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## Personal Property

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a fractional interest, the grant is subject to the interpretation that it covers only the conveyed fraction of the fraction covered by the lease.<sup>21</sup>

The other problem is presented when a lease reserves to a lessor some interest or payment other than delay rentals and royalties, as, for example, an oil payment. Most partial ownership clauses are limited to such rentals and royalties. When additional interests or payments are reserved, it is important to provide in detail that they, too, are subject to the partial ownership clause.

*David G. Hanlon.*

## PERSONAL PROPERTY

### POSSESSION OF CERTIFICATE OF TITLE AS APPARENT OWNERSHIP

In *Oklahoma* a certificate of title to an automobile is not considered a muniment of title which establishes ownership. It is intended merely to protect the public against theft, to facilitate recovery of stolen automobiles, and to aid the State in enforcement of its regulation of motor vehicles.

In *Adkisson v. Waitman*<sup>1</sup> defendant's certificate of title was not filled in other than having the signature of the dealer from whom he purchased the car. Defendant's wife obtained possession of the certificate by taking it from a dresser drawer without her husband's knowledge and consent. She and a third party, who claimed to be the person whose signature was on the certificate of title, surrendered the certificate to the state tag agent and obtained a new one made out to the wife. She then sold the car to the plaintiff. The supreme court reversed the judgment of the lower court and held that defendant was entitled to the automobile. The court based its

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<sup>21</sup> See, for example, *Humble Oil & Refining Co. v. Harrison*, 146 Tex. 216, 205 S. W. 2d. 355 (1947).

<sup>1</sup> ——— Okla. ———, 213 P. 2d. 465 (1949).

decision upon the rule of personal property that no man can be divested of his property without his consent.

The plaintiff contended that when one of two innocent persons must suffer by the acts of a third person, the one who enabled the third person to cause the loss must sustain it. In the cases relied upon by the plaintiff, there was an affirmative act which placed it in the power of the party making the transfer to mislead an innocent purchaser. The court distinguished the principal case on the ground that the defendant did not do anything to place it in his wife's power to make a transfer of title. He did not consent to the transfer of the certificate of title, nor did he deliver it to his wife. The mere fact that she was permitted to use the automobile did not constitute a clothing with authority such as to bind him when the transfer was made without his consent.

#### PRIORITY OF LANDLORD'S LIENS OVER MORTGAGE LIENS

In the *Texas* case of *Industrial State Bank v. Oldham*<sup>2</sup> a tenant had possession of a business building under a five-year lease, when he executed two chattel mortgages in favor of defendant bank upon property he previously had placed in the building. The lease was not recorded, and the bank had no actual knowledge of its terms. When the bank foreclosed its lien, the landlord filed suit for conversion of the mortgaged property.

The dominant question presented in the case was whether the landlord preserved priority of his lien for rents more than 6 months past due. A Texas statute<sup>3</sup> gives the landlord a preference lien on property placed by the tenant in the rented building. In order to preserve priority for rents more than 6 months past due, as against intervening bona fide purchasers or creditors of the tenant, the landlord must file with the county clerk a sworn statement of the amount of rent due; and the statement must be recorded in a book provided for such purposes. The affidavit filed and recorded at any time will secure the lien, unless the rights of

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<sup>2</sup> ———*Tex.*———, 221 S. W. 2d. 912 (1949).

<sup>3</sup> *TEX. REV. CIV. STAT.* (Vernon, 1948) art. 5238.

other parties have intervened prior to the recordation. The rights of creditors and purchasers which accrue prior to the recordation are superior to claims for unpaid rent beyond the six-month period.

Strict compliance with the provisions of the statute must be had in order to preserve priority of the landlord's lien for rents more than 6 months past due. In the instant case the landlord filed an affidavit in the chattel mortgage department of the county clerk's office. The affidavit was retained and indexed in the chattel mortgage department, but was never recorded in the book maintained for recordation under the statute. This was not in compliance with statutory requirements, and the landlord failed to preserve his lien against the intervening creditor of the tenant. Another Texas statute,<sup>4</sup> which provides that an instrument shall be considered recorded from the time it is deposited for record, was held not applicable where the statute makes the recordation of the instrument necessary to the creation of a right.

The supreme court affirmed and reformed the judgment for the landlord. This being a suit for conversion, the rights of the parties were determined as of the date of the conversion. The bank's action in taking over the mortgaged property was a conversion to the extent of the value of the landlord's lien for rent less than 6 months past due.

#### PRIORITY OF BONA FIDE PURCHASER'S RIGHT OVER MECHANIC'S LIEN WHERE POSSESSION NOT RETAINED

The *Arkansas* case of *Kern-Limerick, Inc., v. Emerson*<sup>5</sup> dealt with a statute<sup>6</sup> authorizing repairmen, who part with possession of repaired property, to preserve their lien by filing a claim with the circuit clerk within 90 days after performance of the work or furnishing materials. Such lien is inferior to the rights of an innocent purchaser who acquires title to the property before the lien is filed

<sup>4</sup> TEX. REV. CIV. STAT. (Vernon, 1948) art. 6596.

<sup>5</sup> —Ark.—, 218 S. W. 2d. 78 (1949).

<sup>6</sup> ARK. STAT. (1947) § 51-409.

and is without actual notice of the existence of the claim for repairs.

The plaintiff repaired a tractor and permitted the owner to take it without paying for the repairs. He filed his lien within 90 days, but the owner had sold the tractor at the time the claim was filed. In a suit against the purchaser to enforce the lien, the question before the court was whether the defendant was a bona fide purchaser without notice, actual or constructive. The defendant had no actual notice of the claim at the time of the sale.

Plaintiff advanced the argument that defendant knew plaintiff had repaired the tractor at the time of the purchase and that such knowledge was sufficient to put a reasonably prudent person on inquiry as to whether the repair bill had been paid. Cases were cited to support the principle that where a person has sufficient information to put him on inquiry, he is charged with knowledge of what the inquiry would disclose. The supreme court distinguished the principal case from those relied upon by the plaintiff and affirmed the lower court's holding that the defendant was a bona fide purchaser without notice. The cases relied upon by plaintiff involved liens of materialmen and laborers upon lands and improvements. The priority section of the materialmen's lien statute<sup>7</sup> does not contain the exception in favor of a bona fide purchaser without actual or constructive notice of the lien as does the statute here involved.

#### GRASS AND STRAW AS EMBLEMENTS

In *New Mexico* perennial grass, straw, and stalk pastures were held not to be crops in the sense that they may be used or removed from the premises after the termination of a lease. This is particularly true if the straw is not in ricks or stacks.

The case of *Czerner v. Kerby*<sup>8</sup> involved a farm lease which stipulated that at the termination of the lease, the landlord should

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<sup>7</sup> ARK. STAT. (1947) § 51-605.

<sup>8</sup> —N. M.—, 207 P. 2d. 531 (1949).

compensate the tenant for his proportionate share of the proceeds of any crops growing on the premises. The lease was properly terminated by the landlord at a time when the crop for the year was completely harvested. The grain had been combined and straw left as it fell in the fields. In a suit brought by the landlord for his proportionate share of the alfalfa grown on the premises and sold by the tenant, the tenant counterclaimed for the value of the native grass, straw and stalk pastures under the doctrine of emblements. This counterclaim was denied, and the supreme court affirmed the decision. The intention of the parties as expressed in the lease was said to be controlling in determining whether natural grass, straw, and stalk pastures are crops. Here the purpose of the lease and the primary interest of the tenant was the production of grain and alfalfa.

The court distinguished the case of *Weddle v. Parrish*,<sup>9</sup> where the lease in question was primarily a grass lease intended to be used for late pasturing of sheep. Grass was the crop involved, and it was held that under such conditions the tenant was entitled to the use of the premises after the termination of the lease.

#### REGULATIONS AS TO ABANDONED PROPERTY

In 1949 *Arkansas* enacted The Abandoned Property Act,<sup>10</sup> which makes abandoned personal property subject to escheat to the State. This statute pertains to personalty which has lain unclaimed, forgotten or lost for 7 years. It includes all kinds of personal property, tangible and intangible (excepting insurance and funds held by banks and building and loan associations). The Attorney General is authorized to make inquiry concerning such property and to bring suit against any person holding abandoned property. Any interested person may intervene, and notice must be given to all former owners and claimants. The proceeds from the sale of abandoned property are held in a Separate Escheat Fund and credited at the end of two years to the Public School Fund.

<sup>9</sup> 135 Ore. 545, 295 Pac. 454 (1931).

<sup>10</sup> ARK. STAT. ANN. (Supp. 1949) Ch. 6.

CREATION OF LANDLORD-TENANT RELATIONSHIP BY  
RENTAL OF SAFETY DEPOSIT BOX

*Oklahoma* has enacted a statute<sup>11</sup> regulating the rental of safety deposit boxes. This statute stipulates that the relationship of the parties is that of landlord and tenant, and the landlord owes the tenant the duty of ordinary care in maintaining such boxes. The landlord has a lien upon the contents for past due rentals and expense of replacement of locks, and may sell the contents after complying with statutory requirements of notice. The landlord may also contract to limit liability. It is to be noted that a similar statute was enacted in Texas in 1943.<sup>12</sup>

MORTGAGES ON GOODS EXPOSED TO SALE

*Texas* has amended Article 4000 of the Revised Civil Statutes,<sup>13</sup> concerning mortgages on goods exposed to sale. This statute declares that every mortgage, deed of trust, or other lien given by the owner of such goods shall be deemed fraudulent and void. The amended portion provides that this Article does not apply to any mortgage, deed of trust, or other lien given to secure the purchase price of such goods, except as to retail sales made in the regular course of business.

The amendment was passed because many small businesses and merchants must purchase their stocks of goods from manufacturers outside the state and of necessity must finance their transactions through local banks or other agencies. Local banks and other agencies can now with increased safety accept a chattel mortgage or other security for the purchase price of such goods.

*Helen Wood.*

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<sup>11</sup> OKLA. STAT. ANN. (Special Law Pamphlet, End of 1949 Laws), Tit. 6, Ch. 18.

<sup>12</sup> TEX. REV. CIV. STAT. (Vernon, 1948) art. 342-906.

<sup>13</sup> VERNON'S TEX. SESS. LAWS (1949), 51st Legis., Ch. 82, p. 137.