
Volume 41
Issue 3 *Dickinson Law Review - Volume 41,*
1936-1937

4-1-1937

Chattel Mortgages and Bailment Leases Under the Vehicle Code

Richard E. Kohler

Follow this and additional works at: <https://ideas.dickinsonlaw.psu.edu/dlra>

Recommended Citation

Richard E. Kohler, *Chattel Mortgages and Bailment Leases Under the Vehicle Code*, 41 DICK. L. REV. 183 (1937).

Available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol41/iss3/5>

This Article is brought to you for free and open access by the Law Reviews at Dickinson Law IDEAS. It has been accepted for inclusion in Dickinson Law Review by an authorized editor of Dickinson Law IDEAS. For more information, please contact lja10@psu.edu.

CHATTEL MORTGAGES AND BAILMENT LEASES
UNDER THE VEHICLE CODE

In Pennsylvania chattel mortgages are invalid against the claims of creditors and purchasers in the absence of possession being taken by the mortgagee although valid between the parties to the mortgage agreement.¹ This rule must be qualified by statutory provisions validating chattel mortgages of specified personalty without a change of possession even against creditors and purchasers² A recent amendment to the Vehicle Code, while not specifically validating chattel mortgages as such, would seem to have that effect within the limited scope of its application.³

Article II of the Vehicle Code requires the issuance of a certificate of title for every motor vehicle owned by any resident of this Commonwealth; provides for its contents—description of automobile, name and address of owner, statement of all liens, encumbrances or other legal claims; regulates the issuance, correction and duplication of the certificates; etc.⁴ The interpretation which has been placed upon these title provisions in the Vehicle Code is as follows, "It was a police measure and was not designed to establish the ownership or proprietorship of the car, but rather to register the name and address of the person having the present right of possession, and to furnish persons dealing with one in possession of a car a means of determining whether such possession is prima facie lawful. . . . It follows that the act does not provide nor intend to provide that the 'certificate of title' shall determine the absolute ownership of the car, or alter or affect in any manner the actual ownership of the vehicle and the relations of the persons interested in it. . . . The certificate is not a warrant of ownership or muniment of title as usually understood in the law. It may be relevant evidence in establishing such title."⁵

¹Klaus v. Majestic Apartment House Co., 250 Pa. 194, 95 A. 451 (1915); Kaufmann & Baer v. Monroe Motor Line Transportation Inc., 124 Pa. Super. 27, 187 A. 296 (1936).

²Act of 1853, P.L. 295, mortgages of coal lands and mining rights in Schuylkill county; Act of 1855, P.L. 368, leaseholds may be mortgaged in certain cases; Act of 1887, P.L. 73, and Act of 1891, P.L. 102, iron ore, pig iron, blooms, nails, crude oil, etc. may be mortgaged; Act of 1889, P.L. 197, rentals or royalties reserved by grantors of coal or other minerals may be mortgaged; Act of 1929, P.L. 14, mortgage on vessels; Act of 1931, P.L. 11, mortgages on crops to obtain Federal loans for seed, feed, etc.; Act of 1935, P.L. 38, mortgages on livestock, farm machinery, etc. to loans from Federal agencies; Act of 1935, P.L. 43, mortgages on stock of cooperative associations; and Act of 1936, Ex. Sess., P.L. 47, mortgages upon any chattels by any persons for loans from Federal agencies. These acts may be found in 21 P.S. 831-935. The recordation provisions of the above statutes serve to give notice of the lien to creditors and bona fide purchasers as a substitute for a change of possession.

³Act of May 25, 1933, P.L. 1059, amending section 208. (75 P.S. 38).

⁴Act of 1929, P.L. 905, Art. II, Sections 201-211.

⁵Braham & Co. v. Steinar-Hannon Motor Co., 97 Pa. Super. 19 (1929).

Section 208, which is contained in Article II, is captioned "Change of Ownership by Operation of Law and Judicial Sale." It provides, in substance, that whenever the ownership or possession of a motor vehicle passes by operation of law or judicial sale it shall become the duty of the one from whose possession it was taken to surrender the certificate of title to the one to whom possession has passed and that the secretary shall issue a new certificate of title to the latter. An amendment to this section⁶ qualifies the above provision by requiring that whenever there is a first lien, encumbrance, or legal claim upon the vehicle held by another the secretary shall deliver the certificate of title to him containing thereon a statement of such liens, encumbrances, or legal claims. The rather startling conclusion to the amendment reads as follows, "The certificate of title, when issued by the secretary, showing a lien or encumbrance shall be adequate notice to the Commonwealth, creditors, and purchasers that a lien against the motor vehicle exists, and failure to transfer possession of the vehicle shall not invalidate said lien or encumbrance." The amendment further exempts the secretary from any personal liability in carrying out the provisions of the section or in furnishing information with respect to liens or encumbrances on motor vehicles.

Under this amendment the filing of liens and encumbrances by their notation on the certificate of title is adequate notice to creditors and purchasers without a change of possession. This section of the code would thus seem to have the same effect as a recording statute for all liens and encumbrances to which the section applies. To give this effect to this limited class of certificates of title under the code is incongruous in the light of the interpretation which has been placed upon the basic title provisions set out above.

The section specifies that changes of ownership or possession by operation of law and judicial sale occur upon inheritance, replevin, or execution sale, or a public sale to satisfy storage or repair charges, or when repossessed upon default of a lease, conditional sale, or other like agreement. To all such changes of ownership or possession the section is made applicable notwithstanding it is captioned "Change of Ownership by Operation of Law and Judicial Sale." Repossession of a car upon default of a bailment lease certainly involves no change of ownership as property has never vested in the bailee and the change of possession is by the act of the party and not by operation of law.

A statute altering the common law, is not to be extended beyond its obvious import.⁷ It will be highly interesting to notice what limitations, either by force of the Constitution or by judicial interpretation, will be placed upon the section. To date the light is not especially illuminating. In the recent case of *Kaufmann & Baer v. Motor Line Transportation, Inc.*⁸ a writ of foreign at-

⁶Supra, note 3.

⁷Strain v. Kern, 277 Pa. 209 (1923).

⁸124 Pa. Super. 27, 187 A. 296 (1936).

tachment was issued against a New York corporation and two trucks were seized in the hands of the Pennsylvania garnishee. The rights of the attaching creditor were resisted on the ground that the trucks were sold under chattel mortgages executed and recorded in New York where they were valid. The claimant argued that the attaching creditor in Pennsylvania had notice of these chattel mortgages and that therefore the general principle of their invalidity without a change of possession should not apply. The court took the position that a chattel mortgage without a change of possession is *invalid as to creditors with notice of its existence* and cited Pennsylvania authority for that proposition.⁹ However, even conceding that notice would protect the mortgagee, the court concluded that sufficient notice to the attaching creditor was not shown, saying, "nor does the issuance of a Pennsylvania certificate of title listing the encumbrances charge a creditor with notice. . . . The amendment of May 25, 1933, P. L. 1059 to section 208 of the Motor Vehicle Code referred to in the supplemental briefs, has no application here. That section relates only to changes of ownership 'by operation of law and judicial sale'. *It is sufficient to say that our Legislature has passed no statute requiring or even permitting the recording of such chattel mortgages as are here involved and thus giving notice to all the world.*" (Italics supplied) It is submitted that the language of the court as to the immateriality of notice must be limited to cases where there has been no statutory validation of a chattel mortgage on the subject matter in question and its correctness in this situation is doubtful. The law abhors secret liens but a chattel mortgage where the mortgagee has assumed possession is valid because creditors and purchasers are thus put upon notice. Chattel mortgage recording statutes are a substitute for a change of possession thus giving notice to creditors and purchasers. In theory, notice is the essence of a statutory chattel mortgage.

In a reclamation proceeding based on a bailment lease of an automobile in a bankruptcy trustee's possession the amendment of 1933 was held to have no application.¹⁰

The amendment of 1933 may have important consequences beyond what may be considered a chattel mortgage. A large majority of the automobiles sold in Pennsylvania are legally "leased" under bailment lease contracts. The bailor is protected against creditors of or purchasers from the bailee although the latter is in possession.¹¹ However, this protection to the bailor is afforded only by a legal bailment and not by "a mere cloak or device to secure money lent, made by one who never owned or possessed the bailed article."¹² In the sale of and

⁹Com. v. One Studebaker Coupe, 86 Pa. Super. 532 (1925).

¹⁰In re Kamens Quality Markets, 10 F. Supp. 263 (1935), reversed on other grounds in 85 F. (2d) 452 (1936).

¹¹Brown Bros. & Co. v. Billington, 163 Pa. 76 (1894); Heisley v. Economy Tool Mfg. Co., 33 Pa. Super. 218 (1907); G. M. A. C. v. Hartman, 114 Pa. Super. 545 (1934).

¹²H. L. Braham & Co. v. Surrell, 115 Pa. Super. 365 (1934).

loaning money on automobiles the courts will look through a screen of paper titles to ascertain the real situation. To illustrate: A buys a car from B who is paid with funds secured from C. C, who never had possession, leases the car to A. Creditors of and purchasers from A are protected.¹³ Where one borrows money on an automobile and attempts to secure the loan by executing a bill of sale to the lender, and the latter executes a bailment lease back to the owner without any change of possession the relation between the two is merely that of debtor and creditor.¹⁴ Hence, creditors and purchasers of the pseudo "bailee" are protected against claims of the "bailor."

If these attempted bailment leases are void as to purchasers and creditors because of the failure of the bailor to have had possession, will not the amendment of 1933 remove this protection where there has been a change of ownership by operation of law or judicial sale? Suppose A, borrowing money on his car transfers the title to a loan company who, in return, executes a bailment lease to him—A remaining in possession throughout the entire transaction. Creditors of and purchasers from A are protected. If A dies and B inherits the car for which a new certificate is issued noting the encumbrance in favor of the loan company the latter would seem to be protected against creditors of and purchasers from B. There has been a change of ownership by operation of law, creditors or purchasers are charged with notice of liens or encumbrances noted on the certificate of title, and such liens are specifically validated where there has been no change of possession.

It is difficult to see the intent of the Legislature in placing this amendment in the Vehicle Code. Our courts have declared chattel mortgages without a change of possession to the mortgagee to be against the settled public policy of the state.¹⁵ There never has existed a crying necessity for their validation generally. However, if it be the intent of the Legislature to express a change in that public policy with respect to motor vehicles there can be no particular efficacy in limiting such change to the scope of section 208. That its application will be so limited is probable in the light of the *Kaufmann* case¹⁶ and the doctrine that any statute changing the common law or the settled public policy of the state should be strictly construed. Under all such statutes our Constitutional limitation that the scope of their application must be gleaned from the title should be kept in mind. A new chattel mortgage in the Vehicle Code may surprise many learned in the profession.

The only distinction between the situations governed by the section and those without its scope is that in the former the lien or encumbrance was not cre-

¹³Com. Banking Corp. v. Meade, 104 Pa. Super. 447 (1931); H. L. Braham & Co. v. Surrell, *supra*.

¹⁴Root v. Republic Acceptance Corp., 279 Pa. 55 (1924).

¹⁵*Supra*, note 1.

¹⁶*Supra*, note 8.

ated by the one now in possession. The reliance upon possession by creditors and purchasers is the same in both. It is difficult to understand why creditors of one who receives the automobile by operation of law or judicial sale should be put upon notice of encumbrances but protected in all other situations. The question may arise whether such classification is based on a real and substantial distinction, bearing a reasonable and just relation to things in respect to which the classification is imposed so that it is not violative of rights guaranteed by the 14th amendment to the Federal Constitution.

Richard E. Kohler.