Reporter 2nd Series volumes 347 (p. 321)- 378 (p. 376).
- Federal Supplement volumes 242 (p. 513)-269 (p. 96).
- United States Reports volumes 381 (p. 532)-387 (p. 427).
- Supreme Court Reporter volumes 86-87 (p. 1608).
- North Carolina Law Review volumes 43 (p. 667)-45 (p. 809).

The General Statutes of North Carolina 1967 Supplement

VOLUME 1D

Chapter 22.

Contracts Requiring Writing.

§ 22-1. Contracts charging representative personally; promise to answer for debt of another.

III. PROMISE TO ANSWER FOR DEBT OF ANOTHER.

B. Illustrative Cases.

Persons who sign a note with the original makers, the note being complete except for the insertion of the name of the payee, may not contend that their obliga-

tion was to answer on a special promise for the debt of another within the protection of the statute of frauds, since the writing is a sufficient memorandum within the purview of this section. *Jones v. Jones*, 268 N.C. 701, 151 S.E.2d 587 (1966).

§ 22-2. Contract for sale of land; leases.

I. IN GENERAL.

Editor's Note.—

For article on options to purchase real property in North Carolina, see 44 N.C.L. Rev. 63 (1965). For article concerning the quest for clear land titles in North Carolina, see 44 N.C.L. Rev. 89 (1965).

II. WHAT CONSTITUTES AN INTEREST IN OR CONCERNING LAND.

An oral contract to give, etc.—

In accord with 1st paragraph in original. See *Carr v. Good Shepherd Home, Inc.*, 269 N.C. 241, 152 S.E.2d 85 (1967).

In accord with 4th paragraph in original. See *Carr v. Good Shepherd Home, Inc.*, 269 N.C. 241, 152 S.E.2d 85 (1967).

Option.—Upon the plea of the statute of frauds by defendant in defense to an action on an option to sell realty, plaintiff may neither enforce the agreement nor recover damages for loss of a bargain. *Carr v. Good Shepherd Home, Inc.*, 269 N.C. 241, 152 S.E.2d 85 (1967).

III. SUFFICIENCY OF COMPLIANCE WITH SECTION.

A. In General.

What the Writing Must Contain.—

In accord with 2nd paragraph in original. See *Carr v. Good Shepherd Home, Inc.*, 269 N.C. 241, 152 S.E.2d 85 (1967).

Parol Acceptance of Option.—

A written option offering to sell, at the

election of the optionee, can become binding on the owner by a verbal notice to the owner. *Carr v. Good Shepherd Home, Inc.*, 269 N.C. 241, 152 S.E.2d 85 (1967), quoting *Burkhead v. Farlow*, 266 N.C. 595, 146 S.E.2d 802 (1966).

Where the vendor offers in writing to sell described realty at a stated price, payable in yearly installments, a verbal acceptance of the offer by the purchaser is sufficient to constitute an option enforceable by the purchaser. *Carr v. Good Shepherd Home, Inc.*, 269 N.C. 241, 152 S.E.2d 85 (1967).

V. PLEADING AND PRACTICE.

Defendant's failure to object, etc.—

In accord with 2nd paragraph in original. See *Carr v. Good Shepherd Home, Inc.*, 269 N.C. 241, 152 S.E.2d 85 (1967).

Variance.—Where plaintiff's attempted proof constituted an essential variance and departure from the terms of the written memorandum, he was not entitled to specific performance or damages in the face of defendant's plea of the statute of frauds. *Carr v. Good Shepherd Home, Inc.*, 269 N.C. 241, 152 S.E.2d 85 (1967).

Review.—In a suit for specific performance of a contract for the sale of land, where the federal district court found that the plaintiff failed to show and establish any contract, memorandum or note signed by or on behalf of the seller sufficient to repel his plea of the statute of frauds, unless the district court's findings

of fact were clearly erroneous, the court of appeals must accept them. In the instant case, the district court's findings were am-

ply supported by the record. *Darden v. Houtz*, 353 F.2d 369 (4th Cir. 1965).

Chapter 23.

Debtor and Creditor.

ARTICLE 1.

Assignments for Benefit of Creditors.

§ 23-1. Debts mature on execution of assignment; no preferences.

Validity of Preferential Transfer by Insolvent Debtor.—Apart from the provisions of § 23-1 and § 23-2 a transfer, admittedly preferential, by a debtor admittedly insolvent, is not unlawful or subject to attack on that ground: *Estridge v. Denson*, 270 N.C. 556, 155 S.E.2d 190 (1967).

It is not unlawful for an insolvent debtor to transfer his property in exchange for other property of a different form. *Estridge v. Denson*, 270 N.C. 556, 155 S.E.2d 190 (1967).

Transfer to Corporation in Exchange for Stock.—A transfer of property by an insolvent debtor to a corporation newly formed for the purpose of satisfying creditors, in exchange for shares of stock in that corporation is a transfer for value, at least where it appears that shares were issued to other stockholders for cash, and the transfer is not an unlawful or invalid assignment. *Estridge v. Denson*, 270 N.C. 556, 155 S.E.2d 190 (1967).

§ 23-2. Trustee to file schedule of property.

Validity of Preferential Transfer by Insolvent Debtor.—Apart from the provisions of § 23-1 and § 23-2 a transfer, admittedly preferential, by a debtor admit-

tedly insolvent, is not unlawful or subject to attack on that ground. *Estridge v. Denson*, 270 N.C. 556, 155 S.E.2d 190 (1967).

ARTICLE 4.

Discharge of Insolvent Debtors.

§ 23-29. Persons taken in arrest and bail proceedings, or in execution.—The following persons also are entitled to the benefit of this article as hereinafter provided:

- (1) Every person taken or charged on any order of arrest for default of bail, or on surrender of bail in any action.
- (2) Every person taken or charged in execution of arrest for any debt or damages rendered in any action whatever. (1868-9, c. 162, s. 10; Code, s. 2951; Rev., s. 1920; C. S., s. 1637; 1967, c. 24, s. 5.)

Editor's Note.—

The 1967 amendment, originally effective Oct. 1, 1967, corrected an error by substituting "of" for "or" in subdivision (1).

Session Laws 1967, c. 1078, amends the 1967 amendatory act so as to make it effective July 1, 1967.

Chapter 24.

Interest.

Sec.

24-10. Residential loans.

24-11. Maximum fee or discount inuring to benefit of lender.

§ 24-2. Penalty for usury; corporate bonds may be sold below par.

I. GENERAL CONSIDERATION.

Purpose, etc.—

The statute against usury is striking at, and forbidding, the extraction or reception of more than a specified legal rate for the hire of money, and not for anything else. *Michigan Nat'l Bank v. Hanner*, 268 N.C. 668, 151 S.E.2d 579 (1966).

Four Requisites, etc.—

In accord with 2nd paragraph in original. See *Michigan Nat'l Bank v. Hanner*, 268 N.C. 668, 151 S.E.2d 579 (1966).

II. SUBSTANCE CONTROLS NATURE OF TRANSACTION.

A. General Doctrine.

Form of Transaction, etc.—

If in fact the transaction is a bona fide sale and not a loan of money, it is not usurious. But if the form of the transaction is a subterfuge to conceal an exaction of more than the legal rate of interest on what is in fact a loan and not a sale, the transaction will be regarded according to its true character and will be held usurious. *Michigan Nat'l Bank v. Hanner*, 268 N.C. 668, 151 S.E.2d 579 (1966).

B. Specific Instances.

A bona fide credit sale, etc.—

In accord with 1st paragraph in original. See *Michigan Nat'l Bank v. Hanner*, 268 N.C. 668, 151 S.E.2d 579 (1966).

In accord with 2nd paragraph in original.

§ 24-9. Certain loans to corporations organized for profit not subject to claim or defense of usury.

Local Modification.—By virtue of Session Laws 1967, c. 755, New Hanover should be stricken from the replacement volume.

§ 24-10. Residential loans.—Notwithstanding any other provisions of this chapter or any other provisions of the law, any borrower may agree to pay, and any lender may charge and collect from such borrower, interest at any rate agreed upon in writing in excess of six percent (6%) but not in excess of seven percent (7%) per annum simple interest on the unpaid principal balance where such loan is either a direct reduction loan or a construction loan and such loan in either instance is secured by a mortgage or deed of trust upon residential property. As to such loan, the penalty and forfeiture of interest imposed under G.S. 24-2 shall not be available in any manner whatsoever to the borrower or anyone else in the borrower's behalf, nor shall the principal or any part thereof be impaired or forfeited. Any loan made pursuant to the provisions of this section may be prepaid

in part or in full, after 30 days notice to the lender, with a maximum prepayment penalty of one percent (1%) of the outstanding principal balance at any time within one year after the first payment on principal, and thereafter, there shall be no prepayment penalty. As used in this section:

- (1) The term "direct reduction loan" shall mean a loan repayable in consecutive installments payable at least quarterly, equal or unequal, beginning not later than 90 days after execution of the note by the borrower, sufficient to retire the debt including interest and principal, within the time specified, provided no subsequent installment payment of principal and interest shall be greater than any previous installment payment of principal and interest, except that provisions may be contained in such loan which specify that one or more consecutive installments may be lapsed to the extent that installments have been made ahead of schedule, or in the event of an emergency to the borrower affecting his ability to pay, to the extent of no more than the installments becoming due in the next 180 days but nevertheless the full amount of principal and interest shall be paid within the scheduled term of the loan plus any extensions granted the borrower for emergencies as above provided. Provided, however, in the case of a construction loan the first installment shall be payable not later than 18 months after execution of the note by the borrower. Providing further, however, interest on any loan made under the provisions of this section shall be charged only on the principal balance due after each installment payment.
- (2) "Construction loan" means a loan which is obtained for the purpose of financing, fully or in part, the cost of constructing one or more residential dwellings, and by the terms of a written contract between a lender and the borrower loan proceeds are to be disbursed periodically as such construction work progresses and such loans shall be payable in full not later than 18 months after execution of the note by the borrower, except where the borrower has secured a direct reduction loan with deferred first payment date as above provided.
- (3) The term "residential property" shall mean real estate upon which there is located, or is to be located by construction thereon, one or more single family dwellings, or dwelling units for not more than four families in the aggregate. (1967, c. 852, s. 1.)

Editor's Note.—Section 1.2, c. 852, Session Laws 1967, provides: "The provisions of this act shall not apply to any loan made

prior to the effective date of this act." The act was ratified June 21, 1967 and made effective on ratification.

§ 24-11. Maximum fee or discount inuring to benefit of lender.—No lender shall charge or receive from any borrower or any agent for a borrower, or from any agent, seller, or broker, any fee or discount which inures to the benefit of the lender, which fees or discounts in the aggregate, shall be in excess of one percent (1%) of the principal amount of the loan for any loan made under the provisions of §§ 24-10 and 24-11. (1967, c. 852, s. 1.1.)

Editor's Note.—Section 1.2, c. 852, Session Laws 1967, provides: "The provisions of this act shall not apply to any loan made

prior to the effective date of this act." The act was ratified June 21, 1967 and made effective on ratification.

Chapter 25.
Uniform Commercial Code.

Article 1.

General Provisions.

Part 2. General Definitions and Principles of Interpretation.

Sec.
25-1-209. Subordinated obligations.

Article 4.

Bank Deposits and Collections.

Part 2. Collection of Items; Depository and Collecting Banks.

25-4-204. Methods of sending and presenting; sending direct to payor.

Article 6.

Bulk Transfers.

25-6-106. [Repealed.]
25-6-109. What creditors protected.

Article 8.

Investment Securities.

Part 4. Registration.

25-8-407. Joint ownership of corporate stock and investment securities.

Article 9.

Secured Transactions; Sales of Accounts, Contract Rights and Chattel Paper.

Part 2. Validity of Security Agreement and Rights of Parties Thereto.

25-9-201.1. Security interests granted in household and kitchen furniture.

Part 4. Filing.

Sec.
25-9-408. [Repealed.]

Part 5. Default.

25-9-504.1. Payment of surplus to clerk.
25-9-504.2. Special proceedings to determine ownership of surplus.
25-9-508. Application of statute of limitations to serial notes.
25-9-509. Power of sale barred when foreclosure barred.

Part 6. Public Sale Procedures.

25-9-601. Disposition of collateral by public sale.
25-9-602. Contents of notice of sale.
25-9-603. Posting and mailing notice of sale.
25-9-604. Exception as to perishable property.
25-9-605. Postponement of public sale.
25-9-606. Procedure upon dissolution of order restraining or enjoining sale.
25-9-607. Disposition of proceeds of sale.

Article 10.

Effective Date and Repealer.

25-10-105. [Repealed.]
25-10-107. [Repealed.]

ARTICLE 1.

General Provisions.

PART 1.

SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE ACT.

§ 25-1-101. Short title.

Editor's Note.—For a symposium on the Uniform Commercial Code in North Carolina, see 44 N.C.L. Rev. 525 (1966).

PART 2.

GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION.

§ 25-1-201. General definitions.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or

more persons having a joint or common interest, or any other legal or commercial entity.

(1967, c. 562, s. 1.)

Editor's Note. — The 1967 amendment, effective at midnight June 30, 1967, deleted "property" between "common" and "interest" in subsection (28).

As the rest of the section was not changed by the amendment, only subsection (28) is set out.

Section 10, c. 562, Session Laws 1967, provides: "This act shall become effective at midnight on June 30, 1967. This act becomes effective on the same date as the

Uniform Commercial Code, and the fact that the provisions of this act were enacted at a later date than the Uniform Commercial Code shall not be considered in construing the provisions contained herein or any provisions of the Uniform Commercial Code."

For article concerning liens on personal property not governed by the Uniform Commercial Code, see 44 N.C.L. Rev. 322 (1966).

§ 25-1-209. Subordinated obligations.—An obligation may be issued as subordinated to payment of another obligation of the person obligated, or a creditor may subordinate his right to payment of an obligation by agreement with either the person obligated or another creditor of the person obligated. Such a subordination does not create a security interest as against either the common debtor or a subordinated creditor. This section shall be construed as declaring the law as it existed prior to the enactment of this section and not as modifying it. (1967, c. 562, s. 1.)

Editor's Note. — Section 10 of Session Laws 1967, c. 562, makes the act effective at midnight on June 30, 1967. See Editor's note to § 25-1-201.

ARTICLE 2.

Sales.

PART 1.

SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER.

§ 25-2-101. Short title.

Editor's Note.—For a symposium on the Uniform Commercial Code in North Carolina, see 44 N.C.L. Rev. 525 (1966).

§ 25-2-106. Definitions: "Contract"; "agreement"; "contract for sale"; "sale"; "present sale"; "conforming" to contract; "termination"; "cancellation."—(1) In this article unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (§ 25-2-401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that

the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance. (1965, c. 700, s. 1; 1967, c. 24, s. 6.)

Editor's Note.—

The 1967 amendment, originally effective Oct. 1, 1967, substituted "any remedy for breach" for "remedy any breach" in sub-

section (4). Session Laws 1967, c. 1078, amends the 1967 amendatory act so as to make it effective July 1, 1967.

PART 2.

FORM, FORMATION AND READJUSTMENT OF CONTRACT.

§ 25-2-207. Additional terms in acceptance or confirmation.

(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

- (a) the offer expressly limits acceptance to the terms of the offer;
- (b) they materially alter it; or

(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(1967, c. 562, s. 1.)

Editor's Note. — The 1967 amendment, effective at midnight June 30, 1967, deleted "or different" following "additional" near the beginning of subsection (2). See Editor's note to § 25-1-201.

As the rest of the section was not changed by the amendment, only subsection (2) is set out.

§ 25-2-208. Course of performance or practical construction.

(2) The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (§ 25-1-205).

(1967, c. 24, s. 7.)

Editor's Note.—

The 1967 amendment, originally effective Oct. 1, 1967, corrected the reference at the end of subsection (2). Session Laws 1967, c. 1078, amends the 1967 amendatory

act so as to make it effective July 1, 1967.

As the rest of the section was not changed by the amendment, only subsection (2) is set out.

PART 5.

PERFORMANCE.

§ 25-2-501. Insurable interest in goods; manner of identification of goods.—(1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are nonconforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs

(a) when the contract is made if it is for the sale of goods already existing and identified;

(b) if the contract is for the sale of future goods other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

(c) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve months after contracting or for the sale of crops to be harvested within

twelve months or the next normal harvest season after contracting whichever is longer.

(1967, c. 24, s. 8.)

Editor's Note.—

The 1967 amendment, originally effective Oct. 1, 1967, inserted, in paragraph (c) of subsection (1), "after contracting or for the sale of crops to be harvested within twelve months." Session Laws

1967, c. 1078, amends the 1967 amendatory act so as to make it effective July 1, 1967.

As the rest of the section was not changed by the amendment, only subsection (1) is set out.

PART 6.

BREACH, REPUDIATION AND EXCUSE.

§ 25-2-602. Manner and effect of rightful rejection.

OFFICIAL COMMENT

Prior uniform statutory provision: Section 50, Uniform Sales Act.

Changes: Rewritten.

Purposes of changes: To make it clear that:

1. A tender or delivery of goods made pursuant to a contract of sale, even though wholly non-conforming, requires affirmative action by the buyer to avoid acceptance. Under subsection (1), therefore, the buyer is given a reasonable time to notify the seller of his rejection, but without such reasonable notification his rejection is ineffective. The sections of this Article dealing with inspection of goods must be read in connection with the buyer's reasonable time for action under this subsection. Contract provisions limiting the time for rejection fall within the rule of the section on "Time" and are effective if the time set gives the buyer a reasonable time for discovery of defects. What constitutes a due "notifying" of rejection by the buyer to the seller is defined in Section 1-201.

2. Subsection (2) lays down the normal duties of the buyer upon rejection, which flow from the relationship of the parties. Beyond his duty to hold the goods with reasonable care for the buyer's disposition, this section continues the policy of prior uniform legislation in generally relieving the buyer from any duties with respect to them, except when the circumstances impose the limited obligation of salvage upon him under the next section.

3. The present section applies only to rightful rejection by the buyer. If the seller has made a tender which in all respects conforms to the contract, the buyer has a positive duty to accept and his failure to do so constitutes a "wrongful rejection" which gives the seller immediate remedies for breach. Subsection (3) is included here to emphasize the sharp distinction between the rejection of an improper tender and the non-acceptance which is a breach by the buyer.

4. The provisions of this section are to be appropriately limited or modified when a negotiation is in process.

Cross references:

Point 1: Sections 1-201, 1-204(1) and (3), 2-512(2), 2-513(1) and 2-606(1) (b).

Point 2: Section 2-603(1).

Point 3: Section 2-703.

Definitional cross references:

"Buyer". Section 2-103.

"Commercial unit". Section 2-105.

"Goods". Section 2-105.

"Merchant". Section 2-104.

"Notifies". Section 1-201.

"Reasonable time". Section 1-204.

"Remedy". Section 1-201.

"Rights". Section 1-201.

"Seasonably". Section 1-204.

"Security interest". Section 1-201.

"Seller". Section 2-103.

PART 7.

REMEDIES.

§ 25-2-702. Seller's remedies on discovery of buyer's insolvency.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser under this article (§

25-2-403). Successful reclamation of goods excludes all other remedies with respect to them. (1965, c. 700, s. 1; 1967, c. 562, s. 1.)

Editor's Note. — The 1967 amendment, effective at midnight June 30, 1967, deleted "or lien creditor" following "purchaser" in the first sentence of subsection (3). See Editor's note to § 25-1-201.

changed by the amendment, only subsection (3) is set out.

For a discussion of the constructive trust as a remedy for the seller, see 45 N.C.L. Rev. 424 (1967).

As the rest of the section was not

§ 25-2-704. Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods.

(2) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner. (1965, c. 700, s. 1; 1967, c. 24, s. 9.)

Editor's Note.—

The 1967 amendment, originally effective Oct. 1, 1967, inserted the word "scrap" near the end of subsection (2). Session Laws 1967, c. 1078, amends the 1967

amendatory act so as to make it effective July 1, 1967.

As the rest of the section was not changed by the amendment, only subsection (2) is set out.

§ 25-2-716. Buyer's right to specific performance or replevin. —

(1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. (1965, c. 700, s. 1; 1967, c. 562, s. 1.)

Editor's Note. — The 1967 amendment, effective at midnight June 30, 1967, added "or in other proper circumstances" at the

end of subsection (1). See Editor's note to § 25-1-201.

§ 25-2-723. Proof of market price; time and place.

(2) If evidence of a price prevailing at the times or places described in this article is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(1967, c. 562, s. 1.)

Editor's Note. — The 1967 amendment, effective at midnight June 30, 1967, inserted "in commercial judgment or" near the middle of subsection (2). See Editor's note to § 25-1-201.

As the rest of the section was not changed by the amendment, only subsection (2) is set out.

§ 25-2-725. Statute of limitations in contracts for sale.—(1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

(1967, c. 562, s. 1.)

Editor's Note. — The 1967 amendment, effective at midnight June 30, 1967, added the second sentence of subsection (1). See Editor's note to § 25-1-201.

As the rest of the section was not changed by the amendment, only subsection (1) is set out.

ARTICLE 3.

Commercial Paper.

PART 1.

SHORT TITLE, FORM AND INTERPRETATION.

§ 25-3-101. Short title.

Editor's Note.—

For a symposium on the Uniform Com-

mmercial Code in North Carolina, see 44 N.C.L. Rev. 525 (1966).

§ 25-3-115. Incomplete instruments.

Scope of Presumptive Authority to Fill Blanks.—The presumptive authority to fill blanks extends to every incomplete feature of the instrument. The authority is to fill all blanks in general conformity to the character of the paper or as the person in possession thinks proper. *Jones v. Jones*, 268 N.C. 701, 151 S.E.2d 587 (1966), construing former § 25-20 (Section 14, Uniform Negotiable Instruments Law).

Any and all blanks may be filled in which are necessary and proper to make the instrument a perfect and complete bill of exchange or promissory note, as the case may be. *Jones v. Jones*, 268 N.C. 701, 151 S.E.2d 587 (1966), construing former § 25-20 (Section 14, Uniform Negotiable Instruments Law).

The pronoun "I" or "We" may be inserted under the implied power to fill blanks. *Jones v. Jones*, 268 N.C. 701, 151 S.E.2d 587 (1966), construing former § 25-20 (Section 14, Uniform Negotiable Instruments Law).

As May Name of Payee.—Parties signing a note with others as makers, the note being complete except for the insertion of the name of the payee or payees, clothe the primary makers with authority to complete the instrument by inserting the name of the payees. *Jones v. Jones*, 268 N.C. 701, 151 S.E.2d 587 (1966), construing former § 25-20 (Section 14, Uniform Negotiable Instruments Law).

PART 2.

TRANSFER AND NEGOTIATION.

§ 25-3-202. Negotiation.

Right of Payee to Assume that Check Requires His Endorsement.—The payee of a check, as well as the drawer, has a right to expect the drawee bank to pay it in accordance with its terms. Therefore, when the drawer issues a check to the order of a named payee, the payee—absent his agreement to the contrary, or any conduct on his part creating an estoppel—can assume that he has valuable paper of a

particular commercial character, i.e., one which will require his endorsement for title to pass to a taker, or for discharge to be effected by the action of the drawee in marking the check "paid" and charging it against the account of the drawer. *Modern Homes Constr. Co. v. Tryon Bank & Trust Co.*, 266 N.C. 648, 147 S.E.2d 37, 386 (1966) (decided under NIL).

PART 3.

RIGHTS OF A HOLDER.

§ 25-3-305. Rights of a holder in due course. — To the extent that a holder is a holder in due course he takes the instrument free from

- (1) all claims to it on the part of any person; and
- (2) all defenses of any party to the instrument with whom the holder has not dealt except
 - (a) infancy, to the extent that it is a defense to a simple contract; and
 - (b) such other incapacity, or duress, or illegality of the transaction, as renders the obligation of the party a nullity; and

(c) such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms; and

(d) discharge in insolvency proceedings; and any other discharge of which the holder has notice when he takes the instrument. (1899, c. 733, ss. 15, 16, 57; Rev., ss. 2165, 2166, 2206; C. S., ss. 2996, 2997, 3038; 1965, c. 700, s. 1.)

Editor's Note.—This section is set out in the Supplement to correct an error occurring in the replacement volume.

PART 4.

LIABILITY OF PARTIES.

§ 25-3-405. Impostors; signature in name of payee.

Where Drawer Intends Imposter to Take Possession as Payee.—Where the drawer, mistaken as to the identity of the person to whom he delivers a check, nevertheless intends that the procurer himself shall take title and possession as payee, the endorsement of the imposter will be

regarded as genuine as to subsequent persons dealing in good faith with the instrument, and the bank's protected. *Modern Homes Constr. Co. v. Tryon Bank & Trust Co.*, 266 N.C. 648, 147 S.E.2d 37, 386 (1966) (decided under NIL).

§ 25-3-409. Draft not an assignment.

Payee Has No Right of Action, etc.—

The acceptance of a check is the promise of the drawee to pay it, and, until that promise is made, no contractual relation exists between the drawee and the payee.

Modern Homes Constr. Co. v. Tryon Bank & Trust Co., 266 N.C. 648, 147 S.E.2d 37, 386 (1966) (decided under the NIL).

§ 25-3-410. Definition and operation of acceptance.

Acceptance and Payment Are Different.—Payment is the performance of the drawee's promise—the expected and intended end of the check. Acceptance prolongs the life of the check; payment ends it. Thus, the two are fundamentally different. *Modern Homes Constr. Co. v. Tryon Bank & Trust Co.*, 266 N.C. 648, 147 S.E.2d 37, 386 (1966) (decided under the NIL).

The acceptance of a check is the promise of the drawee to pay it, and, until that promise is made, no contractual relation exists between the drawee and the payee. *Modern Homes Constr. Co. v. Tryon Bank & Trust Co.*, 266 N.C. 648, 147 S.E.2d 37, 386 (1966) (decided under the NIL).

Marking Check "Paid" Did Not Consti-

tute "Constructive Acceptance."—The act of a bank in marking a check "paid" and charging it against a depositor's account did not constitute a "constructive acceptance" under former § 25-144. That section provided that "where a drawee to whom a bill is delivered for acceptance destroys the same or refuses within twenty-four hours after such delivery . . . to return the bill accepted or nonaccepted to the holder, he will be deemed to have accepted the same." It contemplated a case where the bill or check was delivered to the drawee for the purpose of procuring an acceptance or certification; it was never intended to apply to an erroneous payment. *Modern Homes Constr. Co. v. Tryon Bank & Trust Co.*, 266 N.C. 648, 147 S.E.2d 37, 386 (1966).

§ 25-3-419. Conversion of instrument; innocent representative.

Editor's Note.—For case note on recovery by payee against drawee bank on checks paid over forged endorsement, see 44 N.C.L. Rev. 1073 (1966).

Payment of Check on Forged or Unauthorized Endorsement.—The majority of jurisdictions, both before and after the

adoption of the NIL, allowed the holder to recover on the theory of a conversion of the check when the drawee paid a check upon a forged or unauthorized endorsement. *Modern Homes Constr. Co. v. Tryon Bank & Trust Co.*, 266 N.C. 648, 147 S.E.2d 37, 386 (1966).

In paying a check to an agent, a bank assumes the risk that he is without authority to endorse it. *Modern Homes Constr. Co. v. Tryon Bank & Trust Co.*, 266 N.C. 648, 147 S.E.2d 37, 386 (1966) (decided under the NIL).

The payee of a check as well as the drawer, has the right to expect the bank to pay the check in accordance with its tenor, and when the bank pays the check to an agent of the payee it is necessary to the bank's protection that it ascertain that the agent is authorized to receive payment for the payee, and the drawer has no right, as against the payee, to direct its payment to anyone else. *Modern Homes Constr. Co. v. Tryon Bank & Trust Co.*, 266 N.C. 648, 147 S.E.2d 37, 386 (1966).

Payment to Unauthorized Person without Payee's Endorsement. — When the drawee bank takes a check without the payee's endorsement, delivers cash in the amount of the check to one unauthorized to receive its payment, and ultimately returns the check to the maker, the bank has assumed complete control over the check, dealt with it as its own, and withheld it from its rightful owner. Such dealings constitute a tortious conversion of the check, and the payee is entitled to recover its value. *Prima facie*, this is the face value of the paper converted. *Modern Homes Constr. Co. v. Tryon Bank & Trust Co.*, 266 N.C. 648, 147 S.E.2d 37, 386 (1966) (decided under the NIL).

PART 5.

PRESENTMENT, NOTICE OF DISHONOR AND PROTEST.

§ 25-3-501. When presentment, notice of dishonor, and protest necessary or permissible.

(3) Unless excused (§ 25-3-511) protest of any dishonor is necessary to charge the drawer and indorsers of any draft which on its face appears to be drawn or payable outside of the states, territories, dependencies and possessions of the United States, the District of Columbia and the Commonwealth of Puerto Rico. The holder may at his option make protest of any dishonor of any other instrument and in the case of a foreign draft may on insolvency of the acceptor before maturity make protest for better security.

(1967, c. 562, s. 1.)

Editor's Note. — The 1967 amendment, effective at midnight June 30, 1967, substituted "territories, dependencies and possessions of the United States, the District of Columbia and the Commonwealth of Puerto Rico" for "and territories of the

United States and the District of Columbia" at the end of the first sentence of subsection (3). See Editor's note to § 25-1-201.

As the rest of the section was not changed by the amendment, only subsection (3) is set out.

PART 8.

MISCELLANEOUS.

§ 25-3-802. Effect of instrument on obligation for which it is given. — (1) Unless otherwise agreed where an instrument is taken for an underlying obligation

(a) the obligation is pro tanto discharged if a bank is drawer, maker or acceptor of the instrument and there is no recourse on the instrument against the underlying obligor; and

(b) in any other case the obligation is suspended pro tanto until the instrument is due or if it is payable on demand until its presentment. If the instrument is dishonored, action may be maintained on either the instrument or the obligation; discharge of the underlying obligor on the instrument also discharges him on the obligation to the extent of his discharge on the instrument.

(2) The taking in good faith of a check which is not postdated does not of itself

so extend the time on the original obligation as to discharge a surety. (1965, c. 700, s. 1; 1967, c. 562, s. 1.)

Editor's Note. — The 1967 amendment, effective at midnight June 30, 1967, added at the end of the second sentence of paragraph (b) of subsection (1) "to the extent of his discharge on the instrument." See Editor's note to § 25-1-201.

ARTICLE 4.

Bank Deposits and Collections.

PART 1.

GENERAL PROVISIONS AND DEFINITIONS.

§ 25-4-101. **Short title.**

Editor's Note.—For a symposium on the Uniform Commercial Code in North Carolina, see 44 N.C.L. Rev. 525 (1966).

§ 25-4-106. **Separate office of a bank.**—A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders shall be given under this article and under article 3. (1965, c. 700, s. 1; 1967, c. 562, s. 1.)

Editor's Note.—The 1967 amendment, effective at midnight June 30, 1967, deleted "maintaining its own deposit ledgers" following the word "bank" where it first appears in this section. See Editor's note to § 25-1-201.

PART 2.

COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS.

§ 25-4-204. **Methods of sending and presenting; sending direct to payor.**

Editor's Note. — Session Laws 1967, c. 562, s. 1, amended the catchline of this section to read as set out above. As the text of the section was not changed, only the catchline is set out.

§ 25-4-208. **Security interest of collecting bank in items, accompanying documents and proceeds.**

Editor's Note. — For article concerning liens on personal property not governed by the Uniform Commercial Code, see 44 N.C.L. Rev. 322 (1966).

PART 4.

RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER.

§ 25-4-405. **Death or incompetence of customer.**—(1) A payor or collecting bank's authority to accept, pay or collect an item or to account for proceeds of its collection if otherwise effective is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes such authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(2) Even with knowledge a bank may for ten days after the date of death pay or certify checks drawn on or prior to that date unless ordered to stop payment by a person claiming an interest in the account.

(3) A transaction, although subject to this article, is also subject to § 105-24, and § 41-2.1, and in case of conflict between the provisions of this section and either of those sections, the provisions of those sections control. (1965, c. 700, s. 1; 1967, c. 24, s. 10; c. 562, s. 1.)

Editor's Note.—

Session Laws 1967, c. 24, originally effective Oct. 1, 1967, corrected an error by substituting "of" for "or" in the first sentence of subsection (1). Session Laws 1967, c. 1078, amends c. 24 so as to make

it effective July 1, 1967. Session Laws 1967, c. 562, effective at midnight June 30, 1967, made the same correction in subsection (1) and added subsection (3). See Editor's note to § 25-1-201.

ARTICLE 5.

Letters of Credit.

§ 25-5-101. Short title.

Editor's Note.—For a symposium on the Uniform Commercial Code in North Carolina, see 44 N.C.L. Rev. 525 (1966).

§ 25-5-117. Insolvency of bank holding funds for documentary credit.—(1) Where an issuer or an advising or confirming bank or a bank which has for a customer procured issuance of a credit by another bank becomes insolvent before final payment under the credit and the credit is one to which this article is made applicable by paragraphs (a) or (b) of § 25-5-102 (1) on scope, the receipt or allocation of funds or collateral to secure or meet obligations under the credit shall have the following results:

(a) to the extent of any funds or collateral turned over after or before the insolvency as indemnity against or specifically for the purpose of payment of drafts or demands for payment drawn under the designated credit, the drafts or demands are entitled to payment in preference over depositors or other general creditors of the issuer or bank; and

(b) on expiration of the credit or surrender of the beneficiary's rights under it unused any person who has given such funds or collateral is similarly entitled to return thereof; and

(c) a charge to a general or current account with a bank if specifically consented to for the purpose of indemnity against or payment of drafts or demands for payment drawn under the designated credit falls under the same rules as if the funds had been drawn out in cash and then turned over with specific instructions.

(1967, c. 24, s. 11.)

Editor's Note.—

The 1967 amendment, originally effective Oct. 1, 1967, substituted "charge" for "change" near the beginning of paragraph (c) of subsection (1). Session Laws 1967,

c. 1078, amends the 1967 amendatory act so as to make it effective July 1, 1967.

As the rest of the section was not changed by the amendment, only subsection (1) is set out.

ARTICLE 6.

Bulk Transfers.

§ 25-6-101. Short title.

Editor's Note.—For a symposium on the Uniform Commercial Code in North Carolina, see 44 N.C.L. Rev. 525 (1966).

§ 25-6-106: Repealed by Session Laws 1967, c. 562, s. 1, effective at midnight June 30, 1967.

Cross Reference.—See Editor's note to § 25-1-201.

§ 25-6-107. The notice.

(2) If the debts of the transferor are not to be paid in full as they fall due or if the transferee is in doubt on that point then the notice shall state further:

(a) the location and general description of the property to be transferred and the estimated total of the transferor's debts;

(b) the address where the schedule of property and list of creditors (§ 25-6-104) may be inspected;

(c) whether the transfer is to pay existing debts and if so the amount of such debts and to whom owing;

(d) whether the transfer is for new consideration and if so the amount of such consideration and the time and place of payment; and

(e) repealed by Session Laws 1967, c. 562, s. 1, effective at midnight June 30, 1967.

(1967, c. 562, s. 1.)

Editor's Note. — The 1967 amendment, As the rest of the section was not effective at midnight June 30, 1967, re- changed by the amendment, it is not set pealed paragraph (e) of subsection (2). out. See Editor's note to § 25-1-201.

§ 25-6-108. Auction sales; "auctioneer."

(3) The person or persons other than the transferor who direct, control or are responsible for the auction are collectively called the "auctioneer." The auctioneer shall:

(a) receive and retain the list of creditors and prepare and retain the schedule of property for the period stated in this article (§ 25-6-104);

(b) give notice of the auction personally or by registered or certified mail at least ten days before it occurs to all persons shown on the list of creditors and to all other persons who are known to him to hold or assert claims against the transferor; and

(c) repealed by Session Laws 1967, c. 562, s. 1, effective at midnight June 30, 1967.

(1967, c. 562, s. 1.)

Editor's Note. — The 1967 amendment, As the rest of the section was not effective at midnight June 30, 1967, re- changed by the amendment, it is not set pealed paragraph (c) of subsection (3). out. See Editor's note to § 25-1-201.

§ 25-6-109. What creditors protected.—(1) The creditors of the transferor mentioned in this article are those holding claims based on transactions or events occurring before the bulk transfer, but creditors who become such after notice to creditors is given (§§ 25-6-105 and 25-6-107) are not entitled to notice.

(2) Repealed by Session Laws 1967, c. 562, s. 1, effective at midnight June 30, 1967. (1907, c. 623; 1913, c. 30, s. 1; Ex. Sess., 1913, c. 66, s. 1; C. S., s. 1013; 1933, c. 190; 1945, c. 635; 1963, c. 1179; 1965, c. 700, s. 1; 1967, c. 562, s. 1.)

Editor's Note. — The 1967 amendment, pealed subsection (2). See Editor's note to effective at midnight June 30, 1967, re- § 25-1-201.

ARTICLE 7.

Warehouse Receipts, Bills of Lading and Other Documents of Title.

PART 1.

GENERAL.

§ 25-7-101. **Short title.**

Editor's Note.—For a symposium on the Uniform Commercial Code in North Carolina, see 44 N.C.L. Rev. 525 (1966).

PART 2.

WAREHOUSE RECEIPTS: SPECIAL PROVISIONS.

§ 25-7-209. **Lien of warehouseman.**

(3) (a) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under § 25-7-503.

(b) A warehouseman's lien on household goods for charges and expenses in relation to the goods under subsection (1) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. "Household goods" means furniture, furnishings and personal effects used by the depositor in a dwelling.

(c) Where the holder of a security interest with respect to the property stored, or any part thereof, has instituted appropriate legal proceedings for the recovery of possession of property, such holder shall be entitled to possession under the writ or other process upon payment of a fair fractional portion of the total storage charges reasonably allocable to the storage of the property described in the writ or other process.

(1967, c. 562, s. 1.)

Editor's Note. — The 1967 amendment, effective at midnight June 30, 1967, designated the former provisions of subsection (3) as paragraph (a) and added paragraphs (b) and (c) to subsection (3). See Editor's note to § 25-1-201.

As the rest of the section was not

changed by the amendment, only subsection (3) is set out.

For article concerning liens on personal property not governed by the Uniform Commercial Code, see 44 N.C.L. Rev. 322 (1966).

PART 3.

BILLS OF LADING: SPECIAL PROVISIONS.

§ 25-7-301. **Liability for non-receipt or misdescription; "said to contain"; "shipper's load and count"; improper handling.**

(4) The issuer may by inserting in the bill the words "shipper's weight, load and count" or other words of like purport indicate that the goods were loaded by the shipper; and if such statement be true the issuer shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages.

(1967, c. 24, s. 12.)

Editor's Note.—

The 1967 amendment, originally effective

Oct. 1, 1967, substituted "by" for "be" near the beginning of subsection (4). Session

Laws 1967, c. 1078, amends the 1967 amendatory act so as to make it effective July 1, 1967.

As the rest of the section was not changed by the amendment, only subsection (4) is set out.

§ 25-7-307. **Lien of carrier.**

Editor's Note. — For article concerning liens on personal property not governed

by the Uniform Commercial Code, see 44 N.C.L. Rev. 322 (1966).

ARTICLE 8.

Investment Securities.

PART 1.

SHORT TITLE AND GENERAL MATTERS.

§ 25-8-101. **Short title.**

Editor's Note.—For a symposium on the Uniform Commercial Code in North Carolina, see 44 N.C.L. Rev. 525 (1966).

§ 25-8-106. **Applicability.**

Editor's Note. — For comment on the duty to register the transfer of investment securities, see 44 N.C.L. Rev. 854 (1966).

PART 2.

ISSUE—ISSUER.

§ 25-8-204. **Effect of issuer's restrictions on transfer.**

Editor's Note. — For comment on the duty to register the transfer of investment securities, see 44 N.C.L. Rev. 854 (1966).

PART 3.

PURCHASE.

§ 25-8-301. **Rights acquired by purchaser; "adverse claim"; title acquired by bona fide purchaser.**

Editor's Note.—For comment on the duty to register the transfer of investment securities, see 44 N.C.L. Rev. 854 (1966).

§ 25-8-309. **Effect of indorsement without delivery.**

The elements of a gift inter vivos are: (1) The intent by the owner to give to the donee the shares of stock so as to divest himself immediately of all right and title to and control of the stock; and (2) the delivery, actual or constructive, of the stock certificate indorsed by him. *Fesmire v. First Union Nat'l Bank*, 267 N.C. 589, 148 S.E.2d 589 (1966) (decided under the Uniform Stock Transfer Act).

Possession of Indorsed Certificate Held to Establish Delivery Prima Facie.—Delivery of an indorsed stock certificate is constructive delivery of the shares which it represents, and possession of such certificate by the indorsee establishes prima facie the fact of delivery. *Fesmire v. First Union Nat'l Bank*, 267 N.C. 589, 148 S.E.2d 589 (1966) (decided under the Uniform Stock Transfer Act).

§ 25-8-311. **Effect of unauthorized indorsement.**

Bona Fide Purchaser Held to Take Free of Lack of Authority.—Under the Uniform

Stock Transfer Act an unlimited indorsement and delivery of a certificate of stock

to another, or the delivery of it to him together with a separate document containing a written assignment or a power of attorney to him for the transfer of the stock, clothed such other with indicia of ownership, and a bona fide purchaser for value took the shares free from any lack of actual authority. *Patterson v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 266 N.C. 489, 146 S.E.2d 390 (1966).

Status as Bona Fide Purchaser as Affir-

mative Defense.—Subdivision (2) a of former § 55-81 set up an affirmative defense which had to be pleaded and proved by the defendant, just as one claiming to be the holder in due course of a negotiable instrument must prove he has that status when it is shown that the person from whom he acquired the instrument negotiated it in breach of faith. *Patterson v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 266 N.C. 489, 146 S.E.2d 390 (1966).

PART 4.

REGISTRATION.

§ 25-8-401. Duty of issuer to register transfer.

Editor's Note.—For comment on the duty to register the transfer of investment securities, see 44 N.C.L. Rev. 854 (1966).

§ 25-8-406. Duty of authenticating trustee, transfer agent or registrar.

Editor's Note.—For comment on the duty to register the transfer of investment securities, see 44 N.C.L. Rev. 854 (1966).

§ 25-8-407. Joint ownership of corporate stock and investment securities.—(a) In addition to other forms of ownership, shares of corporate stock or investment securities may be owned by a husband and wife as joint tenants with the right of survivorship, and not as tenants in common, in the manner provided in this section.

(b) (1) A joint tenancy in shares of corporate stock or investment securities as provided by this section shall exist when such shares or securities indicate that they are owned with the right of survivorship, or otherwise clearly indicate an intention that upon the death of either spouse the interest of the decedent shall pass to the surviving spouse.

(2) Such a joint tenancy may also exist when a broker or custodian holds the shares or securities for the joint tenants and by book entry or otherwise indicates (i) that the shares or securities are owned with the right of survivorship, or (ii) otherwise clearly indicates that upon the death of either spouse the interest of the decedent shall pass to the surviving spouse. Money in the hands of such broker or custodian derived from the sale of, or held for the purchase of, such shares or securities shall be treated in the same manner as such shares or securities.

(c) Upon the death of a joint tenant his interest shall pass to the surviving joint tenant. The interest of the deceased joint tenant, even though it has passed to the surviving joint tenant, remains liable for the debts of the decedent in the same manner as the personal property included in his estate, and recovery thereof shall be made from the surviving joint tenant when the decedent's estate is insufficient to satisfy such debts.

(d) Nothing herein contained shall be construed to repeal or modify any of the provisions of G.S. 105-2, G.S. 105-11, and G.S. 105-24, relating to the administration of the inheritance tax laws, or any other provisions of the law relating to inheritance taxes. (1967, c. 864, s. 1.)

Editor's Note.—Section 3, c. 864, Session Laws 1967, provides that the act shall be in effect from and after Oct. 1, 1967.

ARTICLE 9.

Secured Transactions; Sales of Accounts, Contract Rights and Chattel Paper.

PART 1.

SHORT TITLE, APPLICABILITY AND DEFINITIONS.

§ 25-9-101. Short title.

Editor's Note.—For a symposium on the case law survey as to credit transactions, Uniform Commercial Code in North Carolina, see 44 N.C.L. Rev. 956 (1966). For

§ 25-9-102. Policy and scope of article.

Editor's Note. — For article concerning by the Uniform Commercial Code, see 44 liens on personal property not governed N.C.L. Rev. 322 (1966).

§ 25-9-103. Accounts, contract rights, general intangibles and equipment relating to another jurisdiction; and incoming goods already subject to a security interest.

(2) If the chief place of business of a debtor is in this State, this article governs the validity and perfection of a security interest and the possibility and effect of proper filing with regard to general intangibles or with regard to goods of a type which are normally used in more than one jurisdiction (such as automotive equipment, rolling stock, airplanes, road building equipment, commercial harvesting equipment, construction machinery and the like) if such goods are classified as equipment or classified as inventory by reason of their being leased by the debtor to others. Otherwise, the law (including the conflict of laws rules) of the jurisdiction where such chief place of business is located shall govern. If the chief place of business is located in a jurisdiction which does not provide for perfection of the security interest by filing or recording in that jurisdiction, then the security interest may be perfected by filing in this State. For the purpose of determining the validity and perfection of a security interest in an airplane, the chief place of business of a debtor who is a foreign air carrier under the Federal Aviation Act of 1958, as amended, is the designated office of the agent upon whom service of process may be made on behalf of the debtor.

(1967, c. 562, s. 1.)

Editor's Note.—

The 1967 amendment, effective at midnight June 30, 1967, substituted "the" for "and" preceding "chief place of business" in the last sentence of subsection (2). See Editor's note to § 25-1-201.

As the rest of the section was not changed by the amendment, only subsection (2) is set out.

§ 25-9-104. Transactions excluded from article.

Editor's Note. — For article concerning the Uniform Commercial Code, see 44 liens on personal property not governed by N.C.L. Rev. 322 (1966).

§ 25-9-105. Definitions and index of definitions. — (1) In this article unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper, contract right or general intangible;

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods; a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) "Collateral" means the property subject to a security interest, and includes accounts, contract rights and chattel paper which have been sold;

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts, contract rights or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) "Document" means document of title as defined in the general definitions of article 1 (§ 25-1-201);

(f) "Goods" includes all things which are moveable at the time the security interest attaches or which are fixtures (§ 25-9-313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, contract rights and other things in action. "Goods" also include the unborn young of animals and growing crops;

(g) "Instrument" means a negotiable instrument (defined in § 25-3-104), or a security (defined in § 25-8-102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment;

(h) "Security agreement" means an agreement which creates or provides for a security interest;

(i) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts, contract rights or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party.

(1967, c. 562, s. 1.)

Editor's Note. — The 1967 amendment, effective at midnight June 30, 1967, added, at the end of the first sentence of paragraph (b) of subsection (1), "a charter or other contract involving the use or hire of

a vessel is not chattel paper." See Editor's note to § 25-1-201.

As the rest of the section was not changed by the amendment, only subsection (1) is set out.

§ 25-9-106. Definitions: "Account"; "contract right"; "general intangibles".—"Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper. "Contract right" means any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper. "General intangibles" means any personal property (including things in action) other than goods, accounts, contract rights, chattel paper, documents and instruments. All rights earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are contract rights and neither accounts nor general intangibles. (1945, c. 196, s. 1; 1957, c. 504; 1965, c. 700, s. 1; 1967, c. 562, s. 1.)

Editor's Note. — The 1967 amendment, effective at midnight June 30, 1967, added the last sentence. See Editor's note to § 25-1-201.

Contract Held to Include Lien on Returned Premiums of Insurance.—Where a contract to assign a bankrupt's accounts receivable clearly comprehended both customer accounts and any other legally enforceable debt arising out of a transac-

tion occurring in and to be paid in North Carolina, and which was made during the effective period of notice of assignment, this contract included the establishment of a lien thereby as against the returned premiums of insurance, under the terms of the contract between the bank and bankrupt. In the Matter of Dail, 257 F. Supp. 326 (E.D.N.C. 1966).

PART 2.

VALIDITY OF SECURITY AGREEMENT AND RIGHTS OF PARTIES THERETO

§ 25-9-201.1. Security interests granted in household and kitchen furniture.—(1) Except as provided in subsection (2) of this section, all conveyances of household and kitchen furniture by a married person, made to secure the payment of money or other things of value, are void unless his or her spouse joins therein.

(2) A conveyance referred to in subsection (1) of this section is valid without the joinder of the spouse if:

(a) The conveyance is made to secure the payment of all or part of the purchase price of the property conveyed; or

(b) The spouse not joining in the conveyance has been adjudged a lunatic or insane; or

(c) The spouse who executes the conveyance is authorized to do so by a valid and lawful deed of separation previously executed by the husband and wife; or

(d) The spouse who executes the conveyance is the spouse not at fault in one of the instances described in G.S. 31A-1 (d). (1967, c. 562, s. 3.)

Editor's Note. — Section 10, c. 562, Session Laws 1967, makes the act effective at midnight June 30, 1967. See Editor's note to § 25-1-201.

§ 25-9-202. Title to collateral immaterial.—Each provision of this article with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor. (1965, c. 700, s. 1.)

Editor's Note.—This section is set out in the Supplement to correct a typographical error appearing in the replacement volume.

§ 25-9-203. Enforceability of security interest; proceeds; formal requisites.

(2) A transaction, although subject to this article, is also subject to the North Carolina Consumer Finance Act (being G.S. 53-164 through G.S. 53-191), G.S. 24-1 and G.S. 24-2, and G.S. 91-1 through G.S. 91-8, and in case of conflict between the provisions of this article and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein. (1866-7, c. 1, s. 1; 1872-3, c. 133, s. 1; Code, s. 1799; 1893, c. 9; Rev., s. 2052; C. S., s. 2480; 1925, c. 302, s. 1; 1927, c. 22; 1935, c. 205; 1945, c. 182, s. 2; c. 196, s. 2; 1955, c. 386, s. 1; c. 816; 1957, cc. 564, 999; 1961, c. 574; 1965, c. 700, s. 1; 1967, c. 562, s. 1.)

Editor's Note. — The 1967 amendment, effective at midnight June 30, 1967, revised the first sentence of subsection (2) so as to clarify the section references therein. See Editor's note to § 25-1-201. As the rest of the section was not changed by the amendment, only subsection (2) is set out.

§ 25-9-204. When security interest attaches; after-acquired property; future advances.

(4) No security interest attaches under an after-acquired property clause

(a) to crops which become such more than five years after the security agreement is executed except that a security interest in crops which is given in conjunction with a lease or a land purchase or improvement transaction evidenced by a contract, mortgage or deed of trust may if so agreed attach to crops to be grown on the land concerned during the period of such real estate transaction;

(b) to consumer goods other than accessions (§ 25-9-314) when given as addi-

tional security unless the debtor acquires rights in them within ten days after the secured party gives value.

(1967, c. 562, s. 1.)

Editor's Note. — The 1967 amendment, effective at midnight June 30, 1967, substituted "five years" for "one year" near the beginning of paragraph (a) of subsection (4). See Editor's note to § 25-1-201.

As the rest of the section was not changed by the amendment, only subsection (4) is set out.

PART 3.

RIGHTS OF THIRD PARTIES; PERFECTED AND UNPERFECTED SECURITY INTERESTS; RULES OF PRIORITY.

§ 25-9-302. When filing is required to perfect security interest; security interests to which filing provisions of this article do not apply.

—(1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under § 25-9-305;

(b) a security interest temporarily perfected in instruments or documents without delivery under § 25-9-304 or in proceeds for a ten-day period under § 25-9-306;

(c) a purchase money security interest in farm equipment having a purchase price not in excess of twenty-five hundred dollars (\$2500.00); but filing is required for a fixture under § 25-9-313 or for a motor vehicle required to be licensed; however, compliance with G.S. 20-58 et seq. shall meet the filing requirements for such motor vehicles.

(d) a purchase money security interest in consumer goods; but filing is required for a fixture under § 25-9-313 or for a motor vehicle required to be licensed; however, compliance with G.S. 20-58 et seq. shall meet the filing requirements for such motor vehicles.

(e) an assignment of accounts or contract rights which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts or contract rights of the assignor;

(f) a security interest of a collecting bank (§ 25-4-208) or arising under the article on sales (see § 25-9-113) or covered in subsection (3) of this section.

(5) The filing provisions of this article do not apply to a security interest in property of any description or any interest therein created by a deed of trust or mortgage made by a public utility as defined in G.S. 62-3(23) or by any electric or telephone membership corporation domesticated or incorporated in North Carolina, but the deed of trust or mortgage shall be registered in the county or counties in which such deed of trust or mortgage is required by G.S. 47-20 to be registered.

(6) The filing provisions of this article do not apply to any security interest created in connection with the issuance of any bond, note or other evidence of indebtedness for borrowed money by this State or any political subdivision or agency thereof. (1866-7, s. 1; 1872-3, c. 133, s. 1; Code, s. 1799; 1893, c. 9; Rev., s. 2052; C. S., s. 2480; 1925, c. 302, s. 1; 1927, c. 22; 1935, c. 205; 1945, c. 182, s. 3; c. 196, s. 2; 1955, c. 816; 1957, cc. 564, 999; 1961, c. 574; 1965, c. 700, s. 1; 1967, c. 562, s. 1.)

Editor's Note.—
The 1967 amendment, effective at midnight June 30, 1967, rewrote paragraphs

(c) and (d) of subsection (1), inserted "or by any electric or telephone membership corporation domesticated or incorporated

in North Carolina" in subsection (5) and added subsection (6). See Editor's note to § 25-1-201.

As the rest of the section was not changed by the amendment, only subsections (1), (5) and (6) are set out.

§ 25-9-306. "Proceeds"; secured party's rights on disposition of collateral.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest

(a) in identifiable non-cash proceeds;

(b) in identifiable cash proceeds in the form of money which is not commingled with other money or deposited in a bank account prior to the insolvency proceedings;

(c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a bank account prior to the insolvency proceedings; and

(d) in all cash and bank accounts of the debtor, if other cash proceeds have been commingled or deposited in a bank account, but the perfected security interest under this paragraph (d) is

(i) subject to any right or setoff; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings and commingled or deposited in a bank account prior to the insolvency proceedings less the amount of cash proceeds received by the debtor and paid over to the secured party during the ten-day period.

(1967, c. 562, s. 1.)

Editor's Note. — The 1967 amendment, effective at midnight June 30, 1967, substituted "identifiable" for "indentifiable" near the beginning of paragraph (c) of subsection (4). See Editor's note to § 25-1-201.

As the rest of the section was not changed by the amendment, only subsection (4) is set out.

§ 25-9-310. Priority of certain liens arising by operation of law.

Editor's Note. — For article concerning liens on personal property not governed by

the Uniform Commercial Code, see 44 N.C.L. Rev. 322 (1966).

§ 25-9-312. Priorities among conflicting security interests in the same collateral.

(3) A purchase money security interest in inventory collateral has priority over a conflicting security interest in the same collateral if

(a) the purchase money security interest is perfected at the time the debtor receives possession of the collateral; and

(b) any secured party whose security interest is known to the holder of the purchase money security interest or who, prior to the date of the filing made by the holder of the purchase money security interest, had filed a financing statement covering the same items or type of inventory, has received notification of the purchase money security interest before the debtor receives possession of the collateral covered by the purchase money security interest; and

(c) such notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(1967, c. 24, s. 13.)

Editor's Note.—

The 1967 amendment, originally effective Oct. 1, 1967, corrected an error by substituting "or" for "of" near the middle of paragraph (b) of subsection (3). Session Laws 1967, c. 1078, amends the 1967

amendatory act so as to make it effective July 1, 1967.

As the rest of the section was not changed by the amendment, only subsection (3) is set out.

§ 25-9-313. Priority of security interests in fixtures.

(4) The security interests described in subsections (2) and (3) do not take priority over

(a) a subsequent purchaser for value of any interest in the real estate; or

(b) a creditor with a lien on the real estate subsequently obtained by judicial proceedings; or

(c) a creditor with a prior encumbrance of record on the real estate to the extent that he makes subsequent advances

if the subsequent purchase is made, the lien by judicial proceedings is obtained, or the subsequent advance under the prior encumbrance is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the real estate at a foreclosure sale other than an encumbrancer purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(1967, c. 562, s. 1.)

Editor's Note. — The 1967 amendment, effective at midnight June 30, 1967, deleted the former last paragraph of subsection (4), relating to the perfection of a security interest against real estate. See Editor's note to § 25-1-201.

As the rest of the section was not changed by the amendment, only subsection (4) is set out.

PART 4.

FILING.

§ 25-9-402. Formal requisites of financing statement; amendments.

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor)

Address

Name of secured party (or assignee)

Address

1. This financing statement covers the following types (or items) of property:

(Describe)

2. (If collateral is crops) The above described crops are growing or are to be grown on:

(Describe Real Estate Including Record Owner or Record Lessee of Same)

.....

3. (If collateral is goods which are or are to become fixtures) The above described goods are affixed or to be affixed to:

(Describe Real Estate Including Record Owner or Record Lessee of Same)

.....

4. (If proceeds or products of collateral are claimed) Proceeds—Products of the collateral are also covered.

Signature of Debtor (or Assignor)

Signature of Secured Party (or Assignee)

Editor's Note.—Subsection (3) is set out in the Supplement to correct a typographical error appearing in the replacement volume.

§ 25-9-403. What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer.

(4) A filing officer shall mark each statement with a consecutive file number and with the date and hour of filing and shall hold the statement for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(1967, c. 562, s. 1.)

Editor's Note. — The 1967 amendment, effective at midnight June 30, 1967, deleted the former third sentence of subsection (4), relating to the filing or recording of an instrument covering fixtures. See Editor's note to § 25-1-201.

As the rest of the section was not changed by the amendment, only subsection (4) is set out.

§ 25-9-404. Termination statement.

(4) Repealed by Session Laws 1967, c. 562, s. 1, effective at midnight June 30, 1967. (1945, c. 182, s. 5; c. 196, s. 3; 1961, c. 574; 1965, c. 700, s. 1; 1967, c. 562, s. 1.)

Editor's Note. — The 1967 amendment, effective at midnight June 30, 1967, deleted former subsection (4), relating to termination of a financing statement or security agreement by presenting the original statement or agreement or an executed dupli-

Note Held to Supply Time of Termination.—Where the registration of a note and contract of assignment, one being contemporaneous with the other, was one act, the failure to state a time of termination in the contract would be supplied by the date stated in the note. In the Matter of Dail, 257 F. Supp. 326 (E.D.N.C. 1966).

cate marked paid and satisfied. See Editor's note to § 25-1-201.

As subsections (1) through (3) were not affected by the amendment, they are not set out.

§ 25-9-405. Assignment of security interest; duties of filing officer; fees.

(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement. The uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be a minimum charge of two dollars (\$2.00) up to and including the first two pages and one dollar (\$1.00) per page for all over two pages.

(1967, c. 24, s. 23.)

Editor's Note.—The 1967 amendment, originally effective Oct. 1, 1967, substituted "two" for "three" near the end of subsection (2). Session Laws 1967, c. 1078, amends the 1967 amendatory act so as to make it effective July 1, 1967.

As the rest of the section was not changed by the amendment, only subsection (2) is set out.

§ 25-9-406. Release of collateral; duties of filing officer; fees.—A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. Upon presentation of such a statement to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release shall be a minimum charge of two dollars (\$2.00) for up to and including the first two pages and one dollar (\$1.00) per page for all over two pages. (1965, c. 700, s. 1; 1967, c. 24, s. 25.)

Editor's Note.—The 1967 amendment, originally effective Oct. 1, 1967, inserted "per page" near the end of the section.

Session Laws 1967, c. 1078, amends the 1967 amendatory act so as to make it effective July 1, 1967.

§ 25-9-407. Information from filing officer.

(2) Upon request of any person, the filing officer shall issue his certificate for which he shall not be liable showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be two dollars (\$2.00) plus one dollar (\$1.00) for each financing statement and for each statement of assignment reported therein. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of one dollar (\$1.00) per page. (1965, c. 700, s. 1; 1967, c. 562, s. 1.)

Editor's Note. — The 1967 amendment, effective at midnight June 30, 1967, added the first and second sentences of subsection (2). See Editor's note to § 25-1-201.

As subsection (1) was not changed by the amendment, it is not set out.

§ 25-9-408: Repealed by Session Laws 1967, c. 562, s. 1, effective at midnight June 30, 1967.

Cross Reference.—See Editor's note to § 25-1-201.

PART 5.

DEFAULT.

§ 25-9-504. Secured party's right to dispose of collateral after default; effect of disposition.

Public or Private Sale.—The Uniform Commercial Code specifically authorizes the disposition of collateral by either public or private proceedings. *Associates Financial Servs. Corp. v. Welborn*, 269 N.C. 563, 153 S.E.2d 7 (1967).

The statement in the North Carolina Comment to the Uniform Commercial Code appended to this section that "under prior law . . . a public sale had to be held," is not correct, and the authorities cited do not sustain this assertion. *Associates Financial Servs. Corp. v. Welborn*, 269 N.C. 563, 153 S.E.2d 7 (1967).

A provision in a conditional sales contract for private sale of the chattel after default and repossession, is not contrary to statute or public policy of this State, and is valid. *Associates Financial Servs. Corp. v. Welborn*, 269 N.C. 563, 153 S.E.2d 7 (1967).

A stipulation in a chattel mortgage or conditional sales agreement authorizing the creditor to sell the personal property described therein at private sale violated no statute or public policy of this State. *Appliance Buyers Credit Corp. v. Mason*, 269 N.C. 567, 153 S.E.2d 3 (1967) (decided un-

der § 45-21.38 prior to the 1967 amendment thereto).

An authorization in a chattel mortgage or conditional sales agreement permitting a private sale of the personal property, does not relieve the mortgagee, in taking possession of and selling the property, from the duty of acting in the utmost good faith. *Appliance Buyers Credit Corp. v. Mason*, 269 N.C. 567, 153 S.E.2d 3 (1967) (decided under § 45-21.38 prior to the 1967 amendment thereto).

In order to recover a deficiency judgment under a conditional sales contract, plaintiff had to allege and prove facts showing (1) that defendant executed and delivered to him or his assignor the contract upon which he sued; (2) that defendant was in default under the terms of the contract; (3) lawful repossession and sale of the property or facts establishing the impossibility of such repossession and sale; (4) the application of the proceeds of the sale; and (5) the amount of the deficiency. *Associates Financial Servs. Corp. v. Welborn*, 269 N.C. 563, 153 S.E.2d 7 (1967) (construing § 45-21.38 prior to the 1967 amendment thereto).

§ 25-9-504.1. Payment of surplus to clerk. — (1) Any surplus remaining after the application of the proceeds of the sale or other disposition as set out in § 25-9-504 (1) and (2) shall be paid to the person or persons entitled thereto, if the party who made the sale knows who is entitled thereto. Otherwise, the surplus shall be paid to the clerk of the superior court of the county where the

sale or other disposition was held, if the disposition took place in this State. If the sale or other disposition took place outside this State, then the secured party or person making the sale or other disposition shall pay said surplus money to the clerk of superior court of any county in this State in which the secured party or other party conducting the said sale or disposition does business. Said payment discharges the secured party from liability to the extent of the amount so paid. Said clerk of superior court shall accept such surplus from said secured party and shall execute a receipt therefor.

(2) Said clerk of superior court is liable on his official bond for the safekeeping of money so received until it is paid to the party or parties entitled thereto, or until it is paid out under the order of a court of competent jurisdiction. (1967, c. 562, s. 3.)

Editor's Note. — Section 10, c. 562, Session Laws 1967, makes the act effective at midnight June 30, 1967. See Editor's note to § 25-1-201.

§ 25-9-504.2. Special proceedings to determine ownership of surplus.—(1) A special proceeding may be instituted before the clerk of superior court by any person claiming any portion of the surplus paid into the clerk's office under § 25-9-504.1, to determine who is entitled thereto.

(2) All other persons who have filed with the clerk notice of their claim to the aforesaid surplus or any part thereof, or who, as far as the petitioner(s) know, asserts any claim to said surplus or any part thereof, shall be made defendants in the proceeding.

(3) If any answer is filed raising issues of fact as to the ownership of the surplus (money), the proceeding shall be transferred to the civil issue docket of the district or superior court for trial.

(4) The court may, in its discretion, allow a reasonable attorney's fee for any attorney appearing in behalf of the party or parties who prevail, to be paid out of the funds in controversy, and shall tax all costs against the losing party or parties who have asserted a claim to the fund by petition or answer. (1967, c. 562, s. 3.)

Editor's Note. — Section 10, c. 562, Session Laws 1967, makes the act effective at midnight June 30, 1967. See Editor's note to § 25-1-201.

§ 25-9-508. Application of statute of limitations to serial notes.—When a series of notes maturing at different times is secured by a security agreement and the exercise of the power of sale or foreclosure for the satisfaction of one or more of the notes is barred by the statute of limitations, that fact does not bar the exercise of the power of sale or foreclosure for the satisfaction of indebtedness represented by other notes of the series not so barred. (1967, c. 562, s. 3.)

Editor's Note. — Section 10, c. 562, Session Laws 1967, makes the act effective at midnight June 30, 1967. See Editor's note to § 25-1-201.

§ 25-9-509. Power of sale barred when foreclosure barred.—(1) Except as provided in subsection (2), no person shall exercise any power of sale contained in any security agreement, or provided by statute, when an action to foreclose the lien contained in said security agreement is barred by the statute of limitations.

(2) If a sale pursuant to a power of sale contained in a security agreement, or provided by statute, is commenced within the time allowed by the statute of limitations to foreclose the lien of such security agreement, the sale may be completed, although such completion is effected after the time when commencement of an action to foreclose would be barred by the statute. For the purpose of this section, a sale is commenced when the notice of public sale is first posted or published as provided in this article. (1967, c. 562, s. 3.)

Editor's Note. — Section 10, c. 562, Session Laws 1967, makes the act effective at midnight June 30, 1967. See Editor's note to § 25-1-201.

PART 6.

PUBLIC SALE PROCEDURES.

§ 25-9-601. **Disposition of collateral by public sale.**—Disposition of collateral by public proceedings as permitted by § 25-9-504 may be made in accordance with the provisions of this part. The provisions of this part are not mandatory for disposition by public proceedings, but any disposition of the collateral by public sale wherein the secured party has substantially complied with the procedures provided in this part shall conclusively be deemed to be commercially reasonable in all aspects. (1967, c. 562, s. 3.)

Editor's Note.—Section 10, c. 562, Session Laws 1967, makes the act effective at midnight June 30, 1967. See Editor's note to § 25-1-201.

§ 25-9-602. **Contents of notice of sale.**—The notice of sale shall substantially:

- (a) Refer to the security agreement pursuant to which the sale is held;
- (b) Designate the date, hour and place of sale consistent with the provisions of the security agreement and the provisions found in part 6 of article 9 of chapter 25 of the General Statutes;
- (c) Describe personal property to be sold substantially as it is described in the security agreement pursuant to which the power of sale is being exercised, and may add such further description as will acquaint bidders with the nature of the property;
- (d) State the terms of the sale provided by the security agreement pursuant to which the sale is held, including the amount of the cash deposit, if any, to be made by the highest bidder at the sale;
- (e) Include any other provisions required by the security agreement to be included therein; and
- (f) State that the property will be sold subject to taxes and special assessments if it is to be so sold. (1967, c. 562, s. 3.)

Cross Reference.—See Editor's note to § 25-9-601.

§ 25-9-603. **Posting and mailing notice of sale.**—(1) In each public sale conducted hereunder, the notice of sale shall be posted on a bulletin board provided for the posting of such legal notices, in the courthouse, in the county in which the sale is to be held, for at least five days immediately preceding the sale.

(2) In addition to the posting of notice required by subsection (1), the secured party or other party holding such public sale shall, at least five days before the date of sale, mail by registered or certified mail a copy of the notice of sale to each debtor obligated under the security agreement:

- (a) At the actual address of the debtors, if known to the secured party, or
- (b) At the address, if any, furnished the secured party, in writing, by the debtors, or otherwise at the last known address.

(3) In addition to mailing a copy of the notice of sale to each debtor, the secured party or other party holding such sale shall, except in the case of consumer goods, also mail a copy of said notice by registered or certified mail to any other secured party and any other party who has filed with him a written request for such notice, at the address set forth in said request for notice. (1967, c. 562, s. 3.)

Cross Reference.—See Editor's note to § 25-9-601.

§ 25-9-604. **Exception as to perishable property.**—If, in the opinion of a secured party about to conduct a public sale of personal property hereunder, the property is perishable because subject to rapid deterioration or threatens to decline speedily in value, he may report such fact, together with a description of

the property to the clerk of the superior court of the county in which the property is to be sold, and apply for authority to sell the property at an earlier date than is provided in this article. Upon the clerk's determination that the property is such perishable or speedily depreciating property, he shall order a sale thereof to be held at such time and place and upon such notice, if any, as he deems advisable. (1967, c. 562, s. 3.)

Cross Reference.—See Editor's note to § 25-9-601.

§ 25-9-605. Postponement of public sale.—(1) Any person exercising a power of sale or conducting a public sale hereunder may postpone the sale to a day certain not later than six days, exclusive of Sunday, after the original date for the sale:

- (a) When there are no bidders, or
 - (b) When, in his judgment, the number of prospective bidders at the sale is substantially decreased by inclement weather or by any casualty, or
 - (c) When there are so many other sales advertised to be held at the same time and place as to make it inexpedient and impracticable in his judgment, to hold the sale on that day, or
 - (d) When he is unable to hold the sale because of illness or for other good reason, or
 - (e) When other good cause exists.
- (2) Upon postponement of a public sale, the person exercising the power of sale shall personally, or through his agent or attorney:

- (a) At the time and place advertised for the sale, publicly announce the postponement thereof, and
- (b) On the same day, attach to or enter on the original notice of sale or a copy thereof, posted on the bulletin board provided therefor, as provided by G.S. 25-9-603, a notice of the postponement.

- (3) The posted notice of postponement shall:
 - (a) State that the public sale is postponed,
 - (b) State the hour and date to which the public sale is postponed,
 - (c) Substantially state the reason for the postponement, and
 - (d) Be signed by the person authorized to hold the public sale, or by his agent or attorney.

(4) If a public sale is not held at the time fixed therefor and is not postponed as provided by this section, or if a postponed sale is not held at the time fixed therefor, the person authorized to hold the public sale may readvertise the property in the same manner as he was required to advertise the sale which was not held, and may hold a public sale at such later date as is fixed in the new notice of sale. (1967, c. 562, s. 3.)

Cross Reference.—See Editor's note to § 25-9-601.

§ 25-9-606. Procedure upon dissolution of order restraining or enjoining sale.—(1) When, before the date fixed for a sale, a judge dissolves an order restraining or enjoining the sale, he may, if the required notice of sale has been given, as provided in G.S. 25-9-603, provide by order that the public sale shall be held without additional notice at the time and place originally fixed therefor; or he may, in his discretion, make an order with respect thereto as provided in subsection (2).

(2) When, after the date fixed for a public sale, a judge dissolves an order restraining or enjoining said sale, he shall, by order, fix the time and place for the sale to be held upon notice to be given and in such manner and for such length of time as he deems advisable. (1967, c. 562, s. 3.)

Cross Reference.—See Editor's note to § 25-9-601.

§ 25-9-607. **Disposition of proceeds of sale.**—The proceeds of any sale or other disposition of the collateral shall be applied by the person making the sale in the manner prescribed by § 25-9-504 (1) and (2), § 25-9-504.1 and § 25-9-504.2. (1967, c. 562, s. 3.)

Cross Reference.—See Editor's note to § 25-9-601.

ARTICLE 10.

Effective Date and Repealer.

§ 25-10-101. **Effective date.**

Editor's Note.—For a symposium on the Uniform Commercial Code in North Carolina, see 44 N.C.L. Rev. 525 (1966).

§ 25-10-102. **Specific repealer; provision for transition.**

Editor's Note.—For article concerning the Uniform Commercial Code, see 44 N.C.L. Rev. 322 (1966).

§ 25-10-105: Repealed by Session Laws 1967, c. 562, s. 3, effective at midnight June 30, 1967.

Cross Reference.—See Editor's note to § 25-1-201.

§ 25-10-107: Repealed by Session Laws 1967, c. 562, s. 5, effective at midnight June 30, 1967.

Cross Reference.—See Editor's note to § 25-1-201.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

November 1, 1967

I, Thomas Wade Bruton, Attorney General of North Carolina, do hereby certify that the foregoing 1967 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

THOMAS WADE BRUTON
Attorney General of North Carolina

