Creditors Rights (1959-1967)

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CREDITORS RIGHTS

1. The First National Bank of Ironclad was the holder of an unsecured note in the amount of $10,000, signed by Muskrat. Upon the bank's request Muskrat executed a deed of trust upon an unimproved lot to secure this debt, which deed of trust was immediately recorded. Muskrat then undertook to erect a building upon this lot. He employed Shoestring Construction Co., a general contractor, to erect the building. Shoestring completed the construction of the building and, upon Muskrat's failure to pay, perfected a mechanic's lien in the amount of $10,000 within the requisite sixty-day period. Muskrat has become insolvent. In an appropriate suit to enforce the mechanic's lien, the court fixed the value of the vacant lot as of the date of sale at $5,000. At the sale the property brought $12,000.

As between Bank and Shoestring, how should the purchase price be divided?

(CREDITORS RIGHTS) V§43-21 the recorded deed of trust of the unimproved land is a first claim on the land and a second claim on subsequently erected buildings, and the mechanic's lien is a first claim on the improvements that gave rise to the lien and a second claim on the land reasonably necessary for the proper enjoyment of the building. So Bank receives $5,000 and Shoestring receives $7,000.

2. In 1955, Ghastly bought an orchard in Clarke County, Va., subject to a certain deed of trust for $20,000, which deed of trust had been executed a number of years previously to secure a note, in the same amount, payable to Shark. As a part of the purchase price, Ghastly assumed and bound himself to pay the balance due on the $20,000 note, with interest as it became due. During his lifetime Ghastly made payments on the note with the result that at the time of his death in 1958, the total amount of the indebtedness had been reduced to $16,000. The orchard was devised to Fiend by Ghastly's will, the will making no specific mention of the indebtedness of Ghastly on the note secured by the deed of trust, nor did the will direct the executor to pay the note. Fiend contends that the balance due on the note secured by the deed of trust should be paid out of Ghastly's personal estate. The general legatees of Ghastly's personal estate contend that the real estate remained the principal source for the payment of the lien indebtedness and that the personal estate was only secondarily liable therefor. A suit in equity has been filed in the Circuit Court of Clarke County for determination of this question.

How should the court rule?

(CREDITORS RIGHTS--WILLS) Fiend is correct. A secured debt is a debt and the first property taken to pay debts (unless the deceased provides otherwise) is personal property at large not otherwise disposed of. Fiend is a specific devisee and a specific devise is the last thing taken to pay debts. See 185 Va.160 on p.1707 of Wills in these Notes.
8. Groundhog, a farmer, obtained a $25,000 loan from Merchants Bank, for which he executed his note, payable in 60 days, with his brother, Ferret, as accommodation endorser. Later Ferret learned that Groundhog was insolvent and he induced Groundhog to execute a deed of trust on his house to secure Ferret as endorser on said note. Said trust was promptly recorded. At the time he obtained the loan from Merchants Bank, Groundhog had a number of unsecured creditors. Upon learning of the trust that Groundhog had given upon his property to Ferret, the unsecured creditors consulted you and inquire whether the deed of trust to Ferret may be successfully attacked as voluntary and fraudulent and as creating a preference. What would you advise?

(CREDITORS RIGHTS) I would advise that it could not be attacked. The debt is a real one as the accommodation endorser is liable and will have to pay. It makes no difference whether Groundhog secures the Bank or the endorser. At common law one may prefer one bona fide creditor to another. Since Groundhog is a farmer he cannot be thrown into involuntary bankruptcy and the provisions of the Bankruptcy Act concerning preferences have no application. See 200 S.E.629,633 on p.200 of Bankruptcy Cases in these notes.

1. Ver Shiftless was an electrician at the Naval Shipyard in Portsmouth, Virginia, earning $85 a week. In August, 1959, as a gesture of brotherly love, he delivered to his unmarried sister, Neva Shiftless, a birthday gift of ten U.S. bonds payable to bearer, each in the denomination of $100. At that time, his financial affairs were in good order, although he owed Grocer a bill of $200. In September, Shiftless fell out of bed at home, seriously injuring his back. The bill of Hospital was so great that he was unable to meet his obligations and became hopelessly insolvent.

Both Grocer and Hospital desire to subject the bonds to payment of their respective debts, and they ask you (a) whether the gift was void as to Grocer, (b) whether the gift was void as to Hospital, and (c) whether in a suit to set aside the gift Shiftless could successfully plead as a defense that they had not obtained judgments against him. How should you advise them as to (a), (b), and (c)?

(CREDITORS RIGHTS) (a) The gift is void as to Grocer. By Va §55-81 voluntary gifts are void as to those creditors of the donor who are owed debts at the time of the gift, regardless of the solvency or insolvency of the donor at that time. (b) The gift is not void as to Hospital, as Hospital was not then a creditor of Shiftless, nor was the gift made to defraud anticipated creditors. (c) By Va §55-82 no judgment need be obtained as a condition precedent to avoid the gift.
June 1960.

1. Debtor owned and operated Blackacre, a large dairy farm in Wythe County, Va. On January 2, 1958, he executed a deed of trust on Blackacre to secure Adams $10,000, which was promptly and duly recorded.

At the April, 1959, term of Wythe Circuit Court, Best obtained a judgment against Debtor for $5,000. This judgment was not docketed, and at the June, 1959, term of this court, Clark obtained and docketed a judgment for $8,000. On August 4, 1959, Davis, to whom Debtor owed a note for $7,500, asked Debtor to secure this note or pay it. Debtor said: "I can't pay it but I will give you a deed of trust. There is one deed of trust on the farm now and some judgments against me. You can look about these at the Courthouse but I will give you the deed of trust." The next day Davis went to the Clerk's Office and found that the Best judgment had been obtained but that it was not docketed. He made no further investigation or inquiry and that day Debtor executed the deed of trust to secure the $7,500 note. This deed of trust was promptly recorded. Debtor also owed $10,000 in open accounts.

Which, if any, of these debts are liens against Blackacre and what is their priority?

Applying the following principles:
(a) Where everything else is equal prior in time is prior in right,
(b) Docketing is not necessary as between creditors,
(c) One who purchases land (and a deed of trust creditor is a purchaser) with actual notice of a prior lien takes subject thereto, and
(d) While judgment creditors have liens, open account general creditors do not, we find that all of the debts, except the open account ones, are liens against Blackacre and that the order of priority is Adams, Best, Clark, and Davis.

Q.1 on p.500 (Creditors Rights). The former rule that docketing is unnecessary as between creditors is no longer law due to a change in V.B.-386 to the effect that a judgment is not a lien on realty until it is recorded (docketed) on the judgment lien docket of the clerk's office of the county or city in which the land is situated. The Adams lien is first because it is a duly recorded first deed of trust, Clark is second because he has docketed his judgment thereby giving constructive notice to subsequent parties, Davis is next because of his duly recorded second deed of trust. So far Best and the open account creditors are on a par, but if Best docketed his judgment he will have priority as of that time unless in the meantime other liens have been perfected.

3 December 1960

Will Worker worked for a number of years in a small store in Lynchburg, Va. He had managed to put his only son through college and had built up a small savings account. He now yearned to lead a more exciting life. Fast buck, a friend who lived on the Eastern Shore of Virginia, induced Will to invest in his racing stable. Will Worker, using the $6,000 he had in the bank and $4,000 he borrowed from his son, invested $10,000 in the stable. The venture was prosperous for a while, but then began to fail. Will Worker soon realised he was insolvent in the sense that he didn't have the present ability to pay his creditors if they pressed for prompt payment, but he felt reasonably sure his creditors would forebear. Will Worker owned a small farm in Campbell County Virginia, which was valued at $4,000, and which he conveyed to his son in satisfaction of the debt due him, saying, "In case I go broke I want to make sure you get paid."

Henry Smith, a creditor of Will Worker learned of the conveyance to Son, and within sixty days of same filed a bill in equity in the proper jurisdiction to have the above conveyance set aside and declared null and void on the ground that it was in fraud of Will's creditors. Will's son comes to you seeking advice. What would you advise him?

Advising him that his father had the right to prefer one bona fide creditor over another creditor even if his father was not acting in good faith. There is nothing fraudulent in paying and receiving what is honestly due. (Note that the question asks nothing about possible bankruptcy proceedings.) Q. M.J., Fraudulent and Voluntary Conveyances #41.
2. Ben Needy owned considerable rental real estate in Lexington, Virginia. His personal property consisted mainly of household effects and he relied upon his rentals for his sustenance. Joe Able was a man of considerable means, his fortune consisting of securities inherited from his father, which he had successfully managed and controlled for a number of years. Needy and Able were close friends, cognizant of the financial condition of each other, and shared each other's confidence.

Ben Needy wished to improve his Lexington properties for the two-fold purpose of their preservation and an increase of their rental values, but found that he needed considerable money to accomplish this. Knowing that some of Joe Able's securities yielded him less than five per cent interest, Ben Needy suggested to Joe Able that it would be to their mutual interest for Able to sell some of these securities and lend him the money which he needed at six per cent interest. Able agreed to this.

A year later, and before the indebtedness was discharged, Ben Needy died. Upon learning that Needy's personal estate is insufficient to pay off the debt, Able files a bill in equity praying that enough of Needy's real estate be sold to satisfy the debt. Needy's heirs defend on the ground that the rents and profits from the realty will satisfy the debt within five years, and hence the property should not be sold. What should be the result of this suit? (CREDITORS RIGHTS) Able should win. This is not a bill to enforce the lien of a judgment brought under Va. 80-301 in which case the defense stated would be valid, but a creditor's suit to subject land of the deceased to his general debts. See 177 Va. 417

1. In February of 1960, an automobile driven by Hyram Jones collided with one driven by John Apple at the intersection of Ninth and Main Streets in the City of Richmond. Each party claiming the other was at fault, no settlement of the controversy could be made. On Nov.3, 1960, Apple brought an action against Jones in the Law an Equity Court of the City of Richmond seeking damages of $50,000 allegedly sustained by him as a result of the collision. Jones promptly filed a counterclaim asking damages of $60,000. In January of 1961 Jones, being advised by his lawyer that he had a fifty per cent chance of winning the case, by the execution and delivery of appropriate instruments made a gift to his wife Sally of all his property, excepting only his interest in the home place which was held by him and Sally as tenants by the entirety. On June 8, 1961, the case between Apple and Jones was tried and the jury returned its verdict for Apple in the sum of $15,000. On this verdict, judgment was duly entered.

Apple, having learned of the gift made by Jones to Sally, and understanding that Jones has insufficient assets to satisfy the judgment, asks your advice on what grounds, if any, he might bring a suit in equity to have the gift made by Jones to Sally set aside. What should you advise him? (CREDITORS RIGHTS) Apple may have the gift set aside on either or both of two grounds. It was a fraudulent conveyance since: made with the intention of hindering, delaying, or defrauding creditors, and it was a voluntary conveyance void as to existing creditors by statute (Va.55-31) whether or not he retained sufficient assets and whether or not the claim against him was liquidated or unliquidated.

3 June 1961.

Q. 1 on p.502(b) The law stated in this portion of the answer is changed by the U.C.C. which allows a security interest in inventory (shifting stock of merchandise) provided that a proper financing statement is filed. Even if such a statement is filed, a purchaser of inventory in the ordinary course of the seller's business is protected even if the purchaser has actual knowledge of the security interest.
Thomas Tobias owed many debts totalling $30,000. Tobias made a general assignment for the benefit of his creditors, conveying to a trustee all of his property. The property held by the trustee was sufficient in value to pay all of Tobias' debts, including the cost of any suit that might be brought to enforce and administer the trust. The trustee failed to act with promptness in the administration of the trust and, therefore, one of Tobias' creditors, instituted a chancery suit for the purpose of enforcing the trust. The other creditors were made parties to this suit, and the litigation was protracted. During the pendency of the suit, Tobias' wife died testamentary and by her will she devised to her husband all of her real estate having a value of $25,000. Shortly after her death, and before the conclusion of the chancery suit to enforce the trust, Hobson obtained a judgment against Tobias and sought to enforce satisfaction of the judgment by a suit instituted for the purpose of selling the real estate acquired by Tobias from his wife. Tobias consults you and inquires whether Hobson may maintain the suit to sell the land acquired by him from his wife in view of the pendency of the prior suit against the trustee to enforce the trust for the benefit of Hobson and the other creditors.

1. In the absence of a statute controlling the rights of the parties what would you advise?

(creditors' rights) I would advise Tobias that Hobson is acting properly. When Hobson became a judgment creditor he obtained a lien on Tobias' after-acquired realty. He can enforce his lien on this reality whether or not he has other methods of collecting as long as he does not receive more than his debt from both sources. Even if the doctrine of election did apply, it would not be applicable here as the original circumstances have changed. He could not be expected to elect whether he would go after the trustee, or after the land until Tobias had the latter. See 99 Va. 163.

Mark, one of Barter's chief creditors, had recently obtained judgment against Barter and had levied on the automobiles. Learning of Barter's transactions with General Motors and Mrs. Ford, Mark consulted you and asked you what rights, if any, he has enforceable in the State court (a) against General Motors and (b) to set aside the Henrietta Ford deed of trust. How should you advise him as to (a) and (b)?

(creditors' rights) (a) As far as State law is concerned a debtor may prefer one bona fide creditor over another, so that Mark has no remedy against General Motors in a State court. (b) A deed of trust on a shifting stock of merchandise is void in Virginia as to purchasers in due course and creditors. Mrs. Ford, by leaving Barter in charge has given him the power to sell off the merchandise and defeat all creditors. From Levy v. Lee, 3 Rand. 110, decided in 1825, until the present time, it has been uniformly held by this court that such a mortgage is on a stock of goods, wares and merchandise which contains provisions adequate to defeat its purposes, is null and void as against creditors and purchasers of the grantor. The cases are too numerous to cite. Judge Burks in Boice v. Finance etc. 127 Va. 563.
Bass averred that he had obtained a judgment against Trout, in the sum of $6,000, in the County Court of Culpeper County, and that said judgment had been duly docketed in the judgment lien docket of the Circuit Court of that County. An abstract of said judgment was filed with the bill of complaint as an exhibit. The lien creditors of Trout, who had been made parties defendant, answered the bill of complaint and joined in the prayer thereof that the cause be referred to a Master Commissioner in Chancery to ascertain and report the lien debts in the order of their priorities, and that the real property of Trout, subject to the liens of his creditors, be sold for the payment of the lien debts.

Trout demurred to the bill of complaint upon the ground that the alleged judgment of the plaintiff in the amount of $6,000 was void, and that the court was without jurisdiction to entertain the suit. The trial court overruled the demurrer, and the cause was referred to a Master Commissioner who reported the liens in the order of their priorities, and that the rents and profits would not pay the debts in five years. Among debts reported as liens was the $6,000 claim of Bass.

Upon exceptions to the Commissioner's report, the trial court held that the judgment obtained by Bass was void, but awarded judgment to Bass for $6,000 in the creditor's suit, as it appeared to the court from evidence returned with the Commissioner's report that Trout was indebted to Bass in the sum of $6,000. The court further decreed the sale of Trout's properties and directed that the net proceeds of the sale be applied to the payment of all of Trout's lien creditors, including the claim of Bass. Upon an appeal to the Supreme Court of Appeals Trout contended:

(a) That the demurrer should have been sustained on the ground that the court was without jurisdiction to entertain the suit at the instance of Bass;
(b) That the trial court erred in awarding judgment to Bass; and
(c) That the court erred in decreasing the sale of Trout's properties.

How should the court rule on each of these contentions?

1. Jones, unmarried, owns (1) a residence, (2) shares of stock in a Virginia corporation, and (3) a savings account in a local bank. He owes your client $3,000, evidenced by a past due note.

How, if at all, may this property be subjected to the payment of client's debt, assuming that both your client and Jones are residents of Virginia.

(CREDITORS RIGHTS) Get a judgment against Jones. This judgment is a lien on his residence. File a bill in equity to enforce the lien of the judgment. See VaR 391. As to the shares of stock they may be levied upon and seized or, they may be reached by equitable process aided by injunction if needed. See Burks Pleading and Practice (6th Ed.) pp. 651, 692 and VaR 1-413 and 415. The bank account may be reached by garnishment proceedings.
Waynesboro, Rexall learned that on November 29th, Geoffrey Chaucer advertised the merchandise for sale at public auction on December 16th. Rexall promptly brought a suit against both Chaucer and the Sheriff in the Circuit Court of the City of Waynesboro in which his bill in chancery alleged the foregoing facts, and prayed that an injunction be granted to prevent the Sheriff’s sale of the merchandise. Chaucer and the Sheriff have each demurred to the bill. How should the demurrers be sustained?

(creditors' rights) The demurrers should be sustained. The chattel mortgage was void as to Pepys’ creditors because it allowed Pepys to keep full control of the property and sell it in the regular course of business. Under such circumstances there is no reason why Rexall should be any better off than Pepys’ other creditors. Benedict v. Hatner 228 U.S.353.
Spector owns a farm worth $10,000, a television set worth $700, an automobile worth $8,000, and a diamond brooch worth $1,000. He owes Small Loan Co. $300, has doctors' bills amounting to $500, and unpaid grocery bill of $600, and he owes Discount House, Inc., $3,000. None of these creditors have reduced their claims to judgment. Discount House, Inc., threatens to commence an action to recover the $3,000 due it, and to avoid this action Spector transferred to Discount House, Inc., the title of his automobile in exchange for a release and satisfaction of this obligation. Spector, out of love and affection, gave his daughter the diamond brooch and, in order to put his farm beyond the reach of his creditors, he conveyed his farm to his son in exchange for the son's worthless shares of stock in the Tcvnerville Trolley Railway Company, a defunct corporation. Six months after all of the foregoing transactions, Frank Foolish lent to Spector $3,000, and thereafter Spector made a gift of his television set to his own wife. Soon thereafter Foolish demanded payment of the $3,000 and was shocked to learn that Spector had no assets. Foolish consulted you and inquires whether he may reach any of the assets formerly owned by Spector. What would you advise?

(CREDITORS RIGHTS) I would advise the Foolish can reach the television set that Spector gave to his wife as such a voluntary gift is void in Virginia as to existing creditors whether or not the donor is still solvent after having made the gift. He can also reach the $10,000 farm as that was conveyed with intent to defraud creditor and is void in Virginia as to all creditors whether present or subsequent. He cannot reach the diamond brooch because he was not a creditor of Spector at that time. He cannot reach the automobile because in Virginia one has the right to prefer one bona fide creditor to another. See §8096 and 1096 of Minor on Real Property.

2. Loan and Savings Bank, Inc., recovered a judgment in the Circuit Court of Albemarle County, Va., against William Frail in the sum of $12,000, and asks you, requesting that you advise whether the judgment is collectible. Upon investigation you find that Frail owns no property, but that six months before you were consulted he was struck by an automobile while walking on a sidewalk in Charlottesville, and as a result he sustained serious bodily injuries. The operator of the automobile was Maggie Smith, Frail's mother-in-law, a wealthy widow. Upon reporting your findings to Loan and Savings Bank, Inc., you are asked whether the Bank may take any action against Maggie Smith to enforce collection of its judgment against Frail. What would you advise?

(CREDITORS RIGHTS) I would advise that Bank has no recourse against Maggie Smith. A cause of action for personal injuries cannot be assigned, attached, or garnished but is purely personal in nature. See §57 of Banks Pleading and Practice.

3. Bill Crenshaw had been trading with Joe Dudley for several years by selling automobile tires and accessories to him. Dudley had one place of business, and a sign on the door read "Joe Dudley and Company—Discount Tires and Auto Accessories." Fred Finley, Dudley's father-in-law, in fact, owned the business, and Dudley was only paid a salary and commission, but there was no indication of this on the door or on any signs or stationery nor had there been publication of any notice or any recordation in any clerk's office. However, when Crenshaw first started dealing with Dudley, he asked why Dudley used the term "and Company," and Dudley said, "My father-in-law, Fred Finley, is really behind all this. I am just a lackey." The business fell so far behind in paying its debts owed to Crenshaw that Crenshaw brought suit and obtained a judgment against Joe Dudley on which execution was levied on all the property of the business and its accounts receivable. Fred Finley, thereupon, in proper proceedings, asserted his title to all the property, claiming to be the true owner thereof.

Is Crenshaw entitled to enforce his lien against the business property on his judgment against Dudley?

(CREDITORS RIGHTS) Yes. W §55-152 (the Traders Act) was not complied with by notices in writing posted in the store and publication of notice as set forth in the statute. Knowledge of the true situation is immaterial if there has been no compliance. See W §55-152 and annotations thereon.
3 June 1965.

1. Ambitious owned several building lots in the rapidly growing town of Boom, Va. Desiring to acquire more land Ambitious borrowed from Industrial Bank $20,000 and secured its repayment by a mortgage conveying to Industrial by metes and bounds description the building lots then owned by him and also "all other real estate which I, Ambitious, may acquire during the life of the mortgage". This mortgage was properly recorded. Later Ambitious bought an office building in Boom and while the foregoing mortgage securing Industrial was outstanding, sold it to Purchaser. Along came a depression and Ambitious was instituted to foreclose the mortgage on the lots and office building. Purchaser intervened and claimed that his title was superior to the rights of Industrial as to the office building. How ought the Court to hold? (CREDITORS RIGHTS) Purchaser's title is superior. The recorded mortgage, as far as the office building is concerned, is outside the chain of title and hence not constructive notice to Purchaser. He was under no duty to see whether or not Ambitious had mortgaged the office building before Ambitious had any interest therein. See 3 Glenn on Mortgages 401.

2. Debtor executed and properly recorded a deed of trust conveying Blackacre to secure Bank the payment of a loan evidenced by his note for $5,000 due one year after date. This debt was paid at maturity and the note was marked "cancelled" by Bank and delivered to Debtor. The deed of trust was not released of record. One year later Debtor, being in financial difficulties applied to Bank for another loan of $5,000 which was granted and the parties agreed that it should be secured by the old deed of trust and so endorsed to that effect on the note. Between the times of these two transactions Creditor had obtained and properly docketed a judgment against Debtor for $4,000. Debtor owned no property except Blackacre and it was worth only $5,000. What are the respective rights of Bank and Creditor as respects Blackacre or the proceeds from its sale? (CREDITORS RIGHTS) Creditor has priority over Bank. When the first $5,000 note was paid the debt was discharged and the security for it absolutely ceased. It was deed. Bank should have released the deed of trust, and cannot stand in a better position because of its failure to do what it should have done. See 1 Glenn on Mortgages 328.

3 December 1965

1. Blackacre, the home of H and W, had been acquired by them in 1960 as tenants by the entirety with the right of survivorship as it common law. In January 1965, they sold Blackacre to Richard Roe and H directed that the net proceeds of the sale be delivered to W, which was done. Because of an unsuccessful business venture, H had become very much involved and judgments were obtained against him in 1960. These judgment creditors have instituted suit against W to recover one-half of the net proceeds of the sale of Blackacre contending that the payment to her of H's part of the proceeds was a fraud on his creditors and that they could collect the share that H had given W.

W consults you and wants to be advised as to whether she can successfully defend the action. What advice would you give her? (CREDITORS RIGHTS) Yes, she can successfully defend the action. Property held as tenants by the entirety is liable only for the joint debts of husband and wife. The proceeds arising from the sale of such property are not held as tenants by the entirety. A gift of property by a debtor which is not subject to his debts cannot be a fraud on his creditors.
2. Debtor borrowed $15,000 from A and gave as security a deed of trust on his farm in Roanoke County, Va. Although the deed of trust recited that the indebtedness was evidenced by a promissory note of even date executed by Debtor for $15,000, payable to A 90 days after date, no such note was ever delivered to A. The deed of trust was properly signed, acknowledged and delivered by Debtor to A on the day he received the money, and A duly recorded it that day in the Clerk's Office of the Circuit Court of Roanoke County.

Sixty days later X secured a judgment against Debtor for $25,000 which was duly docketed in the Clerk's Office of the Circuit Court of Roanoke County. Shortly thereafter X instituted a suit in the proper court to sell the farm in satisfaction of the judgment he had secured against Debtor. The court has referred the matter to you as a commissioner in chancery to ascertain the liens against the farm and their respective priorities. The farm was worth only $30,000. X has contended in this proceeding that A's deed of trust was void, as no note or bond evidencing the $15,000 indebtedness had been delivered to A.

How ought you to report on the validity and priority of the asserted liens of A and X?

(CREDITOR'S RIGHTS) A's deed of trust has priority. It is the debt that is secured—not the note evidencing the debt. Equity regards that as done which ought to have been done and will treat the transaction as if the note had been given.

3 June 1966.

1. John Pagram comes to see you and states that Mike Mack, a resident of Hanover County, owes him $2,500, which is due on an unsecured loan made by Pagram to Mack in 1964. Pagram also tells you that Mack has refused to pay the loan, and that the only asset owned by Mack is an underdeveloped and unencumbered parcel of land situated in Hanover County. He asks you what steps, if any, he may take to have Mack's land subjected to the payment of the $2,500 debt. What should your advice be?

(CREDITOR'S RIGHTS) Pagram should bring an action at law against Mack in the Hanover Court for $2,500. The judgment in this action will be a specific lien on all of Mack's land within Hanover County and Pagram can then file a bill in equity to enforce this lien. If the Chancellor determines that the rents and profits of all land subject to the lien will not satisfy the judgment within five years, he may order a sale of as much thereof as is necessary to discharge the judgment. (Note: Pagram must obtain a judgment but need not exhaust his remedies at law before proceeding against the land). 171 Va. 154, 176 Va. 16, Code #8-391.
Sells Auto Supply Distributor of Richmond, Va., had been trying to induce Byers Auto and Tire Shop, a retailer of Richmond, to purchase Sells' products consisting of hydraulic jacks of a special design for use in Byers' tire-selling operation and a new type non-skid automobile tire for resale to Byers' customers. Byers agreed to purchase two hydraulic jacks at a purchase price of $200 each with the understanding that he would try using them for thirty days to see if they fitted the needs of his operation, and if so, he would pay for them, and if not, they would be returned to Sells at no cost to Byers. Byers also agreed to purchase ten tires at a price of $30 each for sale to the public at $50 each with the agreement that if he could not sell all of the tires within thirty days, all unsold tires could be returned to Sells with Byers paying only for those that had been sold.

Sells delivered the two jacks with an invoice marked "Sale on Approval" and the ten tires with an invoice marked "On Consignment", these being the only documents of sale. Fifteen days after delivery, Sells made inquiry of Byers and was told that Byers' employees liked the jacks and that they apparently would do the job but Byers was not yet positive about purchasing the same, and Byers also advised that three tires had been sold. The next day Crenshaw, a judgment creditor of Byers, for an amount exceeding the value of all the property on the premises, levied on all of the property of Byers through proper proceedings. Sells, through proper proceedings, sought return of the two jacks or their value, and the seven tires or their value, plus $90.00 that being the amount for which three of the tires had been sold.

Is Sells entitled to: (a) return of the two jacks or value, (b) return of the seven tires or value, and (c) the payment of $90?

(a) Yes. Sells is entitled to return of the two jacks or value. 8.2-326(2)(UCC) when goods held on approval are not subject to the claims of the buyer's creditors until acceptance.

That Sells printed, "Sale on Approval" on his invoice is immaterial; however, this was a true "sale on approval" since the goods were delivered primarily for use within 8.2-326(1)(a), and not for resale.

(b) No. Sells is not entitled to the return of the seven tires or value.

8.2-326(3) when goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business, the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum". 8.2-326(2) ... goods held on sale or return are subject to such claims while in the buyer's possession.

(c) No. Sells is a general creditor, as the sale has taken place.
1. Creditor obtained a judgment for $30,000 against Debtor in the Circuit Court of Wise County, Va., on which an execution was promptly issued and placed in the hands of the sheriff of that County. The Clerk of the Court, however, failed to record the judgment on the judgment lien docket.

2. At the time the judgment was rendered, Debtor owned the following property: (1) a store house in Wise County worth approximately $10,000, (2) a residence in that County worth about $7,500, (3) a herd of cattle in Wise County worth about $10,000, and (4) a bond of Farmer for $15,000.

3. After the execution went into the hands of the sheriff and before its return day, Debtor (1) sold the store house for $9,500 cash to Merchant, who knew of the judgment; (2) conveyed the residence as a wedding present to his daughter, who knew nothing of the judgment; (3) sold the herd of cattle to Frazier, who knew nothing about the judgment, and in whose possession the cattle were at the time the sheriff levied on them pursuant to the execution and, (4) collected the bond from Farmer, who also knew of the judgment.

4. What are the rights, if any, of Creditor to subject the following property to the satisfaction of his judgment:

   (1) the store house, (2) the residence, (3) the cattle, and (4) what liability, if any, rests on Farmer?

5. (CREDITORS RIGHTS) (1) Every judgment for money is a lien on realty of which the defendant is possessed only from the time such judgment is recorded. V#B-306. Since Creditor's judgment was never recorded, no lien attached to Debtor's land.

6. Though a gift is not void as to subsequent creditors, it is void as to prior creditors. Hence creditor can reach the residence.

7. Creditor can get the cattle, as a writ of fieri facias on chattels binds those chattels from the time it is delivered to an officer to be executed. V#B-411.

8. No liability rests on Farmer. As against a person making a payment to a judgment debtor, a lien on intangibles shall not affect such person; unless and until he be given notice thereof in writing. V#B-432.