Pledges - Mortgage Assigned as Security Makes Assignee a Pledgee

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will be barred thereon between the husband and wife at the end of the period of limitation.

The Charmley case, supra, is distinguished upon the essential fact that the wife became the owner of the husband's debt after it became due, and, therefore, the statute of limitations which had begun to run as against a third party continued to run as against the wife, and the rule in the Merrill case did not apply. In the Flanagan and the Brader cases, supra, the wife became the owner of the husband's debt before it became due, and thus under the rule announced in the Merrill case, supra, the statute of limitations never became operative.

In considering the cases in jurisdictions outside of Wisconsin, care must be exercised to determine if a similar statute was involved, or whether the case was decided in a jurisdiction where the common law rules relative to coverture apply, namely, the legal inability of a wife to sue her husband. While the latter cases reach a similar result as in the Merrill case, supra, for the period of coverture, they are to be distinguished from the Wisconsin decisions which are based upon a judicial exception to a statute.


Cases which generally speaking hold to the contrary are: Wagner v. Mutual Life Insurance Co. of New York, 88 Conn. 536, 91 Atl. 1012 (1914) which holds that where a wife loaned money to her husband from her sole and separate estate, the statute of limitations ran against the loan as in the case of a transaction between strangers; Graves v. Howard, 159 N.C. 594, 75 S.E. 998, Ann. Cas. 1914 C, 565 (1912); Wyatt v. Wyatt, 81 Miss. 219, 32 So. 317 (1902); Gray v. Gray, 13 Neb. 453, 14 N.W. 390 (1882); Bronswell v. Schubert, 139 Ill. 424, 28 N.E. 1057 (1891); Muus v. Muus, 29 Minn. 115, 12 N.W. 343 (1882). A case directly contrary to the principal case is In re Deener's Estate, 126 Iowa 701, 102 N.W. 825, 106 Am. St. Rep. 374 (1905). In Bennett v. Finnegan, 72 N.J.Eq. 155, 65 Atl. 239 (1916), the rule was applied in favor of the husband in a suit brought by him against his wife.

The rule of law in question, vitally affecting real estate and financial transactions between husbands and wives, is an example of judicial legislation. If it should be deemed advisable to modify the law, the change will have to be made by the legislature, for the Supreme Court of Wisconsin regards the principle as a rule of property from which it should not depart.

WILLIAM EDWARD TAAAY.

Pledges—Mortgage Assigned As Security Makes Assignee a Pledgee.—The defendants Hodgson, a mortgage broker, invested money for the plaintiff Burroughs over a period of years. In 1930 he bought a $5,000.00 mortgage on certain property near Salisbury, Maryland. In a letter which he wrote to the plaintiff describing the mortgage, he stated that he thought it was a good investment and would guarantee the principal and interest "under any and all circumstances." The mortgage became due. The plaintiff foreclosed and sold the mort-
gaged property, receiving the net sum of $2,274.43. Then he brought action against Hodgson to recover the deficiency on the basis of the guaranty. The defendant claimed that, conceding the guaranty to be absolute and enforceable, it was a special guaranty and enured to the benefit of the plaintiff only. Thus, when the plaintiff assigned it as collateral security for a loan, title to the note passed from the plaintiff and the guaranty was at an end.

Held for the plaintiff, since he did not sell the mortgage, but merely pledged it to secure a loan. By virtue of the assignment, the banker acquired a special property in the mortgage, but the plaintiff remained the general owner. The banker was merely a pledgee. Hodgson v. Burroughs (Md. 1938) 2A. (2d) 407.

At common law mere choses in action could not be pledged because the pledgee could not get such possession of the article as was necessary to constitute a pledge. Possession must accompany a pledge, otherwise the right of the pledgee cannot be consummated. Thus, on this principle it was first doubted whether incorporeal things as debts and other objects which cannot be manually delivered were the proper subjects of a pledge. But where the chose is represented by an indispensable document it is now established that the chose may be pledged. Wilson v. Little, 2 N.Y. 243, 51 Am. Dec. 307 (1849). Even delivery of chattels to be pledged can be made in two ways. Constructive delivery of the goods can be made by transferring to the pledgee some document of title representing the goods, as a warehouse receipt. Bush v. Export Storage Co., 136 Fed. 918 (1904).

When a document representing a chose in action is pledged, mere delivery of the document often is inadequate. Title must be transferred to the pledgee. Such transfer of a document, as a note, mortgage or share of stock, to the pledgee gives him a lien on it but keeps the general ownership in the pledgor. Thus, in Campbell v. Parker, 22 N.Y. Super. 322 (1862) the assignor made an absolute assignment of a mortgage and note, of which he was payee, to the defendant as collateral security for a loan. When the note came due, the pledgee foreclosed without notice to the assignor. The pledgor assigned his account to the plaintiff who sued for conversion. The court said that a mortgage and the accompanying note is the proper subject of a pledge. Where such instruments are transferred by an absolute assignment, but accompanied by a promissory note made by the assignor, which gives the assignee authority to sell them upon default of the pledgor, the transfer is a pledge of the note and mortgage and not a mortgage or sale of them.

Although the assignment may be absolute upon its face, the pledgee has only a special interest in the goods; the general ownership is in the pledgor. Brewer v. Hartley, 37 Cal. 15, 99 Am. Dec. 237 (1869); Gorlick v. James, 12 Johns. (N.Y.) 146, 7 Am. Dec. 294 (1815); Miller v. Horton, 69 Okla. 147, 170 Pac. 509, L.R.A. 1918C 625 (1918); Campbell v. Parker, 22 N.Y. Super 322 (1862). Although an assignment of such a chose in action may be absolute on its face, parol testimony can be brought in to show that it was merely a pledge to secure repayment of the money. Gettleman v. Commercial Union Assurance Co., 97 Wis. 237, 72 N.W. 627 (1897).

The following have been held proper subjects of a pledge: A real estate mortgage before foreclosure, Clark v. Chapman, 215 Mich. 518, 184 N.W. 518 (1921); coupon bonds payable to the bearer, Morris Canal and Banking Co. v. Fisher, 9 N.J.E. 667, 64 Am. Dec. 423 (1855); contracts to build and repair homes, John H. Keller v. American Banker's Finance Co., 306 Pa. 483, 160 Atl. 127, 82 A.L.R. 999 (1932); a claim for a debt due from another, Schoenfield v.
Real Property—Accretion and Avulsion.—In an action to quiet title the plaintiff claimed that the land in controversy was an accretion to property admittedly that of the plaintiff. The plaintiff's deed had purported to convey the described property plus any accretions thereto. The plaintiff contended that the lands covered by the defendant's title were eroded by the action of the Missouri River and ceased to exist as lands in place, and that their ownership terminated when such property became a part of the Missouri River; and that they became his property by right of accretion. It was undisputed that the property was covered with water from 1904 to 1915. The defendant, however, claimed the property was covered only during periods of high water and that during low water the land reappeared and remained a part of his property. The trial court held that the mere fact that the land may have disappeared for a time would not be sufficient to destroy the defendant's ownership. The court found further that none of the land had become an accretion to the land of the plaintiff. On appeal, the holding of the lower court was affirmed. Sheldon v. Chambers (Iowa 1938) 281 N.W. 438.

An accretion has been universally held to be a gradual increase of land by an imperceptible accumulation of land, or the increase or growth of property by external accessions, as by alluvium naturally added to land situated on the bank of a river or on the seashore. In Bigelow v. Herrink, 200 Iowa 830, 205 N.W. 531 (1925), the court held that accretions are the gradual and imperceptible additions of soil to the shore line by action of water to which the land is contiguous, but the mere presence of swales and sloughs in land thrown up against the shore line does not necessarily determine its character as an accretion. However, in Yuttermen v. Grier, 112 Ark. 366, 166 S.W. 749 (1914), it was held that land formed by the shifting of the river, and the banks caving in on one side, and the receding waters forming land by the deposit of sediment is accretion, notwithstanding the fact that the greater part was formed during one overflow, and that the caving in of the opposite bank was perceptible at times; the test being not the rapidity of the change, but whether the land formed can be identified as the land of the former owner.

To prove an accretion it must be shown that the added soil was deposited entirely by the action of the water. When the change is sudden or so rapid that its occurrence may be seen as it progresses, it is an avulsion rather than an accretion and does not change title. This distinction was applied in Missouri v. Nebraska, 196 U.S. 23, 25 Sup. Ct. 155, 49 L.ed. 372 (1904) where the court held that an avulsion was the sudden and rapid change in the course of a river and that if such river was the boundary line between private properties, states, or nations the avulsion does not work any change in the boundary line which remains, as it was, in the center of the old channel. In this case, the melting snows of the Missouri River cut a new bed between the states of Nebraska and Missouri in twenty-four hours. It was held that the boundary line between the