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The Purchase Money Trust Act of 1901 in the Light of the Recording Acts

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ized act may be ratified and that the ratification supplies the authority which was lacking at the time the act was done. Whether the President of the United States may be regarded as an agent of Congress to the extent that an act such as his Proclamation may be ratified at a later date is a problem which will not be here discussed. We know that the regulation of our currency is a Federal problem and that, where the entire financial structure of the country is in jeopardy, Congress would have authority under the Constitution to regulate the banks both Federal and state.[3] Legislative authority for the President's Proclamation has been based upon the "Trading with the Enemy Act" of October 6, 1917,[4] which, though passed as a war measure, gave the President sufficient authority to allow him to close banks. The law was not repealed, and the act of the President might well be justified thereunder. Even in the absence of such legislative authority the proposition has been advanced that the Proclamation might be sustained as an exercise of an inherent right in the Chief Executive to exercise extraordinary powers in periods of national crisis.[5]

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THE PURCHASE MONEY TRUST ACT OF 1901 IN THE LIGHT OF THE RECORDING ACTS

The Act in question provides that purchase money trusts shall be void against bona fide creditors, and mortgagees and purchasers of or from the holder of the legal title unless such takers had notice of the trust.[1]

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[3]Federal Constitution, Article I, Section 8. McCulloch v. Maryland. (Supreme Court of the United States, 1819. 4 Wheat. 316, 4 L. ed. 579).

[4]40 Stat. L. 411.

[5]Wilson v. New, 243 U. S. 332, 345, 346; Block v. Hirsh, 256 U. S. 135.

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[1]Section 1 of The Act of 1901, P. L. 425; 21 Purd. Stat. Sec. 601 provides: "Whenever hereafter a resulting trust shall arise with respect

It has been decided under this Act; (1) that the only creditors protected are judgment creditors,[2] (2) that their protection does not depend upon their having advanced credit on the faith of the debtor's interest in the land,[3] (3) that possession of the land by the beneficiary does not constitute notice of his interest,[4] (4) that an action of common law ejectment by the beneficiary alone satisfies the ejectment proviso.[5]

As so construed the Act has been used as a device for; (1) extending the protection of the recording acts to judgment creditors, (2) avoiding the doctrine of notice from possession, and (3) avoiding the doctrine of lis pendens.

In view of this operation of the Act and the important amendment in 1931 in the recording acts,[6] it is timely to

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to real property, by reason of the payment of the purchase money by one person, and the taking or making of the legal title in the name of another, if the person advancing the purchase money has capacity to contract, such resulting trusts shall be void and of none effect as to bona fide judgment or other creditors, or mortgagees of the legal title, or purchasers from such holder without notice unless either, (1) a declaration of trust in writing has been executed and acknowledged by the holder of the legal title, and recorded in the recorder's office in the county where the land is situated, or (2) unless an action of ejectment has been begun in the proper county, by the person advancing the purchase money, against the holder of the legal title."

[2]Burns v. Coyne, 294 Pa. 512, (1928); Central National Bank and Trust Co. v. Kuntz, 161 Atl. 602 (Pa. Super. Ct., 1932).

[3]Central National Bank and Trust Co. v. Kuntz, Supra., note 2.

[4]Rochester Trust Co. v. White, 243 Pa. 469, (1914); Levy v. Hershberger, 249 Pa. 504, (1915); First National Bank of Mt. Union v. Batch, 98 Pa. Super. Ct. 494, (1929); Dukes v. Raspa, 16 Del. Co. 275 (1923).

[5]Knecht v. Reichard, 22 Dist. Rep. 913 (1913).

[6]The Act of June 12, 1931, P. L. 558, amending The Act of May 12, 1925, P. L. 613, (the parts added in 1931 being in italic.): "That all deeds, conveyances, contracts, and other instruments of writing wherein it shall be the intention of the parties executing the same to grant, bargain, sell, or convey any lands, tenements, or hereditaments situate in this Commonwealth, upon being acknowledged by the parties executing the same or proved in the manner provided by the laws of this Commonwealth, shall be recorded in the office for the recording of deeds in the county where such lands, tenements or hereditaments are situate.

examine the Act of 1901 in the light of the recording statutes[7] to ascertain to what extent they furnish alternate remedies, supplement each other, or contravene each other.

It had been long recognized that judgment creditors were not within the protection of the recording acts, and that they could bind only what a debtor actually had.[8]

Every such deed, conveyance, contract, or other instrument of writing which shall not be acknowledged or proved and recorded as aforesaid, shall be adjudged fraudulent and void as to any subsequent bona fide purchaser or mortgagee *or the holder of any judgment duly entered in the prothonotary's office in the county where the lands, tenements, or hereditaments are situate,* without actual or constructive notice unless such deed, conveyance, contract, or other instrument of writing shall be recorded, as aforesaid, before the recording of the deed or conveyance *or the entry of the judgment* under which such subsequent purchaser, mortgagee, *or judgment creditor* shall claim. *Nothing in this act shall be construed to repeal or modify any law providing for the lien of purchase money mortgages.*

[7]The principal general recording act and the one under consideration here is the Act of May 19, 1893, P. L. 108, which provides: "All deeds and conveyances, which shall be made and executed within this Commonwealth of or concerning any lands, tenements, or hereditaments in this Commonwealth, or whereby the title to the same may in any way be affected in law or in equity, shall be acknowledged . . . (or proved) . . . , and shall be recorded . . . in the county where such lands . . . are lying and being, within ninety days after the execution of such deeds or conveyance, and every deed or conveyance, which shall not be proved or recorded as aforesaid, shall be adjudged fraudulent and void as against any subsequent purchaser or mortgagee for a valid consideration, or any other creditor of the grantor or bargainor in said deed or conveyance". This act amends the Act of March 18, 1775, 1 Sm. L. 422, but the only change made is a decrease in the time of recording from six months to ninety days.

No consideration is here taken of the Act of April 24, 1931, P. L. 48, which provides that the legal effect of recorded instruments shall be to give constructive notice to subsequent purchasers mortgagees and/or judgment creditors of the grantors of such instruments. It is submitted that that always was their effect.

[8]Ludwig v. Highley, 5 Pa. 132, 138, (1847), and Reed's Appeal, 13 Pa. 476 (1850), in both of which cases judgment creditors were denied relief against purchase money trusts. See also, Shryock v. Waggoner, 28 Pa. 430, (1857); Kauffman v. Kauffman, 266 Pa. 270, (1920); Rubinsky v. Kosh, 296 Pa. 285, (1929); and Ohio-Pennsylvania Joint-Stock Land Bank of Cleveland v. Miller, 162 Atl. 328, (Pa. Super. Ct., 1932).

The legislature, recognizing this defect, has extended to judgment creditors the protection already afforded to purchasers and mortgagees. Whether the limitations which have been placed upon this protection by judicial construction will be applied to judgment creditors, is not altogether free from doubt. The recording acts which had been the subject of construction were ignored by the Act of 1925. Apparently all that act does is to remove the period of time in which instruments must be recorded. Although that could have been done by a simple amendment of the Act of 1893, the fact remains that the legislature wrote a new law, changing the language of the old, and without expressly repealing or amending it. If the legislature had any other intention, it will remain for the courts to find it, as it is not apparent.[9] Since there appears no intention to change the elements which have been held to constitute notice or to constitute a purchaser one for value, we must assume, until the contrary is decided, that they are still necessary. The amendment of 1931 will, therefore, carry the same rules over to the benefit of judgment creditors.

Assuming then that the Act of 1931 protects judgment creditors as purchasers and mortgagees were protected under prior acts, it appears that that act and the Act of 1901, in so far as the latter has been used as a device to afford recording protection to judgment creditors, afford concurrent remedies. It is clear that the Act of 1901 gives such relief.[10] Purchasers and mortgagees from secret trus-

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[9]Apparently the Supreme Court had an opportunity to pass on this statute in the case of Finley v. Glenn, 303 Pa. 131 (1931). In that case both the deeds concerned were executed subsequently to the effective date of the Act of 1925. The issue of what a recorded deed gives notice was directly before the court, and the recording acts considered at some length. Despite this opportunity to pass on the Act of 1925, the court did not mention it, but decided the case under the Act of 1893. This case merely confuses our inquiry by evidencing that the Act of 1893 is still in effect.

[10]Supra., note 2.

tees have always taken free from the beneficiary's interest,[11] including cases of purchase money trusts.[12] This explains why judgment creditors have been, almost without exception, the only persons who have invoked the Act of 1901. It follows that judgment creditors, having been made purchasers, need no longer rely on this special statute, although it still furnishes them protection.

This conclusion may well be doubted in one respect. It was early decided under the recording acts that if A owed money to B, later deeding or mortgaging a property to him as security, B was not a purchaser for value and thus was not protected against prior unrecorded instruments.[13] The policy seems to be that there must be some value parted with on the strength of the conveyance.[14] Will a judgment creditor have to show that he advanced credit on the faith of the debtor's interest? To be logically consistent such a requirement might be made under the Act of 1931. Such a result is, however, very unlikely. The nature of judgments differs sufficiently from that of deeds or mortgages to warrant a refusal to extend the principle. No such requirement has been found in any other state, while several laws similar to ours have been held to protect a creditor without

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[11]Peebles v. Reading, 8 S. & R. 484, 495, (1822); Bracken v. Miller, 4 W. & S. 102, 113, (1842); Dickinson v. Byer, 87 Pa. 274, 281, (1878); Bigley v. Jones, 114 Pa. 510, (1886); Dewalters v. Kuhnle, 199 Pa. 439, (1901).

[12]Ludwig v. Highley, and Reed's Appeal, Supra., note 8; Fillman v. Divers, 31 Pa. 274, (1858); Rupp's Appeal, 100 Pa. 531, (1882); Lance v. Gorman, 136 Pa. 200, (1890), where it was held that although a judgment creditor would not prevail over a purchase money trust, a purchaser at the execution on that judgment would prevail.

[13]"A creditor who takes a mortgage, note, or other chose in action only as security for a pre-existing debt, and not for money advanced at the time, is not a purchaser for value", Ashton's Appeal, 73 Pa. 153, 162. In Adamson v. Souder, 205 Pa. 498 (1903), an unrecorded purchase money trust prevailed over a conveyance given by the trustee to secure a pre-existing debt.

[14]"He must have parted with some value or some right upon the faith of the mortgage and at the time of it, to entitle him to protection as a purchaser", 5 Thompson on Real Property, Sec. 4036, (1924).

reliance.[15] The language of the Superior Court in construing the Act of 1901 would seem to eliminate such a requirement if applied by analogy to the Act of 1931.[16] Since under the Act of 1901 protection does not depend upon advancing credit in reliance,[17] this act either supplements the Act of 1931 or acts concurrently with it according as the latter is construed in this respect by the courts.

In addition to these instances where the acts work concurrently, the Act of 1931 supplements the Act of 1901 in two important aspects. First, in proceeding under the Act of 1901 it was necessary to distinguish between resulting and constructive trusts.[18] Thus it came about that if A furnished the money for a conveyance to B, A's equity would not prevail over a judgment creditor,[19] but if B wrongfully took the money from A and made the purchase, then A's equity would prevail over a creditor of B.[20] This distinction need no longer be made, because, as stated,[21] the general recording acts protect against both types of equities. The second addition made by the Act of 1931 is illustrated by the case of *Beman Thomas Co. v. White*.[22] In that case

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[15]Atlas Portland Cement Co. v. Fox, 265 Fed. 444, (D. C. 1920). In Sylvanus v. Pruett, 9 Pac. (2d), 142, 144, (N. M., 1932) it was stated; "The rights of a creditor are fixed by the condition of affairs as they existed at the time of the inception of his lien."

[16]Central National Bank and Trust Co. v. Kuntz, Supra., note 2, (161 Atl.) at page, 603; "The law was made broad enough to cover every 'bona fide judgment creditor' without imposing a further burden upon him or restricting him to either indebtedness since the creation of the trust or to an indebtedness incurred on the faith and credit of the land so held in trust."

[17]Central National Bank and Trust Co. v. Kuntz, Supra., notes 2 and 16.

[18]Rosa v. Hummel, 252 Pa. 261, (1921), "However beneficial it might be to extend the scope of the law, such relief should come from the legislature rather than from a forced construction of the statute by the courts".

[19]Supra., notes 2 and 3.

[20]A. B. Dick and Co. v. The Third National Bank, 17 D. & C. 549, (1932).

[21]Supra., notes 11 and 12.

[22]Beman Thomas Co. v. White, 269 Pa. 261, (1921).

C entered a judgment against A in whose name the property stood. B had been entitled to the beneficial interest in the property under a purchase money trust. Had the judgment been entered when things so stood it would have prevailed, but A had conveyed to B just before it was entered, and although the conveyance was not recorded, C failed because B now held under a claim which was not void as against judgment creditors. Such a conveyance would not have been good against a purchaser or mortgagee and is no longer good against a subsequent creditor.

Thus, so far as judgment creditors, as differentiated from purchasers and mortgagees, are concerned, the curing of the defect in the recording acts gives them better protection than does the Act of 1901. Now their protection against purchase money trusts is merely one incident of their broader protection under the recording acts. It is to be doubted whether in the future the Act of 1901 will be used as a device to afford such relief to creditors.

Considering all three classes; creditors, purchasers, and mortgagees, there are situations where they have equally sought relief under this act. To the extent to which they have done so in the past, it is still necessary for them so to do. Such actions have had the effect of avoiding either the doctrine of notice from possession, or the doctrine of lis pendens. In so far as those purposes have been effected, the Act of 1901 may be said to supplement the recording acts, and to a certain extent defeat their purposes.

A purchaser of land takes free from prior inconsistent interests of which he has no notice. This notice may be actual or constructive. Actual notice means direct and positive knowledge of the prior interest.[23] If there exists a state of facts from which the purchaser should know of the interest he will be deemed to have notice thereof. Thus, if A purports to sell land of which he has the record title, but possession of which is in B, the purchaser is bound to inquire of B to ascertain on what rights his possession rests,

[23]Fallon, "Pennsylvania Law of Conveyancing," (1902), page 296.

and will be charged with notice of what such inquiry would have disclosed.[24] Without attempting to discuss the limitations of this doctrine of possession as notice,[25] other than to observe that the possession must be, "exclusive, open, and notorious",[26] and must be inconsistent with the record title,[27] it may be stated that possession sufficient to put a purchaser on notice of the claims of the possessor, does not constitute notice where the possessor is claiming under a purchase money trust.[28] In the first case involving the Act of 1901 it was stated;[29] "It seems quite clear that the notice contemplated by the act is actual notice. The legislature must have had a purpose in including mortgagees and purchasers in the protection against resulting trusts, but if they are still to be affected by mere constructive notice, such as was given by the occupation of the land . . . they are in exactly the same position as they were before the act."

The doctrine of notice from possession is at best a harsh one.[30] In view of the fact that there is almost invariably some intimate or familiar relationship between the parties to a resulting trust, which would naturally tend to mislead a third party, the operation of the statute in this respect seems to be unobjectionable.

Somewhat akin to the problem of notice is the problem as to who is affected by the doctrine of "lis pendens".[31] It

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[24]Jamison v. Dimrock, 95 Pa. 52, (1880); Smith v. Miller (No. 1), 289 Pa. 184, 186, (1927), and cases there cited; Robey, "Real Estate and Conveyancing in Pennsylvania", (1923), page 166.

[25]See exhaustive digest and discussion in 13 L. R. A. (N. S.) 49, (1909).

[26]Meehan v. Williams, 48 Pa. 238, 240, (1864).

[27]Woods v. Farmere, 7 Watts 382, (1838); Lance v. Gorman, Supra., note 12; Smith v. Miller (No. 2), 296 Pa. 340, 345, (1929).

[28]Supra., note 4.

[29]Rochester Trust Co. v. White, Supra., note 4 (243 Pa.) at page 474.

[30]Lyman, "The Doctrine of Constructive Notice as Applied to Real Estate Conveyances" in 19 Dickinson Law Review 147, 156 (1915).

[31]"The doctrine is one branch of the law of constructive notice", Phelps v. Elliott, 35 Fed. 455, 460, (1888).

is well settled in this state that if A conveys property concerning which there is litigation pending to which A is a party, the purchaser takes subject to the outcome of the suit.[32] This doctrine is not based on the protection of innocent parties, but upon the consideration that no suit could be successfully terminated, if, during its pendency, the property of a party could be transferred so that it would not be bound by the decree or judgment in the hands of the transferee.[33] It has been stated that this applies to all actions directly affecting real estate, including actions to subject land to a trust.[34] The leading case in this country on the application of this doctrine was one to protect a cestui against alienation of the trust corpus by the trustee pending a trust adjudication.[35] In a somewhat similar case it was stated;[36] "If the relief sought in a suit is for the recovery of possession, or the enforcement of a lien, or an

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[32]Green v. Rick, 121 Pa. 130, (1888); Dovey's Appeal, 97 Pa. 153, (1881).

[33]Dovey's Appeal, Supra., note 32; Thompson, "Titles to Real Property" Sec. 545 (1919); In Tilton v. Cofield, 93 U. S. 163, 168, (1876), it was stated: "The law is that he who intermeddles with property in litigation does so at his peril, and is conclusively bound by the results of the litigation whatever they may be, as if he had been a party to it from the outset".

[34]Thompson, opp. cit. supra., note 33, In Baird v. Corwin, 17 Pa. 462, (1851), a person bought a property during a partition proceeding, and it was held that the lis pendens was of itself sufficient to give him notice. In Murray v. Lylburn, 2 Johns. C. R. (N. Y., 1817) a cestui was protected by lis pendens when his trustee fraudulently disposed of his property pending a suit to remove him.

[35]In Murray & Winter v. Ballou & Hunt, 1 Johns. C. R., 566, 580, (N. Y., 1815), Chancellor Kent, after tracing the history of the doctrine, states: "It would be impossible, as I apprehend, to mention any rule of law which has been established on higher authority or with more uniform sanction." The doctrine as applied in this case was approved in Diamond v. Lawrence Co., 37 Pa. 353, 356 (1860).

[36]Wingfield v. Neall, 60 W. Va. 106, 54 S. E. 47, 10 L. R. A. (N. S.) 433, 448, (1906). "Applications of the doctrine accordingly occur in connection with actions of ejectment, as well as in connection with equitable proceedings, such as suits to foreclose a mortgage, or to establish a trust in land, or to set aside a conveyance, or for partition". 2 Tiffany, "Real Property" Sec. 579 (1920).

adjudication between conflicting claims of title, or any other judicial action affecting the title, possession, or right to possession of specific property, then the property is so directly affected by the decree sought that it becomes subject to the law of 'lis pendens'."

In view of such considerations what does the Act of 1901 mean when it states that a resulting trust shall be void unless it is recorded, "or (2) an action of ejectment has been begun in the proper county by the person advancing the purchase money against the holder of the legal title"? Very often the person who has paid the purchase money is in possession. He cannot record a declaration of trust for that must be executed by the trustee.[37] He cannot bring ejectment since he is in possession.[38] He can enforce the trust by a bill in equity to establish the trust[39] or by proceeding under the Acts of 1889[40] or 1893[41] to force the holder of the legal title to bring ejectment or to have an issue framed to try the dispute of title. Do none of these actions protect the beneficiary if the trustee chooses to convey pending them? The act indicates that they would not. The appellate courts of the state have not been called upon

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[37]Supra., note 1.

[38]"A party cannot maintain ejectment for land in his own possession," Krebbs v. Downing, 25 Pa. 399 (1855).

[39]Hutchinson v. Dennis, 217 Pa. 290, (1907).

[40]"An Act for Settling of Titles to Real Estate", the Act of March 8, 1889, P. L. 10, Sec. 1, as amended by the Act of April 16, 1903, P. L. 212, providing that a person in possession of land can petition for a rule to show cause why a person not in possession but having a claim thereto should not bring ejectment.

[41]"An Act for Quieting the Title to Land", Act of June 10, 1893, P. L. 415, providing that any person in possession claiming under any right, which right, or title, or right to possession is disputed, can obtain a rule to show cause why an issue should not be granted to determine the dispute.

It has been stated that a beneficiary cannot pursue a trustee through the medium of either of these acts, prior to having his trust declared, Joyce's Petition, 26 Dist. 1122 (1917), but it seems that the decision in that case depended more on the nature of the possession of the plaintiff. In view of Hutchinson v. Dennis, Supra., note 39, and Smith v. Hibbs, 213 Pa. 202 (1906) such a contention cannot be maintained.

to pass on the question, and but a single instance involving it has been reported from a court of first instance. In that case, *Knecht v. Reichard,*[42] A paid for property, title to which was placed in his wife. She deserted him, leaving him in possession. She brought an action of ejectment, and he brought an action under the Act of 1893, which latter action was called by the court,[43] "an action in the nature of ejectment." While both these actions were pending a judgment was entered against the wife. The court held without discussion or authority that the creditor was protected by the Act of 1901, stating merely that "the action of ejectment was the reverse of that referred to in the Act."[44] If this is a correct statement, the Act of 1901 abrogates the doctrine of "lis pendens", unless one single type of action is pending.

It is submitted that such should not be the law. The rule of *Knecht v. Reichard,* can be avoided by a more liberal construction of the provision requiring an action of ejectment. If the beneficiary proceeds under either the Act of 1889 or the Act of 1893, certainly the provision should be satisfied. The provision must have been placed there to furnish beneficiaries some mode of protecting themselves from acts of the trustees without perpetrating a fraud upon third parties. There is no reason why a beneficiary's power to protect his interest should depend on his being out of possession of the land, and especially is this so in view of the fact that his possession does not constitute notice to third parties.[45] Actions brought by persons in possession and those brought by persons out of possession both accomplish the same end; namely, adjudicating disputes as to title and right to possession.[46] Both are properly placed on the ejectment index, thus giving third parties equal notice.[47]

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[42]Supra., note 5.

[43]Supra., note 5, (22 Dist.) at page 915.

[44]Supra., note 43.

[45]Supra., notes 28 and 29.

[46]Earhart v. Marshall, 233 Pa. 365, (1912); Ullom v. Hughes, 204 Pa. 305, (1902).

[47]Smith v. Hibbs, Supra., note 41.

Both contain all the elements of a valid "lis".[48] The same force and effect is given to the verdict in both cases.[49] Since, therefore, they are affirmative actions brought by the beneficiary to protect his interest, and they both give notice to third parties, it is difficult to see why they cannot be considered as actions of ejectment. If they are not so considered, then the beneficiary cannot protect himself unless he can manage to get actual notice to a purchaser, and this is virtually impossible.[50] The courts will be powerless to aid the beneficiary, for pending any proceeding the trustee can alienate the property. It is to cure this very evil that the doctrine of lis pendens has been adhered to as a necessary power of the courts.[51] It is not reasonable that the legislature should have intended such a result, and it is doubtful whether the appellate courts on a thorough consideration of

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[48]"A purchaser is affected by a lis pendens only if the land in litigation is described in the pleadings with such reasonable certainty as to enable him to know that it is the land which he proposes to purchase", 2 Tiffany, "Real Property", Sec. 579, (1920). For the essentials of a valid lis pendens see De Pass v. Chitty, 90 Fla. 77, 105 So. 148, 150, (1925), and Rardin v. Rardin, 85 W. Va., 145; 102 S. E. 295; 10 A.L.R. 300 (1919).

[49]Act of 1893, Supra., note 41, provides, "and the verdict of the jury in such issue shall have the same force and effect upon the right and title and right of possession of the respective parties . . . as a verdict in ejectment upon an equitable title."

[50]"To bring home to every purchaser the charge of actual notice of the suit must, from the very nature of the cause, be in a great degree impracticable", Parks v. Jackson, 11 Wend., 442, 449, (N. Y., 1833).

[51]"If this rule were not attended to there would be no end to any suit; the justice of the courts would be evaded and great hardship and inconvenience to the suitor necessarily introduced. It is extremely difficult to draw any line, and very dangerous to allow of the rule being frittered away by exceptions", Chancellor Kent, in Murray v. Lylburn, Supra., note 34. "Lis pendens is usually understood as the control which a court has over the property involved in a suit", Bungar v. St. Michaels Church, 272 Pa. 402, 404, (1922). "The effect of a lis pendens is founded upon the necessity of such a rule to give effect to the proceedings of courts of justice", Central Trust Co. v. Harless, W. Va., 152 S. E. 209, 211, (1930).

the question would so narrowly construe the act.[52]

Notwithstanding the evils of such a construction, it has been reached. In view of that construction and the rule that possession does not amount to notice, the conclusion is that a creditor, mortgagee, or purchaser of or from a purchase money trustee receives a greater degree of protection than do persons taking similar interests from any other record title holders.

J. Boyd Landis

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[52]"There is no rule that, without relation to the other parts of the act, or the whole system of the laws; without relation to the unjust consequences, that would flow from literal adherence, without relation to the clear scope and design, (that) courts must adhere to the very words and letter of the law; for the letter of a statute will be enlarged or diminished according to legal discretion, so as to embrace all the purposes designed by it", per Duncan, J., in Stewart v. Keemle, 4 S. & R. 72, 73, (1818).