Chattel Mortgages - Effect of Failure to Record Assignment

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Chattel Mortgages—Effect of Failure to Record Assignment.—The Finance Company had a chattel mortgage on an automobile. The mortgage was recorded and then assigned to the plaintiff, but the assignment was never recorded. A state statute authorized but did not require recording of assignments. The Finance Company later repossessed the automobile, and the defendant purchased it after the recorded mortgage was satisfied by the company. The defendant sold the automobile, and the plaintiff sues to recover damages for conversion. Judgment in the lower court was for the plaintiff. Held, judgment reversed.

The rights of an assignee who does not record his assignment of a chattel mortgage, where a statute authorized such recordation, are inferior to the rights of a bona fide purchaser of the property who relied upon the record satisfaction of the mortgage and who purchased without knowledge that the mortgage had been previously assigned to another. Where one of two persons must suffer for the wrongful act of a third, that one should suffer who left it in the power of the third person to do the wrong. General Credit Corporation v. Lee James Inc., 111 P. (2d) 762 (Wash. 1941).

Where the state statute authorizes the recording of chattel mortgage assignments, the general rule is that if the assignee fails to take advantage of the opportunity offered by the statute, his equity is inferior to the rights of the subsequent purchaser of the mortgaged property, who in good faith relied on the record title. Central Trust Co. v. Stepanek, 138 Io. 131, 115 N.W. 891 (1908); Federal Acceptance Corp. v. Dillman, 82 Colo. 598, 262 Pac. 85 (1927). However, as between the immediate parties and subsequent purchasers with actual notice, the assignment is enough to protect the assignee. Federal Acceptance Corp. v. Dillman, supra.

In First National Bank of Chicago v. Baird, 141 Fed. 862 (C.C.A. 8th 1905), the court reached a result differing from that in the principal case. The plaintiff in this case was the assignee of promissory notes secured by a recorded chattel mortgage, but he failed to record the assignment. The defendant was the subsequent purchaser of cattle secured by such mortgage, and paid the mortgage debt to the original payee, without asking for the note or mortgage. In an action for conversion the court held that the payment of the mortgage by the defendant was not enough to protect him against the lien of the mortgage. Although the statute of Wyoming authorized the recording of such assignments, it did not require them to be so recorded in order to be valid against subsequent purchasers or encumbrancers. It was stated that since the statute did not require recording of the assignment, such recording would not have been constructive notice to anyone, and that since the mortgage was recorded, anyone paying it had the duty to use ordinary care to see that the one to whom the debt was paid was the owner and holder of the note and security. Also, in Graham v. Blinn, 3 Pac. 446, (Wyo. 1892), the assignee of a chattel mortgage made subsequent to the plaintiff’s mortgage was given a first lien on the proceeds from the sale of the mortgaged chattel, where the plaintiff did not file a renewal of his mortgage as required by law although the assignor knew of the prior mortgage, and although the assignment had not been recorded, as provided but not required by the law. A bona fide purchaser of negotiable notes secured by a chattel mortgage is charged with actual notice of a prior mortgage or lien or constructive notice from official records against property mortgaged, but he is not charged with notice because the transferor or assignor had actual notice of prior encumbrances. Ambrister v. Dalton, 168 Pac. 231, 66 Okla. 158 (1917).

The rule in most jurisdictions is that the filing or recording of an assignment of a chattel mortgage is not necessary in the absence of a statute requir-
ing such recording, in express terms or by necessary implication, in order to protect the rights of the assignee. *Thompson v. State*, 201 Pac. 1004 (Okla. 1921). This applies even as against subsequent purchasers without notice. *Barrett v. Wedgewood*, 211 Pac. 601, (N.Mex. 1922); *National Livestock Co. v. 1st National Bank*, 203 U.S. 296, 27 Sup. Ct. 79, 51 L.Ed. 192 (1906).

Where local statutes require the recording or filing of assignments of chattel mortgages to make them effective, unless so recorded or filed they will be ineffectual as against those intended to be protected. *Buerger Bros. Supply Co. v. El Rey Furniture Co.*, 40 P. (2d) 81 (Ariz. 1935). Wisconsin requires the filing of any assignment of a chattel mortgage. Wis. Stat. (1939) Sec. 241.10. An assignment of a chattel mortgage to be valid as such against other than the parties thereto, in the absence of change of possession of the mortgaged article, must be filed according to statute. *Burnett County Abstract Co. v. Eau Claire Citizens Loan and Investment Co.*, 216 Wis. 35, 255 N.W. 890 (1934).

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Criminal Law—Silence as an Admission of Guilt.—The defendant was indicted for robbery, being accused of taking four dollars and ten cents from the person of Oscar Glenn by force and against his will. At the county jail, the night after the robbery, the eight or ten prisoners, among whom was the defendant, were lined up for Glenn’s inspection. Glenn pointed out the defendant as the one who had robbed him. The defendant remained silent, and made no denial of the accusation that he was the identical person who committed the robbery. Testimony of this fact was admitted at the trial, over the defendant’s objection. He was convicted, and appealed, claiming among other things, the admission of the above testimony as error.

*Held*, that silence in the face of pertinent and direct accusation of crime partakes of the nature of a confession, and is admissible as a circumstance to be considered by the jury as tending to show guilt, even though the person accused is in custody on the charge. *Muse v. State*, 196 So. 148 (Ala. 1940).

Failure to reply to a direct accusation of crime, when the person charged is free to do so, is generally held to be an acquiescence in the truth of the accusation. This rule is based on the common knowledge that an innocent man will resent an accusation of crime, and will repel it as a matter of self-preservation and self-defense. *State v. Mortensen*, 26 Utah 312, 73 Pac. 562 (1903); *Commonwealth v. Martin*, 23 N.E. (2d) 876 (Mass. 1939); *Lett v. Commonwealth*, 284 Ky. 267, 144 S.W. (2d) 505 (1940); *People v. Smith*, 78 Calif. App. 68, 248 Pac. 261 (1926); *People v. Yario*, 346 Ill. 233, 178 N.E. 338 (1931). Silence, under these circumstances, is an admission against interest. *State v. Sorge*, 123 N.J.L. 532, 10 A. (2d) 175 (1940). Evasive and equivocal responses are considered tantamount to silence. *Commonwealth v. Turza*, 16 A. (2d) 401 (Pa. 1940).

The circumstances surrounding an inculpatory statement must be such as would naturally call for some action or reply by a defendant before they can be treated as an admission by acquiescence. A leading Kentucky case, *Merritweather v. Commonwealth*, 118 Ky. 870, 82 S.W. 592 (1904), gives the requisites of the admission of evidence of acquiescence by silence:

(1) Did the person to be bound by the statement hear it? (2) Did he understand it? (3) Did he have an opportunity to express himself concerning it? (4) Was he called upon to act or reply to it?

If the evidence meets these requirements, it is admissible. It is not the accusation itself, but the conduct of the accused that is evidence, and the accusation