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Automobiles - Chattel Mortgages - Recording

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and thereby flying in the teeth of its own constitution by denying a remedy for the violation of the covenant. It will be interesting to watch the future decisions to see whether the state courts can devise some method of giving effect to both the Supreme Court's ruling and their own constitutions.

JOE R. WILMETTI

AUTOMOBILES—CHATTEL MORTGAGES—RECORDING

An auto, licensed and taxed in Wyoming, was taken to Colorado and mortgaged. The auto was then returned to Wyoming before the mortgage was recorded in Colorado. The defendant purchased the auto in Wyoming without notice of the mortgage, and after default in the payments by the mortgagor, the mortgagee, as was provided for in the mortgage, attempted to take possession of the auto. In an action by the mortgagee to replevin the auto, held: for the defendant. The plaintiff had not complied with the Colorado recording statute¹ providing for chattel mortgages to be recorded in the county where the mortgaged property is situated. *Mosko v. Smith*, 179 P. (2d) 781 (Wyo. 1947).

The validity of a chattel mortgage is to be determined by the law of the place where the mortgagee is executed, if the chattel was located there at the time. Therefore, the Wyoming court had to make their decision based upon the law of Colorado.² If the mortgage had been recorded according to the law of Colorado, it would have been valid against third parties wherever the property might be taken, so long as it was without the consent or knowledge of the mortgagee.³

This case interprets the Colorado statute to mean that the mortgage is to be filed where the property is situated at the time of the filing.⁴ The auto was not in Colorado at the time of such recording, therefore, there was no property to which the lien of the mortgage could attach;⁵ compliance with the statute became impossible by reason of the neglect of the mortgagee.⁶ This construction of the statute protected the Wyoming purchaser, but at the same time indicates that the method of recording chattel mortgages upon autos is inadequate. It is quite possible for an auto to be in another county or even in another state within a few hours and to hold that such a short delay may cause a mortgagee to lose his mortgage as to third parties is unjust and unreasonable.

1. (Colo.) Mills Ann. Stat. 1935 c. 32, sec. 1.

2. *Mosko v. Matthews*, 87 Colo. 55, 284 Pac. 1021 (1930); Restatement, Conflict Of Laws sec. 6 (1934).

3. *Ball Bros. Trucking Co. v. Sorenson*, 191 S. W. (2d) 908 (Texas 1945); *American Loan Co. v. See*, 298 Ky. 180, 182 S. W. (2d) 644 (1944); *McGlone v. Smith*, 293 Ky. 131, 168 S. W. (2d) 566 (1943).

4. See *Mosko v. Smith* 179 P. (2d) 784 (Wyo. 1947).

5. *Yund v. First National Bank of Shawnee, Okla.*, 14 Wyo. 81, 82 Pac. 6 (1905); *General Finance & Thrift Corporation v. Guthrie*, 227 N. C. 431, 42 S. E. (2d) 601 (1947).

6. The auto was mortgaged on October 25, 1944 and the mortgage recorded on November 3, 1944.

Recording statutes were passed to protect purchasers in good faith.⁷ If the mortgage is not recorded,⁸ or is not recorded in the right place,⁹ or is recorded invalidly for any reason,¹⁰ the recording is not constructive notice to third parties. The statutes also protect the purchaser (but inadequately) by giving him notice of where a mortgage must be recorded to charge him with constructive knowledge of it. A diligent search of the record in the proper place is supposed to reveal all such mortgages. The question is where must the prospective purchaser look?

Some state require a chattel mortgage to be recorded in the place where the mortgagor lives,¹¹ but if the mortgagor is a non-resident the mortgage is to be recorded where the property is situated.¹² Some states require the mortgage to be recorded where the property is situated, whether or not the mortgagor is a resident.¹³ The question now arises for both prospective mortgagee and buyer as to the situs of the auto for the purpose of recording a mortgage.

In the instant case the situs of the automobile seems to depend upon the physical place of the auto and if the auto had been in Colorado at the time of the recording the purchaser would have purchased the auto subject to the mortgage. This would be so although the purchaser had no notice that the auto had ever been in Colorado. Under such a system the possibility of a valid outstanding mortgage, not readily discoverable, might make most people extremely reluctant to deal with a stranger and deter a cautious one completely. The policy of legislatures has been to encourage commerce,¹⁴ but a recording statute such as the Colorado law leaves the court little opportunity to carry out this policy.

The court might have held that that situs of the auto for the purpose of recording a chattel mortgage was where the car was licensed. This would protect both the mortgagee and the buyer as an investigation of the license would show where a mortgage, to be constructive notice, must be recorded. The ease with which new licenses may be obtained¹⁵ might prove this suggestion to be unsatisfactory and the solution to this problem should be left to the legislatures.

A few states have attempted to solve the problem by requiring all liens upon automobiles to be recorded in some central office.¹⁶ This reduces the problem

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7. 1 Jones, *Chattel Mortgages & Conditional Sales* sec. 247 (6th ed. 1933).
 8. *Booth Motor Co. v. Gamburg*, 9 La. App. 60, 118 So. 854 (1928); *Bonneviere v. Cole*, 90 Wash. 526, 156 Pac. 527 (1916); *Roudebush v. Nash*, 93 Ind. App. 283, 177 N. E. 335 (1931).
 9. *Primm v. Farrell-Cooper Lumber Co.*, 197 S. W. (2d) 557 (Ark. 1946); *Burke v. First Nat. Bank of Yukon*, 197 Okl. 57, 168 P. (2d) 285 (1946); *In re National Browne Co.*, 151 F. (2d) 595 (C. C. A. 2d 1945).
 10. *Williams v. First Nat. Bank of Ontario*, 48 Ore. 571, 87 Pac. 890 (1906); *Smith v. Jackson*, 232 Ky. 76, 22 S. W. (2d) 420 (1929).
 11. Arkansas, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Missouri, New Hampshire, New York, North Carolina, Rhode Island, South Carolina, Tennessee, and Vermont.
 12. Alabama's statutes do not cover the situation when the mortgagor is a non-resident, but it has been held that a recording where the chattel was situated is sufficient when the mortgagor is a non-resident. *Cooper v. Berney Nat. Bank*, 99 Ala. 119, 11 So. 760 (1892).
 13. Colorado, Connecticut, Delaware, Idaho, Mississippi, Montana, North Dakota, Oklahoma, Oregon, South Dakota, Washington and Wyoming.
 14. *State v. Langly*, 53 Wyo. 332, 84 P. (2d) 767 (1938).
 15. Wyo. Comp. Stat. 1945 secs. 60-104 to 60-108.
 16. Arizona, Nevada, New Jersey, and New Mexico.

of searching the record, but it does not solve the problem when the auto has a foreign license or a foreign registration. The most practical solution, and the present trend, is to make the certificate of title an instrument of recording.¹⁷ Thus, there is not only constructive notice when validly recorded, but also actual notice when the certificate is necessary to convey the auto.¹⁸ The present problem is to have a uniform act adopted in all states.¹⁹ Wyoming, which already requires a certificate of title,²⁰ should adopt this convenient and satisfactory method of recording automobile mortgages.²¹

ROBERT BURGESS

SEARCH OF PERSON UNDER AUTHORITY TO SEARCH PREMISES

Reed informed an Office of Price Administration investigator that he was going to purchase some counterfeit gasoline ration coupons from a certain Buttitta. Acting on that information, the investigator and a detective from the Buffalo Police Department followed Buttitta's automobile to the appointed place. The investigator and the detective went over to Buttitta's car and found the informer Reed sitting alone in the rear seat of the car holding two counterfeit gasoline ration coupons in his hand. On being asked where he obtained the coupons, Reed said he obtained them from Buttitta, who was then sitting in the driver's seat of the car. In the seat beside Buttitta sat defendant Di Re. All three men were taken in custody, "frisked" for weapons, and then taken to the police station. About two hours later, Di Re was booked and thoroughly searched, and one hundred counterfeit gasoline ration coupons were found in an envelope concealed between his shirt and underwear. By the use of this evidence, Di Re was convicted on a charge of knowingly possessing counterfeit gasoline coupons. The Circuit Court of Appeals reversed the judgment; and, on the petition of the United States, the Supreme Court granted certiorari. One of the contentions of the government was that incidental to the arrest of Buttitta the officers had the right to search Buttitta and the premises on which he was arrested, therefore that a search of the automobile would have been lawful and since Di Re was in the automobile the search of his person was lawful. Held that a person does not lose the immunities from a search of his person to which he would otherwise be entitled

17. Arizona, California, Delaware, Florida, Michigan, Montana, Nebraska, Nevada, New Jersey (conditional sales only), New Mexico, Ohio, Pennsylvania, Texas, Utah, Virginia and the District of Columbia.

18. The following states require a certificate of title, but do not use it for recording mortgages so that a recording upon the certificate is constructive notice: Colorado, Idaho, Illinois, Indiana, Maryland, Mississippi, Missouri, North Carolina, North Dakota, Washington, West Virginia, Wisconsin and Wyoming.

19. The following states do not require a certificate of title for automobiles: Alabama, Arkansas, Connecticut, Georgia, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, New Hampshire, New York, Rhode Island, South Carolina, Tennessee, and Vermont.

20. Wyo. Comp. Stat. 1945 sec. 60-207.

21. For suggestions as to the form of the Statute and a discussion of the problems, see Leary, Horse and Buggy Lien Law and Migratory Automobiles, 96 U. of Pa. L. R. 476-483 (1947).