Personal Property

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THE LAW OF FIXTURES (SCHOOL BUILDINGS) MODIFIED BY STATUTORY CONSTRUCTION

DICKENSON v. Board of Trustees of the Chico Independent School District[1] involved the question of whether school buildings, constructed at public expense, upon land granted upon determinable fee to the School District reverted with the land upon defeasance of the estate. The Court of Civil Appeals, principally on the authority of an earlier Court of Civil Appeals case[2], held that the buildings did not revert and that the trustees of the school district had a right to remove the improvements.

Plaintiff was the owner of a possibility of reverter under a deed to the school district which provided that the land should revert to the grantor should it cease to be used for school purposes. In 1946 the trustees of the school district decided to abandon the land and sell or salvage the school buildings. Upon notification of the trustees' intentions the plaintiff brought an action in trespass to try title. The trial court gave judgment to the plaintiff for the land but awarded the improvements to the school district. The plaintiff appealed on the grounds that under the well established doctrines of the law of fixtures the buildings had become a part of the realty and reverted with the land[3]. The Court of Civil Appeals rejected this view and relied upon general considerations of public policy deemed to be implicit in four articles of the Texas Statutes[4] to affirm the judgment.

The preponderance of authority in other jurisdictions seems to be opposed to the Texas decisions[5], and only one other state

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[1] 204 S. W. (2d) 418 (Tex. Civ. App. 1947) *writ of error refused.*

[2] Allen v. Franks, 166 S. W. 384 (Tex. Civ. App. 1914) *writ of error refused.*

[3] *E. g,* Hutchins v. Masterson, 46 Tex. 551 (1877); Jones v. Bull, 85 Tex. 136, 19 S. W. 1031 (1892); Brown v. Roland, 92 Tex. 54, 45 S. W. 795 (1898).

[4] TEX. REV. CIV. STAT. ANN. (Vernon 1925) Articles 2748, 2752, 2754, 2756.

[5] *E. g,* Allemania Fire Ins. Co. v. Winding Gulf Collieries, 60 F. Supp. 65 (S. D. W.

court has adopted a similar view though a strained statutory construction[6]. While the Texas view can be defended as producing the most desirable result, it may be said that its basis at common law is unsound and the statutory construction supporting it seems to be little less than judicial legislation.

NEW FACTOR'S LIEN STATUTE

Article 5506c[7], enacted by the 50th Legislature in 1947, provides for the creation of a lien by written contract upon merchandise[8] in the possession or custody of the lienor in favor of one who advances money upon security of such merchandise. Merchandise which subsequently comes into the possession of the lienor may also become subject to the lien if subsequently identified in a separate written instrument signed by the lienor and delivered to the factor.[9] The lien becomes effective when filed with the clerk of the county where any part of the merchandise subject to the lien is located and when a notice, containing the information required by the act, is posted at a conspicuous place at one of the principal entrances of the place where the merchandise is located.[10] The lien affords superiority over the claims of

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Va. 1945); Williams v. Kirby School Dist., 207 Ark. 458, 181 S. W. (2d) 488 (Ark. S. Ct. 1944); Rustin v. Butler, 195 Ga. 389, 24 S. E. (2d) 318 (Ga. S. Ct. 1943); Board of Education for Jefferson City v. Littrell, 173 Ky. 78, 190 S. W. (Ky. Ct. App. 1917); Webster Cty. Board of Education v. Gentry, 233 Ky. 35, 24 S. W. (2d) 910 (Ky. Ct. App. 1930); Webster Cty. Board of Education v. Wynn, 303 Ky. 1010, 196 S. W. (2d) 983. (Ky. Ct. App. 1946); School Dist. No. 42 of Cascade Cty. v. Pribyl, 82 Mont. 295, 267 Pac. 289 (Mont. S. Ct. 1928); Collette v. Town of Charlotte, 114 Vt. 357, 45 A. (2d) 203 (Vt. S. Ct. 1946).

[6] Schwing v. McClure, 120 Oh. St. 335, 166 N. E. 230 (Ohio S. Ct. 1929) (See the strong dissenting opinion by Marshall, C. J.)

[7] TEX. REV. CIV. STAT. ANN. (Vernon's Supp., 1947) Art. 5506c.

[8] Section 1 defines "merchandise" as "materials, goods in process, and finished goods intended for sale, whether or not requiring further manufacturing or processing." The applicability of the Act is limited by Section 10 to merchandise which is not daily exposed to sale at retail in parcels in the regular course of business.

[9] Section 1 defines "factor" as any person, firm, bank or corporation, and their successors in interest, who advance money on the security of merchandise, whether or not they are employed to sell the merchandise.

[10] Compliance with the provisions of filing and notice is not necessary when the factor is in possession of the merchandise subject to the lien.

unsecured creditors and subsequent liens, except as against specific liens arising from contractual acts of the lienor in the marketing of the merchandise. A purchaser of the merchandise subject to the lien takes free of the lien but the lien attaches to the proceeds of the lien in the hands of the lienor. Upon satisfaction of the indebtedness secured by the lien, the factor may be required, upon the demand of any interested party, to sign a certificate of discharge which may be filed with the record of the lien. Until such certificate shall have been filed the lien is deemed to be in full force. The statute provides that a substantial compliance with its requirements shall be sufficient to support a valid lien.

W. P. B.