



PennState
Dickinson Law

DICKINSON LAW REVIEW
PUBLISHED SINCE 1897

Volume 50
Issue 2 *Dickinson Law Review - Volume 50,*
1945-1946

1-1-1946

The Chattel Mortgage Act of June 1st, 1945

Joseph P. McKeehan

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

Recommended Citation

Joseph P. McKeehan, *The Chattel Mortgage Act of June 1st, 1945*, 50 DICK. L. REV. 72 (1946).
Available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol50/iss2/3>

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.

Dickinson Law Review

Vol. I

JANUARY, 1946

NUMBER 2

NOTE

THE CHATTEL MORTGAGE ACT OF JUNE 1ST, 1945

An assignment of goods to secure a debt, the possession of the goods remaining in the debtor, is a chattel mortgage, passing the title to the property assigned, as between the parties, and, if the conditions of the assignment are broken, the assignee may recover the goods.¹ But a chattel mortgage, while valid as between the parties or as against purchasers with notice, has always been held to be of no effect as against creditors of the mortgagor, without change of possession of the chattel.²

A chattel mortgage, executed in a state where such a mortgage is valid, has never been enforced in Pennsylvania against chattels removed to Pennsylvania and purchased by an innocent third party.³

It has always been the settled rule in Pennsylvania that chattel mortgages are contrary to public policy and will not prevail against claims of bona fide purchasers or creditors.⁴ A valid pledge of personal property as against creditors of the pledgor involves delivery of possession of the pledged property to the pledgee.⁵

The reason chattel mortgages have always been regarded as "inimical to the public policy of the state and void as to execution creditors" was because our recording acts did not extend to writings concerning personal property and the attempted lien was a secret one.⁶

Likewise a sale of a chattel without delivery of possession is invalid as against a subsequent innocent purchaser who gets possession. He who first obtains possession is entitled to the property.⁷ So also, unless there be a change

¹Boyle v. Rankin, 22 Pa. 168 (1853).

²Clow v. Woods, 5 S. & R. 275 (1819); Welsh v. Bekey, 1 P. & W. 57.

³State Bank of Sherman v. Carr, 15 Super. Ct. 346 (1800); Commercial Banking Corp. v. Berkowitz, 104 Super. Ct. 523, 159 A. 214 (1932); Kaufman & Baer v. Monroe Motor Line, 124 Super. Ct. 27 (1936).

⁴Klaus v. Majestic Apartment House Co., 250 Pa. 194, 95 A. 451 (1915).

⁵Roberts' & Pyne's App., 60 Pa. 400, (1869).

⁶Klaus v. Majestic Apt. House Co., supra, n. 4, at page 220; Young, to use, etc., et al. v. Kipe et al., 38 D. & C. 434 (1940).

⁷McKee v. Ward, 289 Pa. 414 (1927); Sec. 25 of The Sales Act, 69 P. S. 203.

of possession or adequate action indicating a change of ownership, a sale is deemed fraudulent and void as against the seller's attaching or levying creditors.⁸ For the same reason, all attempts to retain ownership until a buyer has paid the price have been ineffective as against such third parties unless the conditional sale contract has been recorded.⁹ On the other hand, bailors have been protected, though the bailee is given an option to buy and though the "price" is out of all proportion to the "rental" payments.¹⁰

While a bailment allowing use by the bailee has had the approval of our courts, though accompanied by a contract to sell, if the bailee complied with all the terms of the bailment contract and paid the agreed price, a bailor was not permitted to authorize the bailee to sell the goods and, if he does so, and fails to account for the proceeds, then recover the goods from the purchaser.¹¹

The financing of dealers has been accomplished by means of the trust receipt, the history of which in Pennsylvania is covered in a comment on the Uniform Trust Receipts Act in 46 D. L. Rev. 109 to 120. The goods were uniformly held not subject to levy by creditors of the dealer, though the bailment was for the very purpose of sale.¹² Even a sale, to be good against the bailor, must be one "in the ordinary course of business."¹³ Section 9 of the Conditional Sales of 1925 contains a like limitation.¹⁴

In the trust receipt situation title passes from the manufacturer direct to the banker, while in a chattel mortgage title passes from the borrower to the lender. Accordingly, if title has vested in the borrower, there was no room for the use of a trust receipt prior to the enactment of the Trust Receipts Act.¹⁵ The second section of this act provides that the interest of the entruster may be derived from the trustee.¹⁶ Thus in a limited field a chattel mortgage was authorized by that act.

The multiplication of federal lending agencies and the theory that borrowing is the short cut to prosperity seem to account for the succession of chattel mortgage statutes enacted in Pennsylvania in the last few years.¹⁷ Competition of state institutions with federal agencies has no doubt forced the legislature to follow Washington's conception of public policy and make this new contribution to inflation.

⁸Callaghan v. Union Trust Co. of Pittsburgh, 315 Pa. 274, 172 A. 684 (1934).

⁹Holland Furnace Co. v. Suzik, 118 Super. Ct. 405 (1935).

¹⁰General Motors Acceptance Corp. v. Hartman, 114 Super. Ct. 544, 174 A. 795 (1934).

¹¹Hoeverler-Stutz Co. v. Cleveland Motor Sales, 92 Super. Ct. 425, (1928).

¹²Brown Bros. & Co. v. Billington, 163 Pa. 76, (1894).

¹³Canadian Bank of Commerce v. Baum & Sons, 187 Pa. 48 (1898); General Credit Corp. v. Penn Securities Co., 25 D. & C. 119 (1935).

¹⁴69 P. S. sec. 406, Atlas Auto Finance Corp. v. Greenberg, 39 D. & C. 539.

¹⁵Sterling Commercial Co. v. Smith, 291 Pa. 236, 139 A. 847 (1927).

¹⁶Act of July 10, 1941, P. L. 307, 68 P. S. sec. 552.

¹⁷Act of March 2, 1933, P. L. 6, Supplied by Act of May 21, 1943, P. L. 343, 21 P. S. 936.1—936.16, limited to live stock and farm machinery; Act of July 15, 1936, P. L. 47, 21 P. S. 841, to secure loans by federal government or one of its instrumentalities.

The Act of June 1st, 1945, is all inclusive as to the mortgageable property and it will add tremendously to purchasing power at a time when demand already far exceeds the supply of consumer goods.

The subject of the mortgage may include all crops, whether annual or perennial, which the mortgagor proposes to plant at any time within one year after the date of the mortgage. Presumably the mortgagor should at least be the tenant of the land on which it is proposed to plant a crop. The mortgage may include all after-acquired property, so long as it is of the same class as that described in the mortgage.

The act defines the operation and effect of the lien of chattel mortgages, provides for the filing, indexing, and docketing of them in the prothonotaries' offices, fixes the fees of prothonotaries, provides for the filing in Pennsylvania of such other instruments originally filed or recorded in other states, regulates the assignment, release, satisfaction and extension of the lien of chattel mortgages, prescribes the method of foreclosure, defines defaults and violations of the terms of the mortgages, makes it a misdemeanor for a mortgagor to "wilfully sell" any mortgaged property before payment of the debt and also provides penalties, if the owner of the property "shall wilfully injure, destroy, conceal or without notice to the mortgagee, abandon, or wilfully deface any marks identifying the mortgaged property."

The Act of May 21st, 1943, P. L. 343, is repealed but the Act of 1945 provides that it shall not be construed to repeal or affect any other act relating to chattel mortgages.

The provisions of the new act follow closely the provisions of the act of 1943 but there are some changes which should be noted. Instead of limiting the interest rate to six per cent, it is now provided that the mortgage shall not bear interest in excess of the rate which the creditor is permitted by law to charge at the time of the execution of the mortgage.

The Act of 1943 did not require that the mortgage be acknowledged or witnessed. Now the mortgage must be "signed, witnessed and duly acknowledged by the mortgagor or his agent duly authorized and constituted." Whether such agent is to be deemed duly authorized, when his only authority is verbal, will have to await a decision by the courts. It may be that the courts will apply the same rule that has been applied when the memorandum made to satisfy the 4th section of the Sales Act is executed by an agent, in which case it is held that the agent's authority need not be in writing.¹⁸

The mortgage may secure a pre-existing debt and any future advancements, whether the same are obligatory or optional, but such advancements must be

¹⁸McGowan v. Lustig-Burgerhoff Co., 93 Super. Ct. 227; Penn Discount Corp. v. Sharp, 125 Super. Ct. 171.

made within a period of five years from the date of the mortgage and, of course, must not exceed the amount stated in the mortgage. Expenditures by the mortgagee for taxes, insurance, repairs and maintenance of the mortgaged property are secured by the mortgage, together with interest on all such advancements.

If the subject of the mortgage is a motor vehicle the filing of the mortgage shall not operate as notice of the lien to creditors and purchasers until a statement of the lien is noted on the certificate of title.

If the subject of the mortgage is attached to realty or involves crops, the lien of the mortgage will be superior to all liens upon the realty but any real estate mortgage will have a lien prior to a chattel mortgage placed subsequently on any chattels attached to the realty or crops growing thereon. A judicial sale on a lien subsequent to the lien of the chattel mortgage does not divest the lien of the chattel mortgage and the purchaser at the judicial sale takes subject to the lien of the chattel mortgage.

If mortgaged chattels are removed from the county in which the mortgaged property was at the time of the execution of the mortgage or from the county in which the mortgage is filed, without the written consent of the mortgagee, the property remains subject to the lien of the mortgage.

This provision would appear to operate to make it necessary for the purchaser of a chattel to make a search in the office of every prothonotary in the Commonwealth, and as noted in a comment upon the Act of July 24th, 1941, P. L. 439, in 46 Dickinson Law Review 97, this section would appear to create an intolerable burden of record searching. One must now be sure that any chattel he buys has at all times been located in the county in which it now is.

The place of filing of a chattel mortgage is the county in which the chattels are at the time of filing. The mortgage may cover chattels located in several counties, in which case the mortgage is to be filed in all of such counties. The original mortgage is filed in one county and a certified copy may be filed in the other counties.

When the property is removed to another county with the written consent of the mortgagee, it remains subject to the lien of the mortgage for a period of six months from the day of removal but not longer, unless within such period a copy of the mortgage is filed in the county to which the property has been removed. Under the act of June 12th, 1931, P. L. 558, 21 P. S. sec. 351, no interest in real estate acquired under a contract can be asserted against a subsequent bona fide purchaser, mortgagee or the holder of any judgment entered in the county in which the land is situate, unless the written contract has been recorded before the recording of the subsequent deed, mortgage or judgment. This seems to be the sensible rule and to permit a delay of six months in the filing of the mortgage in the county to which the mortgagee consents that the

property may be removed makes transactions involving personal property extremely hazardous. Such transactions hereafter will have to be confined to dealings with persons who are unquestionably responsible financially, so that recourse may be had on the implied warranty of title, provided for in the 13th section of the Act of May 19th, 1915 P. L. 543, 69 P. S. sec. 122, subsec. Third.

The holder of a chattel mortgage may assert his lien against the proceeds of any sale of mortgaged property, whether or not it was made with his consent, but the act makes no provision as to how this lien is to be enforced, either before or after the purchaser of the property has paid the price.

In *East Central Fruit Growers Production Credit Assn. v. Zuritsky*, 346 Pa. 335 (1943) it was held that under the act of 1933 and its amendments, all of which were repealed by the act of 1943, if the holder of a chattel mortgage consents to a sale of the mortgaged property by the mortgagor, this constitutes a waiver by the mortgagee of his lien both on the mortgaged goods and the proceeds thereof. Now, both under the act of 1943 and the act of 1945, the lien on the goods may be waived without waiving the lien on the proceeds. (See sec. 6 of Act of 1943 and sec. 6 (a) of Act of 1945).

Presumably the mortgagee may compel a second payment of the price to him, if a buyer or the selling agent pays the proceeds to the mortgagor and he fails to satisfy the mortgage out of the proceeds.

There is deemed to be a default by the mortgagor whenever he removes the mortgaged property from the county without the consent of the mortgagee or whenever he shall substantially injure it or conceal it or purport to dispose any part of it or shall "by his wilfull act or neglect substantially impair the value" of the mortgaged property. It may even be stipulated in the mortgage that injury to or destruction of the chattel, though without the fault of the mortgagor, shall constitute a default and, of course, such destruction does not discharge the mortgagor from any part of his debt.

The act should be consulted for details in regard to filing, indexing and the fees the Prothonotary is entitled to charge in this connection, also as to the approved method of assignment of chattel mortgages and the satisfaction thereof.

Upon any default, the mortgagee may, without process of law, immediately take possession of the mortgaged property and any expense incurred in the preservation of the property is recoverable as part of the mortgage debt. The mortgagee may then sell at public or private sale, after giving ten days written notice to the mortgagor by letter mailed to his last known address. Prior to the sale a right of redemption is given and any surplus realized as a result of the sale is payable to the mortgagor.

The act further provides that the mortgage may be foreclosed by any of the methods authorized by law for the foreclosure of a mortgage. This clause

evidently refers to the existing methods of foreclosing a real estate mortgage, though some of them obviously would not be applicable to a chattel mortgage.¹⁹

Judgment may be entered on the warrant contained in the bond or note secured by the mortgage and the lien of a levy upon the mortgaged property, acquired by an execution on such judgment, relates back to the date of the filing of the mortgage. The goods are sold in the same manner in which personal property is regularly sold under an execution. This of course is an application of the well settled rule in the case of real estate mortgages.²⁰

In *United States v. Kemmerer*, 43 D. & C. 197 (1941) Judge Henninger said:

"Since the case of *Clow et al v. Woods*, 5 S. & R. 275, it has been settled law in Pennsylvania that a sale of personal property—and "sale" included "pledge"—without change of possession is void as to creditors and bona fide purchasers: *Callahan v. Union Trust company of Pittsburgh*, 315 Pa. 274, 278; *Shieler et al. v. New Castle Paper Products Corp.*, 293 Pa. 412, 421; *Wendel v. Smith et al.*, 291 Pa. 247, 249. The rule is for the benefit of existing creditors, as well as others who may have lent credit later relying upon debtor's apparent affluence: *Buckley v. Duff & Sons*, 114 Pa. 596, 603; *Hemphill Co. v. Davis Knitting Co. et al.*, 114 Pa. Superior Ct. 94, 99.

Most of these cases have been decided upon the basis of a public policy to avoid the dangers of fraud and to avoid a breakdown in our credit system. It is conceded, however, that, regardless of the policy established by the courts, it is within the power of the legislature to change the policy. So, in *Personal Finance Company of New York v. General Finance Co.*, 133 Pa. Superior Ct. 582, 587, it is pointed out that the hostility to chattel mortgages has been somewhat modified."

It will now have to be stated that the hostility to chattel mortgages, as exhibited by our judicial decisions, has been entirely nullified by the Act of 1945.

It has always been held that household goods and furniture upon leased premises are subject to distress whether held under a bailment, a lease or a conditional sale.²¹

Whether this principle will be applied to chattels covered by a filed chattel mortgage remains to be decided. The Act of 1945 contains no provision for a written notice to the landlord, such as is required by the Act of June 2, 1933, P. L. 1417 sec. 1, 12 PS sec. 2178, relating to goods held by a tenant under a bail-

¹⁹13 Standard Penna. Practice, pages 572 to 713.

²⁰13 Standard Penna. Practice, Chapter 68, sec. 30, page 601.

²¹*Reinhart v. Gearhardt*, 152 Super. Ct. 229, (1943).

ment or conditional sale. The Act of 1933 should be amended to include mortgaged goods, if it is deemed desirable to subordinate the landlord's claims to those of a mortgagee.

If the mortgage covers after-acquired property, the rights of an unpaid seller may conflict with those of the mortgagee. It is generally held that a seller who retains a lien on the property sold, as by a recorded conditional sale contract, as security for the balance of purchase money, is protected against such a mortgage. The mortgagee must take his lien subject to such as exist when the property is acquired, though they are liens of later date than the date of the mortgage.²²

When goods are delivered under a conditional sale, both the seller and the buyer have interests in the goods which can be mortgaged.²³ It should be noted, however, that the conditional buyer may not mortgage his interest unless notice is given in writing to the seller of the name and address of the mortgagee not less than ten days before the mortgage is given, otherwise the seller may retake the goods as in case of default in payment of the price.²⁴

JOSEPH P. McKEEHAN.

²²Estrich on Instalment Sales, sec. 409, p. 812.

²³Bogert's Commentaries on Conditional Sales, U.L.A. Vol. 2A, secs. 25 and 42.

²⁴Act of May 12, 1925, P.L. 603, 69 P.S. sec. 431.