



1951

## Personal Property

D. Carl Richards

Follow this and additional works at: <https://scholar.smu.edu/smulr>

---

### Recommended Citation

D. Carl Richards, *Personal Property*, 5 Sw L.J. 327 (1951)  
<https://scholar.smu.edu/smulr/vol5/iss3/10>

This Article is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in SMU Law Review by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

## PERSONAL PROPERTY

PRIORITY OF WAREHOUSE RECEIPT OVER STATUTORY  
LANDLORD'S LIEN

*Arkansas.* In *Grauman v. Jackson*<sup>1</sup> it was held that the bona fide purchaser of a warehouseman's receipt is superior in title to a landlord claiming a statutory lien. The court noted that the question was one of first impression.

Plaintiff leased to a tenant, taking a note for rents and advances for supplies and equipment for making a crop. In the fall the tenant was allowed to gin four bales of cotton in his own name and to deposit them in a bonded warehouse. Tenant then sold the warehouse receipt to defendant.

In an action to determine whether or not defendant held subject to plaintiff's lien, it was urged that an 1885 statute giving a landlord superiority over claims of purchases of warehouse receipts was controlling.<sup>2</sup> A 1921 case involving similar facts had given the landlord the superior right.<sup>3</sup> However, in that case the court overlooked the passage of the Uniform Warehouse Receipts Act.<sup>4</sup> The court rejected plaintiff's argument, recognizing that the Uniform Warehouse Receipts Act was passed in accordance with a general purpose to establish uniformity of rights and duties throughout the nation. The statute providing for the landlord's lien was thus considered repealed in part to give the holder of the warehouse receipt a superior claim.

## FIXTURES

*Louisiana. Holicer Gas Co., Inc. v. Wilson*<sup>5</sup> was an action to recover a butane gas tank located on defendant's property. It was found that plaintiff entered into a "consumer's contract" with Booras. The latter agreed to buy and plaintiff agreed to furnish butane gas for use on Booras' property (apparently a farm). In

<sup>1</sup> .....Ark....., 225 S. W. 2d 678 (1950).

<sup>2</sup> ARK. STAT. 1947 ANN. § 51-205.

<sup>3</sup> *Lynch v. Mackey*, 151 Ark. 145, 235 S. W. 781.

<sup>4</sup> ARK. STAT. 1947 ANN. §§ 68-1201—68-1258.

<sup>5</sup> 45 So. 2d 96 (La. App. 1950).

execution of the contract plaintiff installed a 500-gallon tank, 6 feet high, 4 feet in diameter, connected to a house by means of a copper tube, and supported on three legs set on concrete blocks 18 inches square. The "consumer contract" was never recorded, and apparently title to the butane tank was retained in plaintiff. Booras sold his property to Wilson, who in turn sold to defendant, a bona fide purchaser without notice. Judgment for defendant was affirmed.

The court based its decision on three statutes:

Article 464 of the *Louisiana Civil Code* (Dart, 2d ed. 1945) states: "Lands and buildings or other constructions, whether they have their foundations in the soil or not, are immovable by their nature." The butane tank was held to be a "construction" within the meaning of this article.

Article 467 of the *Civil Code* lists items that are "fixtures" but does not specifically include a butane tank. The article was held not to be exclusive.

Article 468 of the *Civil Code* is as follows: "Immovables by destination—Illustrations—Things which the owner of a tract of land has placed upon it for its service and improvement, are immovable by destination. . . ." The court held that the owner need not, with his own hands, place the "thing" on his property to come within this article.

It is to be noted that the same result probably would have been reached under common law doctrine, which holds that a chattel which is affixed to land, is adapted to its long-time use and was intended to become a part of the land is a fixture which passes to a bona fide purchaser.<sup>6</sup>

#### FRAUD AND THEFT—RIGHT OF BONA FIDE PURCHASER

*Louisiana.* In a suit for writ of sequestration in order to be declared owner of an automobile,<sup>7</sup> it was found that one Dupuis, impersonating a responsible citizen of Marksville, Louisiana, went to plaintiff's place of business in Lake Charles and offered to pur-

---

<sup>6</sup> Teaff v. Hewitt, 1 Ohio St. 511, 59 Am. Dec. 634 (1853).

<sup>7</sup> Port Finance Co., Inc. v. Ber, 45 So. 2d 404 (La. App. 1950).

chase an automobile, tendering a check in payment therefor. Plaintiff's salesman called the drawee bank in Marksville, Louisiana, and learned there were sufficient funds to cover the check, and was advised that Dupuis' description conformed generally with that of the person he represented himself to be. With the transaction apparently satisfactorily completed, Dupuis drove the automobile to a used car lot in New Orleans and sold it to defendant for slightly over one-half the amount of the check. A few days later the forgery was detected, and the check was returned to plaintiff, who brought suit.

The judgment for plaintiff was based upon a local statute.<sup>8</sup> Under the statute it is a theft to obtain property by "fraudulent conduct, practices or misrepresentations." In accordance with Louisiana jurisprudence, if a seller obtains goods by theft, he cannot pass title to a bona fide purchaser.<sup>9</sup> Consequently, defendant received no title.

The case is of interest principally because of the refusal of the court to apply the civil law doctrine of *la possession vaut titre*, urged by the defendant. If followed, a "defendant in possession" would be protected as against all but an "owner of goods lost or stolen." The court followed two earlier cases<sup>10</sup> and rejected the defendant's contention.

The court contrasted the civil law doctrine with two situations dealt with under the common law: If an initial purchaser, *inter praesentes*, falsely represents to a seller that he is another person, he acquires a voidable title which becomes indefeasible upon transfer to a bona fide purchaser. If a purchaser, *inter absentes*, falsely represents to a seller that he is another, no title passes, and a subsequent purchaser is without protection. Implicit in this decision is a preference for the common law rule over the civil law principle urged by the defendant. However, under the common law, defendant would have prevailed since Dupuis was *inter*

---

<sup>8</sup> LA. CODE CRIM. LAW and PROC. (Dart 2d ed. 1943) art. 740-67.

<sup>9</sup> Lynn v. LaFitte, 177 So. 83 (La. App. 1937).

<sup>10</sup> Holloway v. A. J. Ingersoll Co., 16 La. App. 494, 133 So. 819 (1931); Holton v. Hubbard, 49 La. App. 715, 22 So. 338 (1897).

*praesentes*. Rather than apply the common law, the court turned to the "theft" statute as a basis for its decision.

#### VALIDITY OF UNRECORDED CHATTEL MORTGAGE

*Louisiana. Harris Finance Corp. v. Fridge*<sup>11</sup> was a suit on a chattel mortgage given to secure the purchase price of an automobile. Section 4 of Louisiana Act No. 172 of 1944 was held to amend in part an earlier statute<sup>12</sup> so that a chattel mortgage *exists* from the date of execution rather than from the date of filing for recordation.

On March 9, 1949, Malley purchased an automobile from Reubens and gave a note secured by a chattel mortgage. Plaintiff purchased the note. On March 11 Malley sold the automobile to Fisher, who then sold to defendant, a purchaser without notice. The chattel mortgage was recorded on March 21, ten days after the sale to defendant. Based on Section 8 of Act No. 172 of 1944, requiring a purchaser of movable property to obtain an affidavit from the seller stating (1) that there is no mortgage on it and (2) no money due for its purchase, the judgment below in favor of defendant was reversed.

An earlier case, *Booth Motor Co. v. Gamburg*,<sup>13</sup> decided that under the former statute the mortgage did not come into *existence* until filed for recordation. In the instant case the mortgage was held to exist from the date of execution. If the *Booth* case were controlling, the defendant might have held a right superior to plaintiff, but since the mortgage existed from the date of its execution, and since defendant did not obtain the required affidavit on mortgaged movable property, he was not protected even though he had no notice of the mortgage. Under Section 8 a purchaser without the required affidavit takes subject to rights which have previously accrued.

#### LIMITATION ON LIABILITY—BAILEE FOR HIRE

*Louisiana, Texas*. In two cases bailees were unsuccessful in their attempts to limit their liability by printed or posted notices.

---

<sup>11</sup> 47 So. 2d 414 (La. App. 1950).

<sup>12</sup> La. Acts 1918, No. 198, § 4.

<sup>13</sup> 9 La. App. 60, 118 So. 854 (1928).

In *Fidelity and Deposit Company of Maryland v. Rednour*<sup>14</sup> plaintiff delivered a chest to defendant for storage. Defendant later mailed a warehouse receipt to plaintiff which read, "Our responsibility for any one-piece or package (and contents of such package) is limited to the sum of fifty dollars, unless such value is declared at time of securing rate and special charge is made for higher valuation." One month after deposit when plaintiff requested its re-delivery, the chest could not be found. Judgment for plaintiff in the amount of \$450.00 was affirmed.

The value of the chest and the items therein was not an issue, the only serious question being whether or not the bailee effectively limited his liability to \$50.00 by the notice on the warehouse receipt. Proof by the bailor of delivery of an article to the bailee and failure of the bailee to return the article raised the presumption that the failure to deliver resulted from negligence and shifted the burden to the bailee. To limit his liability, the bailee relied upon the warehouse receipt notice. The court held that a contract was implied at law when the deposit was made which would be controlling unless limitations were effectively introduced. The court refused to permit the statements on the warehouse receipt to work to the bailee's advantage because they were not called to the bailor's attention and he had no opportunity to adopt or to reject the proposed conditions.

In *McAshan v. Cavitt*<sup>15</sup> plaintiff delivered her automobile to a parking lot at 10:30 a.m., receiving a claim check on which was printed, "We close at 6 p.m. Cars left later at owner's risk." Plaintiff did not read this notice. Signs on the premises read: "Not responsible for merchandise left over 48 hours;" "A Service charge of 50 cents will be collected from all persons locking their ignition or taking their keys with them;" and "Open at 8 a.m. and close at 6 p.m." Plaintiff saw only the first of the signs; the latter two were not called to her attention. At 6 p.m. the automobile was moved to an open area beside the parking lot office with the keys in the ignition. Returning to the parking lot at 7 p.m.,

<sup>14</sup> 44 So. 2d 215 (La. App. 1950).

<sup>15</sup> \_\_\_\_\_ Tex., \_\_\_\_\_, 229 S. W. 2d 1016 (1950).