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JURISDICTION OVER CHATTELS THE TITLE TO WHICH IS EMBODIED IN A DOCUMENT

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IT IS THE PURPOSE of this paper to consider some of the conflict of laws problems with respect to jurisdiction over chattels the title to which is embodied in a document. Perhaps it would be well to delineate at the outset the scope of the examination herein. I will first consider the present rule concerning jurisdiction over chattels in general, the history of this rule, and then examine critically the rule of the Restatement of the Conflict of Laws[1] concerning jurisdiction over chattels the title to which is emboded in a document, in the light of the cases and applicable statutes.

Story, in his monumental treatise on Conflict of Laws, in quoting from certain continental jurists,[2] stated that movables have in contemplation of laws no *situs,* and are attached to the person of the owner wherever he is; and, being so adherent to his person, they are governed by the same law which governs his person, that is, by the law of the place of his domicil. From this came the maxim *Mobilia sequunter personam.*[3] He asserted that the doctrine had so general a sanction among all civilized natons as to be treated as a part of the *jus gentium.*[4] And yet he realized that this being but a legal fiction, it would yield whenever it was necessary for the purpose of justice that the actual situs of the thing should be examined. "A nation, within whose territory any personal property is actually situate, has an entire dominion over it, while therein, in point of sovereignty and jurisdiction, as it has over immovable property situate there. It may regulate its transfer, and subject it to process and execution, and provide for and control the uses and disposition

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1. Restatement, Conflict of Laws, Sec. 50 (1935)
   Chattels to the title to which is embodied in a document—
   (1) To the extent to which title to a chattel is embodied in a document by the law which governed the chattel at the time the document was issued, title to the chattel is subject to the jurisdiction of the state which has jurisdiction over the document as a chattel and such jurisdiction is exclusive except as stated in Subsection (2)
   (2) The state in which the chattel is may enforce
      (a) interests growing out of acts done in the preservation of the chattel;
      (b) interests essential to the exercise of the state's police and taxing powers;
      (c) interests dependent upon the exercise of the power of eminent domain.
2. Story, Conflict of Laws, Sec. 377 (2d. ed. 1841).
3. *Id.* Sec. 378.
4. *Id.* Sec. 380.

of it, to the same extent, that it may exert its authority over immovable property."[5]

The concept of documents of title was, by no means, alien to Story, for he posed the case of a shipment of goods from England to New Orleans on account and risk of a merchant domiciled in England, who owes debts in New Orleans, and a subsequent transfer of the bill of lading in England to a purchaser, after their arrival but before the unloading thereof. He then stated that by the law of England and many other commercial States, the legal title to the goods passes by the mere indorsement and delivery of the bill of lading, without any actual possession of the goods by the purchaser. If such a title, so acquired, could be divested by the want of a delivery according to the laws of Louisiana, it would most materially impair the confidence which the commercial world had hitherto reposed in the universal validity of the title acquired under a bill of lading.[6]

Wharton, writing sixty-four years later, rejected the old distinction between *mobilia* and *immobilia*, and further asserted that the rule fell with the reversal of the conditions from which it emanated.[7] Moreover, the policy of sovereignty requires the application of the *lex rei sitae* with respect to chattels.[8]

The present conception of jurisdiction over a person or thing is, in the main, geographical.[9] Like land, chattel is stuated on some territory and is subject while there to the jurisdiction of the state.[10] But jurisdiction over the thing does not necessarily involve jurisdiction over the owner or over his interest in the thing.[11] Typically the owner has submitted his interest to the jurisdiction of the state by belonging to or being in the state, or by permitting his chattel to be there, but Professor Beale goes on to argue that if the owner has done nothing to submit his interest to the law of the state where the thing is, there is no jurisdiction in that state to affect the rights of the absent person. Both Professor Beale and the American Law Institute use the term "jurisdiction" in a restricted sense, viz. that the act in question will be given extraterritorial effect.[12]

5. *Id.* Sec. 550.
6. *Id.* Sec. 394.
7. Wharton on the Conflict of Laws, Sec. 297 (3d ed. 1905).
8. *Id.* Sec. 305.
9. Note, 43 Harv. L. Rev. 1293 (1930).
10. 1 Beale, The Conflict of Laws, Sec. 49.1 (1935).
11. Beale, *Jurisdiction Over Title of Absent Owner in a Chattel*, 40 Harv. L. Rev. 805, 811 (1927)
12. 1 Beale, Sec. 50.3.

The question of jurisdiction principally arises in connection with the taxation of the chattel, with respect to the relation of different parties to the chattel, with judicial action over the chattel, with respect to ownership and the use of it, and with the administration of the chattel.[13]

The present rule of the Restatement concerning jurisdiction over tangibles in general is articulated in Sec. 49, and is as follows:

"Except as stated in Sec. 50 which deals with merger of the title to a chattel in a document, a chattel is subject to the jurisdiction of the state within which it is."

It is with this exception to the general rule that this paper is concerned.

The common law considers that, in many cases, a chattel is capable of being merged in a document issued in connection with some dealing with the chattel, as where a chattel is entrusted to a carrier and against it a document is ssued which is negotiable.[14] This is true at common law in the case of a foreign bill of lading, and under very generally adopted statutes, with an inland bill of exchange or warehouse receipt. The original draftsmen of the Restatement cited negotiable bills of lading and warehouse receipts as illustrations of documents embodying the title of chattels.[15]

The modern policy of the law is to cultivate the utmost freedom of commercial transactions. Bills of lading and other documents of title perform a special function. They are regarded as so much cotton, grain or other articles of merchandise, in that they are symbols of ownership of the goods they cover.[16] If a document of title is the symbol of goods in any real sense it must follow that the symbol is the exclusive means of dealing with the goods. Delivery of the symbol cannot amount to a real delivery unless the buyer can be confident that the symbolic delivery excludes the possibility of other dealings with the goods without his consent.[17]

The Uniform Sales Act was the first of the uniform statutes to concern itself with the problems of documents of title. A document of title in which it is stated that the goods referred to therein

13. *Id.* Sec. 49.1.
14. *Id.* Sec. 50.4.
15. Restatement, Conflict of Laws, Sec. 50.
16. Friedlander v. Texas, etc. Ry. Co., 130 U.S. 416 (1889).
17. 2 Williston on Sales Sec. 438 (1948).
Citizen's Banking Co. of Eastman v. Peacock, 29 S.E. 752 (1897)—(Action against warehouseman for the recovery of bales of cotton. Plaintiff nonsuited and appeals. The warehouse receipts covering the goods in question had been pledged to plaintiff. Held: that it was the intention of the legislature in passing the statute in question to make the warehouse receipts stand for the property which they represent. Action could be mantained by holder of the receipts quasi-negotiable in form.)

will be delivered to the bearer or to the order of any person named in such a document is a negotiable document of title.[18] Several statutes besides the Sales Act have been widely enacted in recent years which have for part, at least, of their aim, the object of making bills of lading and warehouse receipts negotiable when such documents are made out to the order of a person named therein. These statutes are the Uniform Warehouse Receipts Act, the Uniform Bills of Lading Act, and the Federal Bills of Lading Act, commonly known as the Pomerene Act.[19] The Uniform Warehouse Receipts Act has now been enacted in every state in the United States, and the Uniform Bills of Lading Act is law in over half the States. The Pomerene Act covers all shipments of goods in interstate commerce for which a bill of lading has been issued.

Even a bill of lading or a warehouse receipt is not a full substitute for the tangible which it represents. It creates a duty on the part of the carrier or warehouseman to deliver on presentment of the paper.[20] Its negotiability creates a power to destroy by negotiation the claims of certain individuals to delivery and to convey to another the right to possession.

Under Sec. 39 of the Sales Act and corresponding sections of the other uniform acts relating to documents of title,[21] a creditor is unable to attach the goods of his debtor unless he prevents the possibility of negotiation of the outstanding document of title. This can only be done by obtaning an injunction against the negotiation of the document or actually impounding it. The warehouseman or carrier is under no obligation to deliver up the possession of the goods until the document is surrendered to him or impounded by the court.[22] The net effect of these sections is that goods for which a negotiable document of title has been issued are immune from attachment unless the statutory measures for the protection of the holder of the goods have been complied with. This result is now

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18. Sec. 27 Uniform Sales Act.
19. 39 Stat. 538, 49 U.S.C.A. §§81-124.
20. Stumberg, *Commercial Paper and the Conflict of Laws*, 6 Vanderbilt L. Rev. 489 (1953).
21. Sec. 25 Uniform Warehouse Receipts Act, Sec. 24 Uniform Bills Lading Act.
22. See,*e.g.*, Stamford Rolling Mills Co. v. Erie R. Co., 257 Pa. St. 507, 101 Atl. 323 (1917)—(Stamford Co., a Del. corp., issued a writ of foreign attachment against J. Lipton d.b.a. Acme Iron & Steel Co. as Defendant and Erie R. Co. as garnishee. The Acme Co. shipped from Cleveland a cargo of scrap consigned to its order in Conn. The RR had delivered to the shipper an order bill of lading for the contents of the car. The ct. below dissolved the attachment on the ground that the bill of lading was negotiable and as the bill had not been surrendered or its negotiation enjoined the goods could not be attached. Aff'd. Sec. 24 U. B. L. A.)
Cf. Note, 7 N. Car. L. Rev. 294 (1929) Jurisdiction of Persons and Property for Purposes of Attachment.

clear under the uniform state commercial statutes and under the Pomerene Act, and cases can now rarely arise that are not governed by one or another of these statutes.[23]

A creditor whose debtor is the owner of a negotiable document of title is required to seek such aid from *courts of appropriate jurisdiction* by injunction and in attaching such document or in satisfying claims by means thereof as is allowed in law or equity in regard to property which can not readily be attached or levied upon by ordinary legal process.[24] The creditors must come into equity and prove that the debtor is the owner of negotiable documents of title.[25]

The obvious case where the question of jurisdiction over title to chattels from a conflict of laws standpoint arises is one wherein the goods are in State X, the negotiable document of title in State Y, and possibly, the endorsee or holder of the document is in State Z. Such a case was squarely presented to the New Jersey Chancery Court in the case of *Brimberg v. Hartenfeld Bag Co.*[26] The defendant, Hartenfeld Bag Co., was a foreign corporation not authorized to do business in New Jersey. The complainant's bill set forth that he had caused a writ of attachment to be issued under which the sheriff took possession of the goods in the hands of the railroad, the property of the defendant; that the defendant had negotiated an order bill conveying the goods to one Gesas, a resident of Illinois; that the bill was in the actual possession of defendant, Steinhaus, an attorney, resident of New York; that the defendants were about to move to set aside the execution of the writ of attachment upon the ground that the defendant railroad was a common carrier and the goods while in its possession were protected from attachment by the Act of Congress of 1916, as well as the New Jersey statute. The complainant further alleged that the defendant Gesas was not a bona fide holder for value of the bill and that the goods are really the property of the Hartenfeld Bag Co. and concluded with the

23. 2 Williston Sec. 439.
24. Sec. 40 Sales Act;
Sec. 26 Warehouse Receipts Act;
Sec. 25 Bills of Lading Act;
Sec. 24 Pomerene Act;
Sec. 7—602 Uniform Commercial Code.
25. Boston Sheridan Co. v. Sheridan Motor Car Co. *et al*, 244 Mass. 425, 138 N.E. 806 (1923)—(action by trustee process against the trust co. and Sheridan Co. The trust co. answered that it had certain bills of lading on certain automobiles. Held: that the trust co. had no goods, or effects of the defendant in its possession that could be attached. Remedy is to apply to a court of competent jurisdiction and enjoin the negotiation of the bills.)
26. 89 N.J. Eq. 425, 105 Atl. 68 (1918).

prayer that it be so adjudged and the negotiation of the bill enjoined. The Court dismissed the complainant's order to show cause, and held that the purpose of the Federal and New Jersey statutes undoubtedly was to protect goods in transit and in possession of a carrier against seizure until the carrier should be first liberated from liability and attack by surrender of the order bill. Such legislation has made the bill the res rather than the goods.

> "The holder of the bill and the bill itself are without the jurisdiction of this court so that this court is without power to effectively enjoin negotiation. Application for such relief will have to be made either in the jurisdiction where the bill or the holder is . . . . Where, as in this case, the goods are in one state, the order bill in another, and the alleged holder of the order bill in still another, it may well be that courts of equity, acting in the three jurisdictions, will simultaneously go so far as each may in protecting the rights of creditors, although no one court may be able, without the aid of the others, to make a decree which will be effective as against all parties."[27]

The court concluded that ample opportunity had been given to the complainants to institute proceedings in either the jurisdiction where the alleged holder of the order bill was, or the bill itself, and no such proceedings had been instituted.

Service of attachment on the holder of the document does not comply with the statutes. The act requires a bill in equity and the taking of every essential step as provided for in chancery proceedings.[28]

It has been suggested that the preemption of the field of regulation of title interests in chattels in interstate commerce by Congress has made the question one of federal law in which no interstate conflicts can exist.[29] There are some slight differences from state to state in the wording of some of the provisions of the uniform commercial statutes, but in the main the provisions as to negotiability and effect of negotiation are the same. Consequently, Professor Stumberg suggests, interstate questions of conflict of laws do not frequently arise.[30]

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27. *Id.* at 69.

28. Pottash v. Albany Oil Co., 274 Pa. 384, 118 Atl. 317 (noted in 8 Corn. L.Q. 176) —(plaintiffs issued foreign attachment under which the shf. seized several carloads of goods being transported by Pa. RR under a negotiable bill of lading which was in possession of bank. The RR and the bank were both served with copies of the attachment, and duly appeared in the action. Rule to show cause why the attachment should not be dissolved for non-compliance with Sec. 24 UBLA made absolute. Aff'd. Service of attachment did not "enjoin" the negotiation of the bills.)

29. Note, *The Power of the State to Affect Title in a Chattel Atypically Removed to It*, 47 Col. L. Rev. 767,774 (1947).

30. Stumberg, *supra* note 20, at 498.

It is the writer's conclusion that the rule enunciated n Subsection (1) of Section 50 of the Restatement is compelled by the cases where in this problem has been considered and the statutes discussed herein.

EXCEPTIONS TO THE RULE OF SUBSECTION (1)

Subsection (2) of Section 50 asserts that the state in which the chattel is may enforce:

(a) interests growing out of acts done in the preservation of the chattel;
(b) interests essential to the exercise of the state's police and taxing powers;
(c) interests dependent upon the exercise of the power of eminent domain.

The general rule with respect to the power to tax is that some benefit to the property taxed is the controlling consideration.[31] It is also essential to the validity of a tax that the property be within the territorial limits of the taxing state.[32] Protection and payment of taxes are said to be correlative obligations.[33]

In Sellinger v. Kentucky[34] the Supreme Court held that the State of Kentucky could not impose a tax on warehouse receipts held in Kentucky on whiskey stored in Germany. "The receipts can not be taken to be more than one of several keys to the goods . . . . We take it to be almost undisputed that if the warehouses were in Kentucky the state would not and could not tax both the whiskey and the receipts, even when issued in Kentucky form, and that it would recognize that the only taxable object was the whiskey."[35]

Conversely, a Pennsylvania court in *Commonwealth v. Large Distilling Co.*[36] held that a Maryland corporation registered to do business in Pennsylvania was obliged to pay "bonus" on whiskey

31. Union Refrigerator Co. v. Kentucky, 197 U.S. 194 (1905)—(Question was whether a corp. organized under Ky. law could be subjected to taxation upon its tangible personal property, permanently located in other states, and employed there in the prosecution of its business. Held: property in question not subject to the taxing power of the Comm. of Ky.)

32. Pullman's Car Co. v. Pennsylvania, 141 U.S. 18 (1888)—(action brought by state of Pa. to recover the amount of tax settled by the Aud. Gen. on the defendant's capital stock using as a basis such proportion of its capital stock as the no. of miles of railroad over which cars were run by the Defendant in Pa. bore to the total no. of miles owned by D. Ct. aff'd the tax as one in substance and effect on the property within the state.)

Cf. Old Dominion SS Co. v. Virginia, 198 U.S. 299 (1905)—(Va. taxed certain vessels, the property of a Del. corp. but used in Va. coastal waters and harbors. Tax aff'd.)

33. Pullman's Car Co. v. Pa., 197 U.S. at 204.

34. 213 U.S. 200 (1909)

35. *Id.* at 206.

36. 22 Pa. D. & C. 147 (1937)—(Appellant, a Md. corp., had purchased warehouse receipts in NYC for the whiskey in quest. stored in a Pa. Warehouse. Held: that the whiskey was taxable to the appellant, being held under the protection of the laws of Pa. for the corporate uses of defendant.)

held in a Pennsylvania warehouse through the medium of warehouse receipts. The fact that negotiable warehouse recepts have been issued for the property held in bond does not affect the question of the power of the state. A state has the undoubted power to tax private property having a situs within its territorial limits, and may require the party in possession of the property to pay the taxes thereon.[37]

The general rule is that chattels which are in transit from one state to another are not considered as having a situs in every state through which they pass, so as to subject them to taxation there.[38] In *McCutcheon v. Board of Equalization*[39] it was held that Jersey City could tax flour held on a pier for repacking and blending. The flour had been shipped from the Northwest to New York City on through bills of lading. The fact that the flour was held for repacking and blending broke the continuity of the journey. Nor does the fact that goods are stored in a warehouse while waiting for shipping facilities to their ultimate destination exempt them from taxation at the situs.[40]

Statutory tax liens are generally held to have priority over a foreign chattel mortgage lien. In *First National Bank of Valentine v. Peterson*[14] the plaintiff bank advanced a loan on cattle located in Nebraska, and by the terms of the mortgage to be kept in Nebraska. Prior to the execution of the note and mortgage the mortgagor had resided in and owned personal property in South Dakota against which personal property taxes had been levied and not paid before the removal of that property. Later without the plaintiff's knowledge the cattle described in the chattel mortgage were in South Dakota, whereupon the sheriff levied upon and took the cattle into possession. The plaintiff then commenced this action to recover possession of the cattle, but the Court in applying the South Dakota tax statute held that the lien for taxes on he personal property had priority over the interest of the Nebraska mortgagee.

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37. Carstairs v. Cochran, 193 U.S. 10 (1904).

38. Archer-Daniels-Midland Co. v. Bd. of Equalization, 154 Neb. 632, 48 N.W. 2d 756 (1951)—(Plaintiff is a Del. corp. with its principal place of business in Minn. It is engaged in the buying, selling, storing and cleaning of grain. It had no terminal facilities in Neb. or grain stored there.)

39. 87 N.J.L. 370, 94 Atl. 310 (1915).

40. John Ross & Co. v. Daviess County, 186 Ky. 589, 217 S.W. 677 (1920)—(Appeal from an assessment for taxation on certain tobacco in question was a resident and citizen of Engl. The owner had only stored the tobacco while waiting for shipping facilities to Engl. for resale. Held: Tax aff'd.)

41. 67 S. Dak. 400, 293 N.W. 530 (1940) Noted in 89 U. of Pa. L. Rev. 511 (1941)—(wherein the result of this case is compared with Sec. 50 (2) b of Rest. Conflict of Laws).

Where a mechanic's or materialman's lien is expressly given priority by local statute, the lien is usually held superior to the foreign owner's interest because of the value added to the chattel.[42]

The police power prevents the use of one's property in his own way as against the general comfort and protection of the public. The power of eminent domain deprives the owner of property of the ability to obstruct the public necessity and convenience by obstinately refusing to part with his property when needed for public use Both of these powers are inherent in the concept of sovereignty.

Typically a proceeding to forfeit a chattel for its use in an illegal enterprise is a proceeding in rem—the chattel itself is considered the wrongdoer. It has been suggested that a better practice, and one more in accord with due process, would be a proceeding in which the true owner could appear and present his claim of ownership.[43] But this has not been the practice of the cases.[44]

In conclusion, the rule of Subsection (2) of Section 50 of the Restatement is substantiated by the cases. The state's power to tax chattels having a situs within its borders is undisputed. The power of eminent domain and the police power are equally as broad and undisputed. The writer's research has dsclosed no case in which a state exercised the power of eminent domain over a chattel the title to which was embodied in a document, but it seems apparent that the state in which the chattel is could exercise such power. Generally, states in which the chattel is situate have enforced interests growing out of acts done in the preservation of the chattel, and in adding value to the chattel.

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42. Willys Overland Co. v. Evans, 104 Kans. 632, 180 Pac. 235, (1919) (Plaintiff appealed from a judgment which preferred the lien of a repair bill to its chattel mtge. on the automobile in question. The mtge. was filed and recorded in Mo. The car was brought to a Kans. garage for repair without plaintiff's knowledge. Ct. applied the Kans. statute which gave the garageman a prior lien.);

Cf. C.I.T. Corp. v. Jorgonson, 242 N.W. 594 (S.D. 1932) (wherein the ct. found that the conditional vendor (in Ind.) had recorded his contract in time to defeat priority of garageman's lien).

43. Note, 34 Harv. L. Rev. 200 (1921).

44. See *e.g.*, State v. Morris, 124 Kans. 143, 257 Pac. 731 (1927) (A proceeding to forfeit an auto used in transporting liquor. Jdg. of forfeiture rendered, and mtgee. of the automobile appealed. The car had been purchased in Mo. and the mtge. provided that it should not be removed therefrom or used for illegal purposes. Aff'd);

Buchholz v. Commonwealth, 127 Va. 794, 102 S.E. 760 (1920) (the owner's chauffeur took the car into Va. from D.C. where it was seized. Held: the chauffeur operated the car with the permission of the owner and there was no error in declaring a forfeiture. A very unwise result).

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