Volume 57
Issue 2 *Dickinson Law Review - Volume 57, 1952-1953*

1-1-1953

An Interpretation of Sections Three and Four of the Chattel Mortgage Act of 1945 and Related Sections

Jerome H. Gerber

LEGISLATION

AN INTERPRETATION OF SECTIONS THREE AND FOUR OF THE CHATTEL MORTGAGE ACT OF 1945 AND RELATED SECTIONS

Chattel mortgages have had legislative sanction in Pennsylvania, at least to a limited extent, since 1853.[1] Since that time the legislature has, by statute, expanded the scope of chattel mortgages bit by bit,[2] until today we have, in the form of the Chattel Mortgage Act of 1945 (as amended),[3] a comprehensive law covering security transactions of this nature for all types of chattels.

Two phases of the chattel mortgage picture are dealt with here. First, are goods acquired after the execution of the mortgage capable of being covered by a mortgagee's lien within the meaning of this act; and, if so, to what extent? Secondly, can a person mortgage chattels (of any type) for money or credit which is to be given at some future time; and, if so, under what circumstances?

In order to answer the problems raised above, we must look to a variety of sources. The primary source is, of course, the act itself. Unfortunately, the drafters of the present act made it none too clear in its meaning, and the statute is not altogether free from ambiguity.[4]

Secondly, there are court decisions construing the act. Here again our source is weak, for there has been but one case since the passage of this act that dealt with the problem and that was decided on another point.[5] Therefore, we must look to the courts' treatment of the Chattel Mortgage Act in general, and try by analogy to predict the manner in which the courts will deal with the particular sections on future advances and after-acquired goods.

Outside cases—cases of other jurisdictions on chattel mortgages and Pennsylvania cases on subjects related to our problem—also are used in the analysis.

A Mortgage Of After-Acquired Goods—Its Validity As Between The Parties.

There is not too much of a problem here. The Act of 1945, P.L. 1358, Section 3, specifically says that after-acquired *res* may be the subject of a chattel mortgage.[6] As long as the rights of third parties do not interfere, there can be

---

1 (Mining rights)—April 5, 1853, P.L. 255, 21 P.S. 831.

2 (Leaseholds)—April 27, 1855, P.L. 368, 21 P.S. 838. (iron ore and products, petroleum, slate and cement)—April 28, 1887, P.L. 73, 21 P.S. 861; (coal rentals and royalties)—May 13, 1889, P.L. 197, 21 P.S. 891; (vessels)—March 7, 1929, P.L. 14, 21 P.S. 921; (General Chattel Mortgage Act covering loans by federal government agencies)—July 15, 1936, P.L. 47, 21 P.S. 921.

3 Act of June 1, 1945, P.L. 1358, §§ 1-16, 21 P.S. 940.1-940.16; Act of June 28, 1947, P.L. 1043, §1; Act of May 23, 1947, P.L. 270, §1; Act of June 27, 1947, P.L. 1070, §1; Act of September 29, 1951, P.L. 425, §§ 1-3.

4 By examining and comparing the present act with the Act of 1943, P.L. 343, 21 P.S. 839 (an act to cover chattel mortgages of farm equipment and produce) we can easily see that the drafters of the present act merely took the text of the Act of 1943 and enlarged its scope by insertion and addition. This method has proved to be weak and gives rise to much ambiguity and uncertainty.

5 Arcady Farms Mill Co. v. Sedler, 367 Pa. 314, 80 A.2d 845.

6 Quoting from the title of Section 3, "Subsequently acquired property. . ." See text of Section 3.

no reason why the parties cannot agree that any property acquired by the mortgagor after the execution of the mortgage shall fall under the mortgagee's lien on acquisition by the mortgagor. The act specifically mentions farm produce and progeny, but is not limited to this, for the act calls for "*any* after-acquired good."[7] We thus may infer that anything later acquired can come under the mortgagee's lien if provision is made for it in the instrument.

In addition to the act itself, we find support for this in older Pennsylvania cases dealing with land mortgages. In *Ladley* v. *Creihton*[8] machinery that was installed to replace worn-out units was covered by the mortgage.[9]

In looking to other jurisdictions, we find an Oklahoma statute similar to our own[10] interpreted in the case of *Stockyards Loan Co.* v. *Nichols*.[11] Here the court stated, "when the agreement of the chattel mortgage calls for the mortgage to cover after-acquired goods the lien will attach when the mortgager acquires the goods." The Alabama,[12] South Dakota,[13] Washington[14] and California courts[15] are in accord. New York allows mortgages of after-acquired goods stand as between the parties.[16]

A Mortgage Of After-Acquired Goods—Its Validity As To Third Parties

When third parties enter the picture, problems arise. If the parties to the mortgage comply with the formal requirements of the act[17] the mortgagee will have a lien on the goods covered in the mortgage.[18] Under what circumstances will the lien stand good against third parties?

Suppose A has mortgaged all his farm equipment to B, including any farm equipment A might later acquire. Where the interests of third parties do not interfere, the lien of B will attach as soon as A gets a new tractor. But suppose A buys a tractor already encumbered? Will B's lien extend or will the previous encumberancer's rights be paramount? Section 5 of the act[19] says that the "lien shall be good and valid against and superior to all rights of *subsequent* pur-

---

7 Quoting from Section 3 of the act, ". . .may validly include any chattel of any kind or description. . . ." See also n. 6, infra.
8 Ladley v. Creihton, 70 Pa. 490, 6 Phila 209 (1872).
9 This was an early chattel mortgage under the Chattel Mortgage Act (1855) (see n. 2) covering leaseholds.
10 §3829, Revised Laws of Oklahoma, (1910).
11 Stockyards Loan Co. v. Nichols, 1. A.L.R. 547, 243 Fed. 511.
12 In re Alabama Braid Corp., 13 F. Supp. 336—(lien will attach when mortgagor acquires property).
13 First National Bank v. Simpson, 280 N.W. 873; 66 S.D. 191 (1938)—(interpreting statute, Rev. Code (1919), § 1529).
14 Reconstruction Finance Corp. v. Hambright, 133 P.2d 278, 16 Wash. 2d 81—(interpreting statute—Rem Rev. Stat., §3780).
15 Bank of California v. McCoy, 72 P.2d 923, 23 Cal. App. 2d 192—(interpreting statute, Civ. Code, §§2883, 2930).
16 See F & M Schaefer Brewing Co. v. Amsterdam Tavern Inc., 12 N.Y.S. 2d 701, 171 Misc. 352 (1939).
17 Act of June 1, 1945, P.L. 1358, §8, as amended May 23, 1947, P.L. 270, §1, 21 P.S. 940.8.
18 See Act of June 1, 1945, P.L. 135, §5, 21 P.S. 950.5.
19 Ibid.

chasers, *subsequent* mortgagees, and other *subsequent* lienors and encumberancers, and all persons *subsequently* dealing with the mortgaged *res* or *subsequently* acquiring interests therein." From the words and tone of this section it can be clearly seen that the legislature intended that the lien of the chattel mortgagee shall be paramount only to the rights of those making their claims on a right brought into existence AFTER the execution of the particular mortgage. So the answer to the hypothetical case above would be: B's lien would not take priority over the other lien on the chattel.

In further support of this contention the treatment of this subject by the legislature can be examined. In *U.S.* v. *Kemmerir,*[20] the court in construing the words of the Chattel Mortgage Act of 1936,[21] to wit: "lien good against subsequent purchasers and execution creditors. . . ," held that the term "subsequent" modified only the word "purchasers" and *not* the term "execution creditors." This would mean that the lien of a chattel mortgagee *would* be good against some existing encumberancers. The legislature, it is contended here, clearly reversed this line of thinking with the words of the Chattel Mortgage Act of 1945 Section 5, *supra.* (Note the extended use of the word *"subsequent(ly)"* as a modifier.) It should be quite clear that the lien will operate *only* against those whose claim of right comes (in point of time) *after* the execution of the mortgage, and as applied to after-acquired property, only against those whose liens postdate the acquisition of the *res.*

In addition to specifically providing that the mortgagee's lien will not be good against encumberancers previous to the execution of the mortgage, it seems that the act specifically says that the lien *will* be good against any and all persons subsequently dealing with the goods in any way. But the courts have held in two cases that there might be exceptions to the supposedly ironclad provisions of this section. In *Potter Title & Trust Co.* v. *International Pennsylvania Colliers*[22] the court held that a *subsequent* claim of the Commonwealth of Pennsylvania's Department of Labor and Industry (to the use of the Unemployment Compensation Fund) was paramount to a previously-recorded chattel mortgage. The court based its view on (1) the Unemployment Compensation Act[23] which states that such a claim by the Department of Labor and Industry "shall *first be allowed and paid out of the proceeds of such* (judicial) *sale,*" and (2) on Section 1401 of the Fiscal Code of April 9, 1929,[24] which contains the same words and adds "before any judgment, mortgage or any other claim or lien" (this referring to priority of the Commonwealth's claims).

---

20 U.S. v. Kemmerir, 43 D. & C. 197, 79 Leh.L.J. 301; 10 Som. 389; 56 York 66.
21 1936, first extra session—July 15 P.L. 47, No. 22, §1.
22 Potter Title & Trust Co. v. Int'l Penn. Colliers, 68 D. & C. 591, 14 Som. 255 (1950).
23 Act of December 5, 1936, P.L. 2897, as amended April 23, 1942, P.L. 60, 43 P.S. 788.1.
24 Act of 1929, P.L. 343, as amended June 3, 1933, P.L. No. 1474; June 11, 1935, P.L. 303; May 28, 1943 P.L. 794, 72 P.S. 1401.

In the case of *Commercial Credit Plan* v. *Mahoney*[25] the court held that the landlord's common law right of distraint was paramount to the recorded chattel mortgage.[26] While these two cases did not involve after-acquired property, the first can definitely and the second can probably be extended to cover instances where after-acquired property is included in the chattel mortgage. So while the act clearly says that the mortgagee's lien will be good against all subsequent parties dealing with the chattels, the court might easily rule otherwise under certain conditions.

A Mortgage For Future Advances—Its Validity Between The Parties And As Against Third Parties

The problem here is to find what type of future advances are covered by the act. Once this is found, the validity as between the parties and as against third parties will fall into the pattern discussed previously, i.e. if properly executed, the mortgage will be valid between the parties and the mortgagee *will* have a lien against subsequent persons dealing with the chattels (subject to the previously-mentioned exceptions laid down by the courts).

Section 4 of the Chattel Mortgage Act of 1945[27] deals with future advances. This section states:

> "(A)ny chattel mortgage executed under and pursuant to this act may secure a pre-existing debt, advances currently made or contracted for and *future advances,* whether obligatory or optional, to be made by the mortgagee within a period of five (5) years from the date of the execution of such mortgage, but not to exceed in the aggregate an amount stated in the mortgage. . . . (A)ll mortgages shall be secured to the same extent and shall have the same priority as if made at the time of the execution of the mortgage."

Pennsylvania has long recognized that mortgages may be used for future advances. In *Conrad* v. *Atlantic Insurance Co.*[28] the court allowed the mortgage to cover money to be given by the mortgagee. (The court required the mortgage also to cover existing debts, but this is clearly unnecessary because of the use of the disjunctive "and" in the act.[29]) The same general holding is found in *In re*

---

25 Commercial Credit Plan v. Mahoney, 67 D. & C. 577; 32 Erie 172; 14 Som. 200 (1950); cites First National Bank of Jamestown N.Y. v. Sheldon, 161 Pa. Super. 265, 54 A. 2d 61, 62 for strict construction of Chattel Mortgage Act doctrine.

26 While this case is in line with every major holding since the passage of the act, the weakness of the entire line is pointed out later.

27 Act of June 1, 1945, P.L. 1358, §4, 21 P.S. 940.4. This section deals with the type of obligation that the mortgagees assume. This article deals with only one specific kind, future advances.

28 Conrad v. Atlantic Insurance Co., 26 U.S. 386, 1 Pet. 386, 7 L.Ed. 189.

29 Ibid. See Section 4 Quoted in text.

Mode's Estate.[80]

What is the purpose of such a provision—one which allows a man to put his chattels as security for money or credit he will receive *in the future?* The framers of the act intended that the ability of the average person to secure credit should be extended. These men conceded that a person owning real estate, government bonds or gilt-edged securities would and could very easily go to a bank or lending agency and secure what money he needed. But if a person or business lacks these enumerated securities, the banks or lending agencies will turn their backs on the one in need. The person in need must then go to a finance company and pay as much as forty-two per cent annual interest, three and one-half per cent per month.[81] Small businesses cannot afford to keep large capital reserves; they must keep most of their investment in their stock and inventory. Consequently, this inventory, their chief asset, is the only thing they have to offer as security for the establishment of credit. The Chattel Mortgage Act, therefore, allows them to trade a lien to the mortgagee in exchange for his promise of future advances or credit.

This is an excellent device for the small businessman or individual and it serves the person extending the credit equally well. But what of the rights of third parties, especially the mortgagor's other creditors?

Let us put ourselves in the place of such a third party and consider some of the problems that might arise. We want to carry on business transactions with Mr. A. When checking his credit rating we find that there is a recorded chattel mortgage given by Mr. A to Mr. B to secure future advances. For how long, we may ask, will Mr. B's lien attach to these chattels? The act in Section 4 states that the mortgage secures all advances within a period of five years from the date of the execution.

Suppose we get a judgment against A after the execution of the mortgage to B, but before B actually makes any advances (the act which gives rise to the mortgagee's lien)? Will we be subsequent encumberancers within the meaning of Section 5 of the act or will our encumberance predate Mr. B's, thus freeing us from the lien? The last lines of Section 4 answer this by saying that whenever (within the five-year period) the mortgagee maks his advances, the mortgage shall be secured to the same extent as if made at the time of the execution of the mortgage.

Other questions arise, questions, the answers to which are not so readily apparent. Suppose the mortgage calls for $5000 in future advances. Four advances of a thousand dollars each are made. The mortgagor then pays back two

---

80 In re Mode's Estate, 76 Pa. 502, 6 Lanc. Bar 138; 22 P.L.J. 127. The court limited the decision by saying that such a mortgage would be no good against third parties who levied against the goods before the mortgagee took possession. But since possession by the mortgagee is no longer essential to a valid lien (1936, extra session July 15, P.L. 47, No. 22, §5) the case supports the present view. See also Stewart v. Stocker 1 Watts 135 (1832); and Lyle v. Ducomb, 5 Binn. 585 (1813).

81 Legislative Journal—(Senate), vol. 29, no. 30, 1291—2, an address by Mr. Gourley.

thousand dollars. The question arises, may the mortgagee advance three thousand dollars to the mortgagor (the amount necessary to bring the present indebtedness up to the stated limit) and have his lien for the full amount, or is he limited to a one thousand dollar advance (the amount needed to bring the total advances to the stated amount)? In other words, is the amount stated in the agreement of the parties a definite limit on *total* advances or is it a floating limit on the amount due and owing *at any one particular time?*

Most jurisdictions hold that in the absence of specific stipulation by the parties, the coverage of the lien is on a floating balance good *up to* the amount stated in the mortgage.[32] At least one court has held that the lien is good even if the mortgagor has already paid back much more than the original specified amount.[33]

Pennsylvania, however, might take a completely different view on this. Section 4 says, ". . .but not to exceed in the aggregate the amount stated in the mortgage. . . ." What do the words "exceed in the aggregate" connote? Can they be interpreted as meaning the total advance or do they mean the total at any one time? To best carry out the desire of the legislature to more easily facilitate credit, it would be better to take the "floating" view accepted by the majority of jurisdictions. An objection might be raised to this by stating that this will be unfair to the third party who knows of the recorded mortgage but will never know for just what amount the mortgagee's lien will hold. But it can be answered that the same is true as to any third party and any mortgage. The payments by the mortgagor are not a matter of record until the mortgage is satisfied of record. In all cases the third party can only take the word of one or both of the parties as to the amount of satisfaction. Of course, in mortgages of this type the third party has the added disadvantage of having later advances becoming effectively covered by the lien as of the execution date, but I cannot help feeling that the advantages to the immediate parties of a transaction of this type far outweigh the disadvantages to third parties. The adoption of the floating doctrine would not increase a third party's disadvantage beyond what they are or would be under the single total interpretation.

However, the courts of Pennsylvania will, in all probability, adopt the single total interpretation. There are no cases directly on point, but two sources support this prediction.

First, there is the judicial interpretation of words almost identical with those of the statute in the case of *In re Miller's Estate.*[34] In that case there was a will which granted from the principal of a trust fund emergency advances. ". . .not exceeding *in the aggregate* $500. . . ." The claimant beneficiary contended that

---

32 See 152 A.L.R. 1184 for citations.
33 See Rutherford v. Edward L. Eyre & Co., 174 Ore. 162, 148 P.2d 530. Mortgagor had already paid back $15,200 when stated limit was $7600.
34 In re Miller's Estate, 168 A. 807; 110 Pa. Super. 384.

this meant that there could be an unlimited number of emergency advances, no one of which might exceed $500 (this view being analagous to the floating total interpretation). The Superior Court, however, held that the true interpretation of the phrase was not a $500 limit for any one advance, but a total of $500 in emergency advances (this view being analagous to the single total interpretation). So the Superior Court's definition is almost exactly like that of the statute.

In addition to this we have an entire line of cases holding that the Chattel Mortgage Act shall be strictly construed. And it should be clear that strict construction will bring about the single total view.[35]

Another question might arise from the words of Section 4, "whether obligatory or optional." Two old Pennsylvania mortgage decisions held that where the advances were obligatory, the mortgagee's lien would stand against anyone who deals with the security chattels between the time of execution and the time the advances are made.[36] Another case held that where the advances were optional, the mortgagee before making the advances should look to the record to avoid conflicts.[37] This would seem to show that the common law would favor the third party in future advance cases where the advances were optional. However, the present statute states that the mortgagee's lien would be paramount even if the advances were optional. The act classifies future advances "whether obligatory or optional" and closes Section 4 with "shall be secured to the same extent as if made at the time of the execution. . . ."

Suppose no limit is stated in the mortgage; to what extent will the lien of the mortgagee hold? The majority of courts say the mortgage is still good for *all* of the advances,[38] but here again Pennsylvania would probably follow the principles of strict construction.[39]

Conclusion

We have seen thus far that a great deal of the interpretation of the act's provisions must be, by necessity, conjectural. Furthermore, in predicting the way the courts will hold on various points, we have seen that a great deal depends on whether the courts will apply a strict or liberal basis for construction of the statute. The question of the courts' view came up in considering the issue of against whom the mortgagee's lien shall hold, of whether the courts will adopt the single total or floating view on the limit of future advances and on other key points. Each time the problem came up it was pointed out that the judiciary has taken or probably would take the strict view. If it does and continues to do so, all the forego-

35 For citations and discussion see the conclusion to this article and accompanying footnotes, infra.
36 See Parmentier v. Gillespie, 9 Pa. 86 (1848); also Pennock v. Copeland, 1 Phila 29 (1850). Cf., real estate mortgages, 152 A.L.R. 1182.
37 See Ter-Hoven v. Kerns, 2 Pa. St. Rep. 96 (1845).
38 See 81 A.L.R. 631 for citations.
39 See n. 35, supra. Cf., real estate mortgages, 306 Pa. 64.

ing questions will have one set of answers; if, on the other hand, the courts should liberally construe the act's provisions, another complete set of answers will appear.

It has been pointed out that the courts favor strict construction. A complete line of cases hold that the Chattel Mortgage Act is in derogation of the common law and as such its provisions must be followed to the letter.[40] They go on to say that chattel mortgages in themselves are contrary to public policy and the act concerning them must be construed so as to limit their use.[41] These statements are not the words of a single court in a single case, but can be found in practically every holding that has dealt with the act. The courts seem determined in their stand.

But, we may ask, is their decision the proper one? I think not. The arguments of the courts seem to be weak. The courts are construing the words of the legislature in such a way as to lend to them a meaning almost exactly opposite to the meaning the legislature intended. The weakness of the contention of the courts, is shown by the *Kemmerir* decision, *supra,* which was clearly reversed by the legislature in the present act.[42] Also the Statutory Construction Act of May 28, 1937 (P.L. 1019, art. IV, sec 58; 46 P.S. §558) clearly states:

> "The rule that laws in derogation of the common law are to be strictly construed shall have no application to the laws of this Commonwealth hereafter enacted."

What could be clearer than this? Yet the courts go on saying that the act does not mean what it says and that the provisions of the act are to be strictly interpreted. One case even *cited* the Statutory Construction Act and blandly said that it didn't apply to the Chattel Mortgage Act, without giving reasons.[43]

If this were all there was to go by, it could be said that a deplorable condition exists, but the courts will not change. However, there seems to be one last chance.

In May, 1951, the Supreme Court of Pennsylvania held in the case of *Arcady Farm Mills Co.* v. *Sedler*[44] that a purported chattel mortgage was invalid. The court based its decision on the following grounds:

> First, that there was no bond or note accompanying the chattel mortgage as required by the first section of the act. Next, that the mortgagor's signature was not witnessed (also required by the act), and finally, that the act must be strictly construed, here citing the entire line of cases so holding.[45]

---

40 See Roos v. Fairy Silk Mills, 5 A.2d 569, 334 Pa. 305 (1939); First National Bank of Jamestown N.Y. v. Sheldon, 54 A.2d 61, 62, 161 Pa. Super. 265; Roberts & Pynes' Appeal, 60 Pa. 400; Klaus v. Majestic Apt. House Co., 250 Pa. 194, 95 A. 451; Kaufman & Baer v. Monroe Motor Line (Transp), 124 Pa. Super. 27, 187 A. 296; Commercial Credit Plan v. Mahoney, 67 D. & C. 577, 32 Erie 172, 14 Som. 409; Newcomer v. Reese, 13 Fay.L.J. 102; Seabord Consumer Discount Co., v. Landau Inc., 74 A.2d 737, 167 Pa. Super. 180. (1950).

41 See n. 40.

42 See n. 18.

43 See Arcady Farm Mills Co. v. Sedler, 367 Pa. 314; 80 A.2d 845.

44 Ibid.

45 See n. 40, supra.

At this point the decision looked like just more salt on the wound. But four months later a bill left the legislature and became law.[46] This amendment to the Chattel Mortgage Act of 1945, it is here contended, was a complete reversal of the *Sedler* case and its predecessors. First, the new act specifically ruled down the *Sedler* case by providing that neither bond nor note nor witnesses to the mortgagor's signature shall hereafter be required. Finally, the last provision of the amendment sets forth:

> ". . .the provisions of the Chattel Mortgage Act shall be *liberally* construed to hold valid chattel mortgages made in good faith to secure bona fide loans which *substantially* comply with the provisions of this act." (Emphasis mine.)

It is difficult to conceive a clearer repudiation of the courts' holdings or for that matter, a clearer statement of the legislative intent. If it were not for the judiciary's disregard of the Statutory Construction Act which states generally what the new amendment states specifically, a liberal construction could be predicted hereafter. However, in view of what has transpired, we can only now wait for the courts' reply to this latest legislative declaration.

Jerome H. Gerber
Member of the Senior Class

---

[46] Act of September 29, 1951, P.L. 1632, §§ 1-4, 21 P.S. 940.1, 940.2, 940.3 and 940.17.