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Property: Automobile Security: Conflict Between Recorded Security Interest and Bona Fide Purchases Beyond Jurisdiction of Record

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AUTOMOBILE SECURITY — CONFLICT BETWEEN RECORDED SECURITY INTEREST AND BONA FIDE PURCHASES BEYOND THE JURISDICTION OF RECORD

This comment will limit itself to the problem presented when the mortgagor of a recorded chattel mortgage on an automobile removes the automobile from the state without the consent of the mortgagee and sells it to an innocent purchaser for value and without notice in another state. In a recent case a Nevada bank loaned money secured by chattel mortgage on a Cadillac automobile owned by one Mrs. Bell. The mortgage was recorded in the proper county in Nevada and the mortgagee received the statutory certificate of registration showing it as legal owner of the car. Subsequently, without consent or knowledge by the bank Mrs. Bell, alias Mrs. Holt, obtained a certificate of registration from the state of Wyoming which showed no liens or incumbrances. She drove the Cadillac to Illinois and using this certificate she sold the Cadillac to a Chicago used car dealer, who in turn sold it to an innocent purchaser. The bank upon learning the whereabouts of the car replevied it from the purchaser. The court held a chattel mortgagor who surreptitiously removes the chattel from one state to another cannot pass title free of the mortgagee's rights. Under the doctrine of comity the rights of the mortgagee will be preserved.[1]

This case represents the weight of authority today.[2] An analysis of the cases reveals several divergent concepts and theories used in support of the majority view. First, there is the so called contract theory which recognizes that rights and interests created by contract valid in one jurisdiction will be protected in others as a matter of comity.[3] Thus, in the *Frank* case, the fact that the Minnesota mortgagee did not file his automobile mortgage did not preclude his recovery against an innocent purchaser in California, because the unrecorded mortgage was recognized as valid against innocent purchasers in Minnesota.[4] Second, the basic common law title theory that the mortgagee is the legal owner of the chattel and his right to ownership cannot be severed by the tortious act of the mortgagor.[5] In applying this theory the courts draw a distinction between liens encumbering title and those concerning only possession, such as mechanics and other possessory liens.[6] Third, the

[1] 1st National Bank of Nevada v. Swegler, 336 Ill. App. 107, 82 N.E.(2d) 920 (1948).
[2] 14 C.J.S. 607 (1939); 1st National Bank v. Ripley, 204 Iowa 590, 215 N.W. 590 (1927).
[3] RESTATEMENT, CONFLICT OF LAWS, § 266 (1934).
[4] Mercantile Acceptance Co. v. Frank et al, 203 Cal. 483, 265 Pac. 190 (1928).
[5] Beale in 40 HARV. L. REV. 810 (1926).
[6] National Bond & Investment Co. v. Haas, 124 Neb. 631, 247 N.W. 563 (1934) (Artisan's lien on automobile). A careful analysis of cases shows that the courts generally uphold subsequent artisan liens, yet refusing to recognize subsequent rights to title such as chattel mortgages. Also attaching creditors

doctrine of caveat emptor favors the extension of commercial credit, supports the creditor position, and carries with it the fear that a different result would disrupt our present economic structure.[7] Fourth, the occasional tendency of the law to protect subsequent innocent purchasers is frequently counter-acted by the doctrine of constructive notice through recording acts. The doctrine of comity leads to the geographical extension of a right, and in applying it the courts apparently feel that they are indirectly protecting local creditor interests.[8]

Only four states have protected the innocent purchaser against the mortgagee in this situation.[9] Louisiana and Pennsylvania, because they do not favor chattel mortgages.[10] Texas assumes the position that the mortgagee has no semblance of title, but only a security right which can be exercised against the chattel upon the occurence of certain prescribed contingencies.[11] Michigan ridicules the use of the constructive notice concept in this situation and says that a chattel mortgage recorded in "Hidden" county, Nevada, cannot be notice to citizens of the state of Michigan, who purchase in Michigan.[12]

It is apparent that neither the majority nor minority view offers a satisfactory solution to the used car problem, because each view represents an extreme position which results from the present law of chattel mortgages. It has been ably suggested that return to common law principles of agency might afford a more reasonable solution to the problems involved than the present statutory system of recording in chattel security transactions.[13] However, this approach does not offer a solution where the dealer purchases from an individual.

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will yield to prior mortgage on theory that such attachment doesn't exist by reliance on possession, see Annotation 88 A.L.R. 1185, also Watson v. Brodhead, 33 So.(2d) 302 (Miss. 1948); RESTATEMENT, CONFLICT OF LAWS, § 268 (1934) Comment (c). Interest of mortgagor is not divested by any dealings with the chattel in the second state whether such dealings consist of a sale by the mortgagor to a purchaser for value and without notice, or of an attachment or execution levied by a creditor of the mortgagor. It is immaterial that the mortgage has not been recorded in the second state. (d). A dealing with the chattel in the second state may, if such is the law of the second state, create a new lien and give the lien preference over the mortgage, preserving the mortgage intact. This is accomplished by subjecting the chattel to a lien without regard to the title thereto.

[7] *Supra*, note 4.

[8] COBBEY, CHATTEL MORTGAGES, Vol. II (1893).

[9] JONES, CHATTEL MORTGAGES, § 260 (4th ed. 1933); Shepard v. Haynes, 104 Fed. 499 (1900); Annotation 57 A.L.R. 702 (1928).

[10] General Motors Acceptance Corp. v. Nuss, 193 La. 815, 192 So. 248 (1939) (distinction between common and civil law on security by chattel mortgage); Loftus v. Farmers and M. Bank, 133 Pa. 97, 19 Atl. 347 (1899).

[11] 1st National Bank of Austin v. Western Mortg. & Inv. Co., 86 Tex. 636, 26 S.W. 488 (1894) (Texas, the mortgagor, retains title and possession subject to divesture on default); 15 Tex. L. Rev. 127 (1937).

[12] Allison v. Teeters, 176 Mich. 216, 142 N.W. 340 (1918).

[13] Luce in 46 MICH. L. REV. 187 (1947) (excellent discussion on this point involving wholesale distribution of consumers goods).

In order to arrive at any solution to this problem it is necessary to examine the relationships and interests involved. This is a security transaction in which possession is delivered to or retained by the debtor, and the creditor receives the legal title for security purposes. The creditor protects his interest by strict compliance with the recording act. It was in the cases of debtor possession of land, by its nature immoveable, that the doctrine of constructive notice by recording developed.[14] Later upon its introduction into the field of personalty the doctrine worked satisfactorily where the personalty was not easily moveable. However, with the mobile automobile the recording acts do not seem to fulfil the purpose for which they were designed, namely protection of third parties and creditors alike against unauthorized transfers by debtors in possession.

With land or an immoveable chattel the creditor can protect his position by recording, and this recording in turn provides a readily available means of protection to the third party purchaser or creditor. So long as the third party knows where the record, if any, is to be found, the result seems fair enough. But with the automobile and other readily moveable chattels the third party is faced with an endless list of places of record, in the counties of 48 states and more. The result is that he must buy or extend credit at his peril, without checking of records. To place the loss resulting from unauthorized transfer either upon the creditor or the third party is purely arbitrary, and the court can only place it through interpretation of existing recording statutes against the common law background of caveat emptor, etc. The problem does not adapt itself to judicial solution, and legislative reform is clearly indicated.

Although there is a legislative trend toward change of the law of automobile registration, the results are far from satisfactory.[15] The solution must lie in a comprehensive legislative system which will provide a central registration, and means of investigation of all rights to the automobile involved through which all parties can reasonably protect their interests. This might be accomplished through a national or a uniform state registration act which would furnish a central clearing service for all titles and liens on automobiles. Possibly no title claims to such chattels should be assumed without production of the certificate of title showing all liens and claims of ownership. Thus all sales and transfers

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[14] *Supra*, note 8; 11-12, Huddy, ENCYC. OF AUTO. LAW (1931).

[15] 24 N.C. L. REV. 62 (1945); UNIFORM CHATTEL MORTGAGE ACT, 11 U.L.A. 30 (1938) enacted in Colorado, Delaware, Idaho, Louisiana, Nevada, New Mexico, North Carolina, North Dakota, Utah, but the adoptions contain so many departures that much of the real purpose has been lost.

would only be effected through the certificate.[16] Such a system would combine constructive notice with actual notice through the medium of documents required to be employed in the business.

It is not within the scope of this comment to offer a detailed plan. Clearly the existing law does not cope satisfactorily with the problems presented in our commercial system, and it is submitted that the law should be renovated perhaps along the lines suggested, to prevent further judicial uncertainty and resort to attenuated legal fiction.

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[16] 26 N.C. L. REV. 173 (1948); 12 WIS. L. REV. 92 (1937), thoroughly discusses this point.