Elementary Principles of Chattel Mortgages

John McDill Fox

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A CHATTEL mortgage has been defined frequently, as a conditional sale of personal property as security for a debt. Under this definition the condition is really a condition subsequent, i.e. the title has passed and will vest upon the happening of a condition, namely the payment of the loan secured or the performance of the obligation secured. Today, however, we have given a technical meaning to the words conditional sale. By those words we define, according to the Uniform Conditional Sales Act (Chapter 122 Wis. Stat.) “any contract for the sale of goods, under which possession is delivered to the buyer and the property in the goods is to vest in the buyer at a subsequent time upon the payment of part or all of the price, or upon performance of any other condition, or the happening of any contingency; or any contract for the bailment or leasing of goods by which the bailee or lessee is bound to become or has the option of becoming the owner of such goods upon full compliance with the terms of the contract.”

The common usage of the words chattel mortgage as opposed to conditional sale, especially when defining the legal right, of buyer and seller is that the seller conveys title to the buyer and the buyer secures the debt by a chattel mortgage, thereby revesting title for that particular purpose in the seller, or that the seller retains title in himself as security and merely gives possession to the buyer. If the transaction is a chattel mortgage, the mortgage must be foreclosed. If a conditional sale, before the passage of the present statute, except as to certain goods such as household furniture, there did not need to be a foreclosure or sale. Now there is by the terms of the act a compulsory resale by the seller under the conditions set forth, though it is still possible in a very modified degree to retake possession under a conditional sale without a resale. Just as in mortgages of real property, so also in chattel mortgages, parol evidence may come in to show the real nature of the transaction. If a regular bill of sale is given to secure an indebtedness, it is a chattel mortgage. The difficult case is a situation where there is on the face of the instrument a purported sale with an option reserved to the vendor of repurchase within a given time. If certain at least so as to be capable of identification. Thus in Fowler v.

* A continuation of the discussion in the February issue.
† Professor in the Marquette University School of Law.
this is merely a device to do away with the necessity of foreclosure—to
clog the equity of redemption—it may be construed a chattel mortgage.
The test is, if there was a previous debt which still subsists the trans-
action will be deemed a chattel mortgage.¹ The usual rule in equity
permitting evidence tending to show a bill of sale absolute on its face
to be a chattel mortgage is well illustrated in the following cases, Lam-
son v. Moffat,² where what purported to be a lease was construed to be a
chattel mortgage, Bertschy v. Bank of Sheboygan,³ where a bill of
sale was construed to be a chattel mortgage, Salter v. Bank of Eau
Claire,⁴ and where the same situation was presented. This last cited
case illustrates a principle of foreclosure by sale as well as the previous
rule. A mortgage of a crop thereafter to be raised is absolutely void
as against subsequent purchasers unless the mortgagor took possession
before the purchase. See Lamson v. Moffat, supra, and cases there
cited. A chattel mortgage of a stock of goods in trade where there is
a verbal agreement that the mortgagor may retain possession, sell the
goods and apply the proceeds to the support of himself and family is
void,⁵ as is also such a mortgage where such provision is incorporated
as one of the terms of the mortgage itself⁶ and even where the mortgage
purports to cover after acquired property and permits the sale of stock
and covers additions to stock it seems that there must be a provision in
the mortgage itself as to what disposition is to be made of the proceeds
of sales over and above the additions or at least filing in accordance
with the statute.⁷ A chattel mortgage of personal property exempt
from seizure and sale upon execution is of course, by the provisions
of the statute, invalid unless the same be signed by the wife of the per-
son taking the same (if he be a married man and his wife at the time
be a member of his family) and unless the signature of the wife be
witnessed by two witnesses⁸ though creditors cannot attack it because
of the wife's failure to sign.⁹

The property described in the chattel mortgage must be definite and

¹ Rockwell v. Humphrey, 57 Wis. 410, 15 N.W. 394.
² Musgat v. Pumpelly, 46 Wis. 660, 1 N.W. 410.
³ 61 Wis. 249, 21 N.W. 62.
⁴ 89 Wis. 473, 61 N.W. 1115.
⁵ 97 Wis. 84, 72 N.W. 352.
⁶ Steinert v. Deuster, 23 Wis. 136.
⁷ Place v. Longworthy, 13 Wis. 629.
⁸ Durr v. Wildish, 108 Wis. 401, 84 N.W. 437.
⁹ Eastman v. Parkinson, 133 Wis. 375, 113 N.W. 649.
¹⁰ Roundy v. Converse, 71 Wis. 524, 37 N.W. 811.
¹¹ Wis Stat. 241.08; Lashua v. Myhre, 117 Wis. 18, 93 N.W. 811.
¹² Cunningham v. Brichtson, 101 Wis. 378, 77 N.W. 729.
the language was "The entire stock in trade and the fixtures of the said William Wetzel, consisting of clocks, watches, chains, show cases, jewelry, and all goods included in his stock, tools, and material excepting one safe, one regulator, one astronomical clock, two musical clocks and stock in trade to the amount of two hundred dollars." The court held the mortgage void for uncertainty, and quoted with approval from Herman on Chattel Mortgages "in order to transfer the right of property in goods or chattels, the chattel intended to be conveyed must be ascertained and identified at the time of the execution of the instrument." Nevertheless when such a mortgage is given and the mortgagor subsequently delivers property as conforming to the mortgage and the mortgagee takes full possession of it this cures the defective description.\textsuperscript{11}

The mortgagee is entitled to the possession of the mortgaged chattels immediately upon the execution of the mortgage if there be no express or implied condition to the contrary.\textsuperscript{12} "It is the settled law in this state" said Cassody J., in the last cited case "that the mortgagee of chattels has the legal title to the property before the debt is due and that he may take immediate possession thereof, unless by express stipulation the mortgagor is permitted to retain possession." Likewise it is held that "a mortgagee of chattels, who is authorized by the instrument to take possession at any time he may deem himself insecure, may demand the property at any time, and upon refusal of the mortgagor to deliver it he may maintain replevin therefor." Where possession is permitted to remain with the mortgagor, and a clause permits the mortgagee to take possession whenever he may deem himself insecure, or words of similar import, it is immaterial whether his apprehended insecurity be reasonable or not. It is equivalent to giving the mortgagee the right to immediate possession whenever he may choose to demand it.\textsuperscript{13}

\textsuperscript{10} Fowler v. Hunt, 48 Wis. 345, 4 N.W. 481.
\textsuperscript{11} Frost v. Citizens National Bank of Beloit, 68 Wis. 234, 32 N.W. 110.
\textsuperscript{12} Hill v. Merriman, 72 Wis. 483, 40 N.W. 399.
\textsuperscript{13} Gage v. Wayland, 67 Wis. 566, 31 N.W. 108; Huebner v. Koebke, 42 Wis. 319.