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Chattel Mortgages: After-Acquired Property: Crop Mortgages

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RECENT DECISIONS

CHATTEL MORTGAGES—AFTER-ACQUIRED PROPERTY—CROP MORTGAGES.—The defendant, a farmer, was the plaintiff's tenant. He had purchased stock, equipment, and feed from his lessor and had given the landlord a note for the price secured by a mortgage on his interest in the stock and feed so purchased and on his interest in the crops to be grown. According to the lease the farm was to be operated on shares. The defendant was in possession for several years. There had been annual accountings between the parties. Each year a new note and a new mortgage were executed to secure the balance still due to the landlord-seller. Each year the parties entered into a new lease. After the last accounting, and when the present notes and mortgage were executed, the obligation of the tenant was slightly less in amount than it was when the original note was given. The lessor gave notice to terminate the lease. The tenant was not in default in the payment of rent. He was in default on the notes. The lessor brought this action to reduce the notes to judgment and to reach the security covered by the chattel mortgage. The court entered judgment on the notes but adjudged that the plaintiff had no lien in certain of the grain, hay, and feed because it was produced on the farm after the execution of the mortgage. *Held,* on appeal, judgment affirmed, except that the plaintiff should have a lien in the hay which was grown from seed covered by the previous mortgage. *Kohler Improvement Co.* v. *Preder,* (Wis. 1935) 259 N.W. 833.

The Wisconsin court in the instant case reaffirms its position with respect to mortgages on after acquired property; they are "void" even as between the parties. See *Comstock* v. *Scales,* 7 Wis. 159 (1858); *Chynoweth* v. *Tenney,* 10 Wis. 397 (1860). As between the parties whether the lien is effective or not can only be important when the chattels are exempt from execution. See *Rowlands* v. *Voechting,* 115 Wis. 352, 91 N.W. 990 (1902). The typical after-acquired property cases are those where the chattels consist of stocks of goods to be sold in trade, livestock with the probability of increase, and crops not yet grown. The Wisconsin legislature has prescribed a scheme which debtors and creditors must observe to give the particular creditor a lien upon a stock of goods and its additions, and the lien will be effective as between the parties and against third persons. WIS. STAT. (1933) §241.14. *Cf. Thomas Produce Co.* v. *Letman,* 184 Wis. 211, 199 N.W. 79 (1924). The legislature in Wisconsin has not spoken with respect to crop mortgages. The seed must have sprouted before a crop mortgage can be "valid." *Comstock* v. *Scales, supra.* In the great majority of states the creditor has an "equitable lien" in the crop as between himself and the borrower if the seed was in the ground when the mortgage was executed. See Note (1932) 77 A.L.R. 572. In some states he can acquire a lien in an unplanted crop which he can enforce at least until some third party intervenes to assert a claim to the specific produce. *Endresen* v. *Larson,* 101 Minn. 417, 112 N.W. 628, 118 Am. St. Rep. 631 (1907); *Rochester Distilling Co.* v. *Rasey,* 142 N. Y. 570, 37 N.E. 632, 40 Am. St. Rep. 635 (1894). In either case the lien is still effective after the crop has been harvested. *Thomas* v. *Prairie Home Co-op. Co.,* 121 Neb. 603, 237 N.W. 673, 77 A.L.R. 566 (1931); *Hogan* v. *Atlantic Elevator Co.,* 66 Minn. 344, 69 N.W. 1 (1896). Whether the creditor can make his lien effective against third party claimants depends upon whether those third parties have had "notice" of the lien. In Minnesota the filing of a crop mortgage, executed before the seed is in the ground, gives the creditor protection against everyone. *Endresen* v. *Larson, supra.* In other states filing may be effective to give the creditor protection against third parties only if the seed is in the ground when the mortgage is

executed. *Rochester Distilling Co.* v. *Rasey, supra.* In Nebraska filing was ineffective in either situation until the legislature acted. Now filing gives the creditor protection against third party claimants in all cases. See *American State Bk.* v. *Keller,* 112 Neb. 761, 200 N.W. 999 (1924); *cf. Thomas* v. *Prairie Home Co-op Co., supra,* and NEB. COMP. STAT. (1929) §36-301, cited therein. The Wisconsin court has compromised to some extent with its declared position. The court has recognized that a landlord may have a lien in the crop of his tenant to secure the payment of rent where he has bargained for "title" in the crop. *Layng* v. *Stout,* 155 Wis. 553, 145 N.W. 227 (1914). And a creditor who has furnished seed to the debtor may bargain for "title" in the crop and acquire a lien therein. *Lanyon* v. *Woodward,* 55 Wis. 652, 13 N.W. 863 (1882). These compromises indicate that the court has not always been satisfied with the sweeping declaration of policy stated in most of the cases. Whether the parties have literally bargained for "title" ought not have any effect upon the decision unless the particular case on its facts is typical of a class of cases which deserve special adjustments as is, perhaps, true in the landlord cases, particularly if the landlord has himself harvested the crop. Perhaps there is no commercial demand in Wisconsin for the working out of some acceptable scheme for this type of financing. Certainly the hands of the court are so tied by the earlier decisions that no satisfactory scheme can be worked out without the aid of the legislature. And no statute merely purporting to make "valid" mortgages on after-grown crops will be sufficient. If the legislature should act at all it should anticipate some of the administrative problems that will necessarily arise and make literal provision for their solutions.

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CONSTITUTIONAL LAW—TAXATION—GROSS SALES TAX.—The plaintiffs, corporations, partnerships, and individuals, conducting stores in the state of Kentucky, brought four suits in the federal court to enjoin as unconstitutional a graduated gross sales tax. Ky. Laws, (1930) c. 149, p. 475. Interlocutory injunctions were issued but the district court dismissed the bills being of the opinion that the procedure set up in the act for the recovery of taxes (payment under protest and suit against the auditor of public accounts) provided an adequate remedy at law. Upon appeal in the case of *Stewart Dry Goods Co.* v. *Lewis et al.,* 287 U.S. 9, 53 Sup. Ct. 68, 77 L. ed. 135 (1932), the decrees were reversed on the ground that the inability of the state treasury to meet the warrants outstanding in the hands of those who had successfully contested payment vitiated the remedy at law. The district court then found the remedy at law inadequate but sustained the act and dismissed the bills. *Stewart Dry Goods Company* v. *John B. Lewis et al,* 7 Fed. Supp. 438 (D.C.W.D. Ky. 1933), 8 Fed. Supp. 396 (D.C.W.D. and E.D. Ky. 1934). On appeal to the Supreme Court in a six-three decision, *Held,* that the statute was unconstitutional for the reason that the graduation feature of the tax denied equal protection of the law as assured by the fourteenth amendment. *Stewart Dry Goods Co.* v. *Lewis et al.,* 55 Sup. Ct. 525, 79 L. ed. 539 (1935).

The appellee asserted that increased sales result in greater profits per unit sold, thereby effecting greater ability to pay taxes; and that the tax graduation levels off at a fixed amount before this increase of profit per unit ceases and the act is therefore not discriminatory. This contention persuaded the supreme court of the state of Kentucky to uphold the act. *Moore et al.* v. *State Board of Charities et al.,* 239 Ky. 729, 40 S.W. (2nd) 349 (1931).

The court states that a tax on gross sales is, in fact, a tax on the article sold