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John McDill Fox

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ELEMENTARY PRINCIPLES OF CHATTEL MORTGAGES*

JOHN McDILL FOX†

WHERE a debt is secured, or a performance, by a chattel mortgage the security continues throughout to be personal property and is so largely governed by local statutes that a few elementary considerations with reference to the Wisconsin doctrine and treatment of chattel mortgages might not be out of place.

It is the doctrine in Wisconsin that the title to the mortgaged property is in the mortgagee, i.e., the rule in chattel mortgages is the opposite of the rule in real mortgages. But though the title is vested in the mortgagee it is only a special title, the mortgagor having the equitable ownership in him.

"It is elementary," says Justice Marshall in Illinois Trust and Savings v. Alexander Stewart Lumber Company,¹ "that a mortgagee of chattel property holds the legal title thereto, but nevertheless, till default and actual possession of the property in himself, his interest, as against the mortgagor or any person claiming under him, is special. It is limited to the amount of the mortgage indebtedness. The general property and the equitable title being in the mortgagor or those claiming under him, the mortgagor may sell the mortgaged property and convey a good title thereto subject to the mortgage. Such title is equitable in character, to be sure, but it is of sufficient dignity to be regarded as a general property right, good as against the whole world except as to the special interest of the mortgagee, which, till it becomes absolute, may be extinguished by the owner of the general property by payment of the mortgage indebtedness. In case of a conversion of the property as to the mortgagee, the measure of damages recoverable by him is limited to the value of his special interest therein, the amount due-upon the mortgage.² The mortgagor may not only sell the property and convey a good title subject to the mortgage, but he may place a second mortgage thereon, and the subsequent vendee or mortgagee may protect his

*Ed.—This article contains a preliminary statement of the Law of Chattel Mortgages and will be followed in the April issue by a consideration of chattel mortgages on stocks of goods in trade and after acquired property generally, a comparison of chattel mortgages and conditional sales provisions and the manner of foreclosure of each.

†Professor in the Marquette University School of Law.

¹ 119 Wis. 54, 94 N.W. 777.

² Smith v. Konst, 50 Wis. 360, 7 N.W. 293.
interest and clothe himself with a full legal title by paying off the first incumbrance."

What constitutes a chattel mortgage? Where the property is mutually intended to act as security for a loan and the title rather than merely the possession (as in a pledge) is placed in the lender, the transaction is in essence a mortgage as between the parties and if the statutory requirements are observed as to others. It may be given in the ordinary form, i.e., a deed absolute with a description of the goods usually with a covenant of warranty followed by a proviso that if the note, debt, or other obligation be paid then the conveyance shall be void, or it may be in form a bill of sale. Mere inaccuracies of description of property covered by a chattel mortgage are not fatal if the subject is so described that it can be readily identified by the exercise of ordinary care, or even by the aid of extrinsic evidence, where there is sufficient in the writing to put one acting reasonably on inquiry. So also when there is no provision in the mortgage itself governing possession pending maturity of the debt, the mortgagee may exercise his own discretion as to taking possession of the property.

The Wisconsin statute provides: "No mortgage of personal property shall be valid against any other person than the parties thereto unless the possession of the mortgaged property be delivered to and retained by the mortgagee or unless the mortgage or a copy thereof be filed as provided in section 2314," and so forth. Compare the language of this section with that of 2241, the section with reference to the recording of deeds and mortgages to real estate. This section provides (section 2241): "Every conveyance of real estate (and under the following section 2242 conveyance is defined to include mortgage) within this state hereafter made . . . which shall not be recorded as provided by law shall be void as against any subsequent purchaser in good faith and for a valuable consideration of the same real estate or any portion thereof whose conveyance shall first be duly recorded." As to the affidavit of renewal and the subsequent renewal of such affidavit, however, the chattel mortgage statutes with reference to renewal (sections 2315)
and 2316\textsuperscript{11}) adopt the same form as the real estate recording act, namely make conformity therewith invalid as against subsequent purchasers or mortgagees in good faith and creditors, while with reference to the filing of the original mortgage or lack of change of possession, the mortgage is invalid against all persons except the parties thereto. Commenting in this distinction, the late Chief Justice Winslow in First National Bank of Edgerton v. Biederman,\textsuperscript{12} said:

"... The question is whether failure to file a chattel mortgage can only be taken advantage of by subsequent purchasers or mortgagees in good faith, or whether persons dealing with the property with notice can also take advantage of it. The section itself (section 2313)\textsuperscript{13} seems very plain and unmistakable. It says that no chattel mortgage "shall be valid against \textit{any other person than the parties thereto}" unless the possession of the property be delivered and retained or the mortgage duly filed. There is no room for interpretation or construction here. The words are definite and the meaning certain—"any other person than the parties" can mean but one thing and the court is not at liberty to construe it to mean anything else. In the majority of the states notice of an unrecorded mortgage will deprive a subsequent purchaser or mortgagee of any protection under the filing act; he will take subject to the rights of the holder of the unrecorded mortgage. In Wisconsin, however, unrecorded mortgages have no validity as against subsequent purchasers or mortgagees, even though they have actual notice of them.\textsuperscript{14} This has been squarely decided by this court.\textsuperscript{15} In Manson v. Phoenix Insurance Company,\textsuperscript{16} language which seems to indicate a contrary view was used, but the question there was simply whether an unrecorded mortgage was valid as between the parties. The question at issue in Ullman v. Duncan,\textsuperscript{17} was as to the construction of Section 2315\textsuperscript{18} statutes with regard to the failure to file an affidavit of renewal, and by the very terms of this latter section the only persons protected are "subsequent purchasers or mortgagees in good faith." It seems unquestionable that our filing statutes make sharp practice possible and enables one who has full notice of a previously unrecorded mortgage to purchase the property or to take a mortgage thereon to secure a pre-existing debt or one presently created, with the deliberate purpose of cutting off the unrecorded mortgage. The idea of the statute doubtless is that it is better to have the statute certain and effective than it is to leave the question in each case to depend on notice or good faith, and

\begin{footnotes}

\item[12] 149 Wis. 8, 139 N.W. 84.

\item[13] Sec. 241.08, Wis. Stats. (1925).


\item[15] Parroski \textit{v. Goldberg}, 80 Wis. 339, 50 N.W. 191; \textit{Ryan Co. v. Hvambsahl}, 89 Wis. 61, 61 N.W. 299; Dornbrook \textit{v. Rumley Co.}, 120 Wis. 36, 97 N.W. 493.

\item[16] 64 Wis. 26, 24 N.W. 407.

\item[17] 78 Wis. 213, 47 N.W. 266.

\item[18] Sec. 241.11, Wis. Stats. (1925).
\end{footnotes}
thus afford opportunity for conflict in oral testimony and offer a reward to active and fertile memories.

This case also establishes the necessity of strict conformity with the statute. In this case there was a mortgage by a partnership. The statute provides (2314) that every mortgage be filed with the clerk of the town, city or village where the mortgagor resides. The case held that in order to conform, where the partners resided each at separate places, that a copy of the mortgage be filed at each place where a partner resided, otherwise there was no conformity. This seems still to be the law.

The question of change of possession once caused some little trouble. Statute 2310 relates to the presumption of fraud if possession be not changed. The case of Ryan Company v. Hvambsahl, supra, had held that where a chattel mortgage was unrecorded the failure to change the possession was fraudulent as a matter of law and the circuit court sustained an attachment based upon a fraudulent conveyance which was upheld by the supreme court. That case was, however, subsequently overruled by St. Louis Clary Products Company v. Christopher, holding that section 2310 was not applicable to chattel mortgages and that an unrecorded mortgage, where the possession was not changed was not fraudulent, but merely invalid as against all persons except the parties thereto and since the mortgagor does not control the filing, the mere fact that the mortgagee fails to file it does not justify the issuing of an attachment against the property of the mortgagor on the ground of fraud.

30 Sec. 241.10, Wis. Stats. (1925).
31 Sec. 241.05, Wis. Stats. (1925).
31 152 Wis. 603, 140 N.W. 351.