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Fixtures: Foreclosures of Land Contracts: Adjustment Between the Vendor in a Land Contract and a Chattel Mortgagee Claiming Possession of Fixtures

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use of income taxes in the State of Illinois, the Occupation Tax adopted, so closely resembled the income tax in many of its phases, that the Supreme Court was forced to write page upon page of legal reasoning to distinguish between the two.

E. O. E.

FIXTURES—FORECLOSURES OF LAND CONTRACTS—ADJUSTMENT BETWEEN THE VENDOR IN A LAND CONTRACT AND A CHATTEL MORTGAGEE CLAIMING POSSESSION OF FIXTURES.—The plaintiff contracted to sell the premises in question to one of the defendants. The vendor, according to the terms of the contract, put up a building which the vendee occupied. The vendee installed the bowling alleys and other equipment. The vendee had purchased the alleys on credit and had given a purchase money mortgage to the seller to secure the price of the alleys. The vendee, apparently, had satisfied that obligation, but had subsequently borrowed a sum of money from another creditor and had given to him a chattel mortgage on the bowling alleys to secure that loan. The plaintiff-vendor had no knowledge of the subsequent transaction and did not in fact give its consent. The defendant-vendee had carried insurance on the alleys in a policy separate from that covering the building. The vendee was in default on the land contract. The vendor sued to foreclose. The second chattel mortgagee, the only one in the case claimed the bowling alleys. The court entered a judgment of foreclosure and enjoined the defendants from removing the bowling alleys. *Held*, on appeal, judgment affirmed, the bowling alleys were fixtures and were covered by the plaintiff's title. *David G. Jones Co.* v. *Weed,* (Wis., 1934) 253 N.W. 181.

Bowling alleys when installed on the premises are fixtures. *Brunswick-Balke-C. Co.* v. *Franzke-Shiffman R. Co.,* 211 Wis. 659, 248 N.W. 178 (1933). In the most simple situation that means that, as between a grantor and a grantee, the grantor's interest in the premises and the fixtures is divested in favor of the grantee by a conveyance covering the premises. See *McConnell* v. *Blood,* 123 Mass. 47, 25 Am. Rep. 12 (1877); *Capehart* v. *Foster,* 61 Minn. 132, N.W. 257, 52 Am. St. Rep. 582 (1895); *Doll* v. *Guthrie,* 233 Ky. 77, 24 S.W. (2d) 947 (1930). As between the vendor in the land contract and the vendor who had furnished the fixtures, bowling alleys, or whatnot, to the proprietor-vendee on a conditional sale agreement or with a chattel mortgage back, the chattel vendor would be protected against the vendor in the land contract in the event of a default by the buyer on the chattel mortgage obligation or conditional sale agreement. *Campbell* v. *Roddy,* 44 N.J.Eq. 244, 14 Atl. 279, 6 Am. St. Rep. 889 (1889). He could take his bowling alleys out of the place provided he could do so without impairing the building. This result follows although the court may be willing to admit that the alleys or other equipment are fixtures. The court has to make an adjustment between two security claimants. The vendor ought not get more security than that for which he had bargained. Until the chattel vendor's claim is satisfied his security interest is dominant. When his claim is satisfied then the fixtures are covered by the other claimant's interest as the principal case has decided.

When security is given to a creditor by way of a mortgage covering the real estate after the equipment has been installed on credit, and the seller of the equipment has a recorded chattel mortgage or conditional sale agreement to secure his claim, the real property mortgagee without notice is protected. The chattel vendor will be enjoined from taking out the equipment if he tries to reach his security after the purchaser's default .The recording of his security instru-

ment is not constructive notice to the subsequent real property mortgagee. *Brunswicke-Balke-C. Co.* v. *Franzke-Shiffman R. Co.,* 211 Wis. 659, 248 N.W. 178 (1933); *Brennan* v. *Whittaker,* 15 Ohio St. 446 (1864); contra, see *In re Atlantic Beach Corp.,* 244 Fed. 828 (S.D., Fla., 1917); see Recent Decision 17 Marq. Law Rev. 231. The Uniform Conditional Sales Act provides that the conditional vendor of the fixtures may prepare a description of the premises and a description of the transaction which he may file with the register of deeds to protect his interest against the subsequent encumbrancers or purchasers of the premises. Section 122.07, Wis. Stats., 1933.

The principal case presents a situation where a subsequent creditor takes a chattel mortgage on the equipment instead of a real property mortgage on the premises. He has constructive notice from the record that the vendor is the last person in the chain of transfer. The alleys are fixtures. Technically the vendor has "title" to the premises; he has not yet executed a conveyance to the purchaser. The creditor should not take a mortgage on the bowling alleys as security for his loan without getting the consent of vendor whose claim covers the fixtures. There is nothing in the case to suggest estoppel. The dissenting judge points out that the proprietor of the bowling place, the vendee, had once arranged to sell the alleys with the plaintiff-vendor's consent, and that he was accustomed to carry insurance on the alleys as if they were seperate from the building. Unless the defendant creditor had known of those facts and had acted in reliance upon them there ought to be no estoppel.

J. C. Q.
V. X. M.

GUARDIAN AND WARD—LIABILITY OF GUARDIAN FOR FUNDS LEFT IN BANK WHICH BECOMES INSOLVENT—DEPOSIT OR INVESTMENT—The guardian, intrusted with $1,272.80, the ward's share of the proceeds of certain real estate, placed the funds on deposit in a bank. Inasmuch as the ward was to come of age twenty months later, the guardian had no intention of making any other disposition of the funds. Eighteen days before the minor became of age the bank became insolvent. In an action to surcharge the guardian with the balance of the deposit when the bank closed, it was *Held,* the guardian is liable for the money on deposit at the time of closing. He should have made an *investment* of the funds, *In Re Hazelbakers Estate,* (Pa. 1934) 171 Atl. 619.

The placing of funds on deposit by a guardian is not an investment, *In Re Grammel,* 120 Mich. 487, 79 N.W. 706 (1899); *In Re Taylor's Estate,* 277 Pa. 518, 121 Atl. 310, 37 A.L.R. 533 (1932). But a deposit of funds in a bank at 4% interest has been held to be "invested" under the terms of a testamentary trust, *Fanning* v. *Main,* 77 Conn. 94, 58 Atl. 472 (1904); *State ex rel First Nat'l. Bank* v. *Bartley,* 39 Neb. 353, 58 N.W. 172, 23 L.R.A. 67 (1894). Depositing funds in a bank is justified only as a temporary measure while the guardian is seeking suitable investment, *In re Law's Estate,* 144 Pa. 508, 22 Atl. 831, 14 L.R.A. 103 (1891); *Corcoran* v. *Kostrometinoff,* 164 Fed. 685, 21 L.R.A. (N.S.) 399 (1908). What is a reasonable time to keep funds on deposit where the guardian is seeking for a suitable investment is held to depend on the circumstances, *Barney* v. *Saunders,* 57 U.S. 535, 14 L.Ed. 1047 (1853); *In re Grammel,* supra; *Cronk* v. *Am. Sur. Co. of N. Y.,* 208 Iowa 267, 225 N.W. 454 (1929). In the instant case the court indicated that six month might have been a reasonable time. However the length of time was not the criterion when the guardian admitted he did not intend to make any other disposition of the funds.