1892

Chattel Mortgages the Instrument

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THESIS

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CHATTEL MORTGAGES

THE INSTRUMENT

by

H. L. White.

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Cornell University -- School of Law

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Nature and Definition.

From a study of the New York cases, a chattel mortgage may be defined as a transfer of personal property, which is in the nature of an absolute conveyance for a security for money, obligation or for the performance of some act; by such instrument the mortgagee acquires a paramount and specific title upon the property described therein, subject to be defeated by a performance of the condition and on a breach of the condition the mortgagee has a right of possession so as to satisfy his debt and the title becomes absolute in him at law, subject to be defeated by the express or implied condition for an equity of redemption by the mortgagor.
The mortgage does not convey an absolute legal title to the property mortgaged, for the reason that the mortgagor may sell and convey it, subject to such lien; and all a purchaser or subsequent encumbrancer need do is to discharge the condition by complying with the provisions of the mortgage; so that, in this respect, there is no distinction between mortgages of real and personal property prior to a forfeiture or breach of condition. A mortgagor after he obtains a mortgage is still a creditor, the consideration for the mortgage is the debt; and it remains a debt until discharged or satisfied by payment or sale under the mortgage, or by legal process. There can be no mortgage, unless there is an equity of redemption; it is this right which makes the transaction a
mortgage; the very nature of the transaction compels and protects this right in the mortgagor. So that no absolute title passes to the mortgagee when his instrument is executed and recorded; it gives him the same, and no greater rights than a mortgagee of real property has,--the right, upon default or breach of condition, to subject the specific property described in the instrument to the satisfaction of his debt in the manner provided by statute, by the instrument itself or by due process of law. If the execution of the mortgage and the delivery of possession paid the debt, it would be a sale if possession is to be delivered, whether registered or not.

The execution of a chattel mortgage in the usual form, invest the title in the mortgagee,(1) subject to be

(1) Bragleman v Dane, 69 h.y. 69.
defeated by the subsequent performance of the condition.

(1) The right of possession ordinarily follow that of the property; and both would pass under such an instrument, in the absence of any express or implied agreement for the retention of the chattels by the mortgagor. But when the instrument specifically defines the circumstances under which the right of possession is to rest in the mortgagee, the law implies an intent, that it is to remain in the meantime in the mortgagor, and until this possessory right of the mortgagor ceases, his interest is subject to seizure and sale under legal process at the instance of his creditors, and where the instrument contains a clause giving the mortgagee, whenever he feels unsafe and in good faith he can take possession of the

(1) West v Cravy 47 h.y. 423. Hayes v Wycroff 114 h.y. 207.
property and such an act terminates the mortgagor interest to such an extent that he has no interest left subject to levy or sale.

The legal title becomes absolute upon default. (1)

It is not necessary that the instrument shall declare that the defeasible title of the mortgagee shall become absolute on default of the mortgagor to pay the sum secured or any part thereof when it becomes due; this result follows as an incident to the relation of the parties. But if the mortgagor fails to pay according to the terms of the instrument his rights at law terminate and his rights in equity come into being and this right of the equity of redemption is liable to be extinguished.

(1) Bragelman v Dane 69 N. Y., 69.
The general rule is, that after a default in the condition of the mortgage the mortgagor has no interest in the property mortgaged subject to be seized upon execution, and this is so, even though the mortgagor still retains possession of the property, it is equally clear that the mortgagor has some interest in the property after forfeiture of the condition. He has the right of the equity of redemption until such right is foreclosed.
Legal title on Default.

Where personal property is mortgaged the legal title according to the New York rule passes to the mortgagee and on default it becomes absolute in him, and the mortgagee can take possession and dispose of the property. The only interest left in the mortgagor is his equity of redemption and by exercising that right he may redeem himself to the possession of the property and so vest the legal title once more in himself. The mortgagee may extinguish the equity of redemption by an action to foreclose, either legal or equitable or by a power of sale in the mortgage and the mortgagee may purchase at his own sale if in good faith, and so have the absolute title both equitable and legal in himself.
Until a chattel mortgage becomes absolute in the mortgagee by non-performance of the condition of the mortgage, the mortgagor has such an interest in the chattel mortgage as is liable to a levy and sale on execution and the purchaser at the sale on execution takes the property subject to the mortgage and acquires with it a right to redeem it by payment of the amount due on the mortgage. (1) But where the mortgagor is in possession of a chattel after forfeiture and the mortgagee can take possession at his pleasure, there is no interest left in the mortgagor subject of a sale on execution. (2)

It is well settled that where the property is in the possession of the mortgagor after default for a definite period, it is subject to a seizure upon execu-

(1) Champlin v Johnson 39 Barb. 606.
(2) Marsh v Lawrence 4 Cowen 467.
Otis v Wood 3 Wend. 500 Hull v Carlney 11 N.Y. 505.
tion against him.

Although the absolute legal title is in the mortgagor after default and he has the right of possession, yet while the property remains in the hands of the mortgagor after such default it is subject to seizure and sale by a tax collector under tax warrant against such mortgagor; such is the law as authorized and enacted in R. S. 398 sec. 2. relating to taxes, and in view of this statute it is held that each individual of a community has notice of the law and is presumed to understand that if his chattel are by his consent or permission in the possession of another they can be taken for a tax against the person in possession. (1)

Legal title as effected by payment. As a general

(1) Hersee v Porter 100 N.Y. 410
rule the payment of the debt for which the mortgage is a security, reinvest the title in the mortgagor and discharges the mortgage. (1) Whenever the mortgagee after default receives payment of the debt the mortgage will be discharged, (2) the forfeiture for default is considered as having been waived, and the mortgagee's title to the goods is undoubtedly extinguished, without any resort to a court for a decree of redemption; and the mortgagor may at once bring his action at law for the recovery of possession of the mortgaged property. (3) But if there has been a default before tender or payment has been made, the failure to pay the debt when due operates to make the title of the mortgagee absolute and at law the mortgagee could rightfully refuse a tender of

(1) Thompson v Van Vechten 27 N. Y. 568.
(2) West v Crary 47 N.Y. 423, Porter v Parmley 52 N.Y.188.
(3) Braun v Benent 8 Johns 95, Patchin v Pierce 12 Wend 61.
the debt after default.

There is a wide difference between a mortgage of land and mortgage of chattels. In the first case as the law in this state is now settled, the estate subject to the mortgage, remains in the mortgagor and is bound a judgment and may be sold under an execution against him, the mortgage is regarded nearly as a lien or security for the debt and not as a transfer of title. But a mortgage of chattels in all cases, vest the legal title in the mortgagee, and when by the terms or by the legal construction of the instrument, he has an immediate right to possession, although the possession may not in fact have been changed, he is, in the judgments of law the absolute owner, and it is merely as his bailee and by his sufferance that the mortgagor retains the possession. The
latter has no interest that is bound by or can be sold under an execution against him. When by the terms of the mortgage the mortgagor is to remain in possession for a certain time, his temporary interest, subject to the mortgage may be levied upon and sold, but his interest in other cases, is a right of redemption only, a mere chose in action, which unless united to a right to possession for a definite period can never be subject of a levy and sale under execution.

The distinction, as laid down by text writers is that in case of a pledge, the title remains in the pledgor and the possession passed to the pledgee while in the case of a chattel mortgage, the possession remains with the mortgagor and the title passes to the mortgagee. A pledge consists of a delivery of goods by
a debtor to his creditors, to be held until the debt or obligation is discharged and then to be redelivered to the pledgor; the title not being changed, during the continuance of the pledge nor is it effected by a default in the payment of the debt, the pledgor is divested of his title only when the property is sold by the pledgee. While in the case of a mortgage, on default the mortgagee's title to the goods becomes absolute, and the mortgagor is divested of all rights in and to them, except that he has still his equity of redemption.

It has been laid down by an eminent writer that unless there be a delivery of the goods, there can be no valid pledge. The delivery must be an actual and continued, except in one or two classes of cases, where constructive delivery is tolerated. The reason for the
strictness of rule in delivery is quite obvious. It is not essential to a valid pledge that the terms of it should be in writing and a public record made of it for the reason that in every valid pledge the creditor is found in possession of the goods, and that fact together with the absence of possession in the debtor, is a sufficient publication of the transaction to other parties dealing with him.
Forms and Requisites.

As a general rule no particular words or form of conveyance is necessary to constitute a chattel mortgage. A mortgage made entirely by parol, will be valid as between the parties and if the mortgagee takes possession it will be good as to third parties. (1) A chattel mortgage in its execution does not require such exactness and formality as a mortgage of real property and, in fact, no particular words seem to be required to constitute a good mortgage, beyond the requirement that the instrument which was intended to operate as a mortgage, must contain words sufficient to transfer the title of the goods to the mortgagee. Whenever a conveyance or assignment of

(1) Bank of Rochester v Jones 4 N.Y. 498.
property is originally intended as a security for money, whether this intention appears from the conveyance itself or any other instrument, it is always considered as a mortgage, and redeemable, even though there is an agreement of the parties that it shall not be redeemable, or that the right of redemption shall be confined to a particular time or a particular description of persons. A chattel mortgage need not be under seal, in this it differs from a real estate mortgage. Personal property could always be transferred without the use of a deed while real property can not. A seal never has been held necessary to a bill of sale of personality while it is otherwise as to real property. (1) A mortgage may be payable in instalments and it generally occurs when the

(1) Thompson v Blonshard 4 N.Y. 303.
amount secured is larger than what the mortgagor can pay at any one time; so for the benefit of both it may be made payable in several instalments or at different periods and where the principle is not made payable at any such time the interest may; so there may be a default by the mortgagor in the payment of the interest, if not in the principle debt secured. In case of this kind where there is a provision in the mortgage that in default of payment of interest or of the principle, the whole sum shall become due and payable; the non-payment of either principle or interest is such a breach of the condition or forfeiture as will give the mortgagee the right to immediate possession of the property and make the whole sum due and payable at once and the mortgagee's
right becomes perfect on default of one instalment of in-
terest or principle as upon default in the payment of
the whole debt.

Whether an instrument is to be regarded as an ab-
solute conveyance or a mortgage, depends upon the cir-
cumstances under which it was made, and the relation sub-
sisting between the parties and not exclusive, nor even
chiefly upon their agreement. When it is doubtful whe-
ther a transaction was a mortgage or a conditional sale,
the intention of the parties will control the transaction
and form of the contract, and the circumstances under
which it was executed may be looked into in determining
what was their intentions. A bill of sale of chattels
may be shown to be a mortgage by the same evidence that
would produce that effect. A bill of sale absolute upon its face, transferring property to be held as security for the payment of a debt, is in character and effect a mortgage and is to be treated as such. (1)

A mortgage is void as to creditors, which provides for a substitution of other property to take the place of the property described in the mortgage. So is a mortgage which by its terms, the privilege is granted to the mortgagor to sell for his own benefit, and as his own portions of the property covered by the mortgage, this renders the instrument fraudulent and void upon its face. Such agreements can have only one purpose, and that is to hinder and delay and defraud creditors. The time of payment should be named in a chattel mortgage,

(1) Smith v Berthie 31 N. Y. 542.
otherwise it is due immediately and the right of possession and absolute legal title vest at once in the mortgagee and he has right to recover the property against the mortgagor or any other person claiming under him, but where the possession is reserved to the mortgagor subject to be defeated by a demand of the performance of the condition, the mortgagor has possession until such demand.
The Parties.

The general rule as to who may make a chattel mortgage is, that any owner of personal property, or his duly authorized agent, may execute a valid mortgage; the only exception being infants and insane persons. So far as the insane persons and infants, person's contract are not void, but voidable; the mortgage is enforceable until the infant determines to avoid it. And he is not prevented from avoiding the mortgage because he has consumed the consideration of the mortgage, and cannot restore the mortgagee to his original position. (1) But if the consideration of the mortgage has not been consumed or disposed of, and can therefore be returned to the

(1) Green v Green 7 Hun 492.
mortgagee, the mortgagor cannot avoid the mortgage without returning the consideration. Thus, if the property mortgaged had been bought from the mortgagee, and the mortgage had been given to secure the purchase money, the mortgage property would have to be returned, before the mortgage could be avoided. (1)

Partners are mutual agents of each other in all things which respect a partnership business and the act of one in such things is the act of an agent of all. A pledge or mortgage by one partner of partnership property will bind his co-partners; although it be made without their knowledge, (2) provided the mortgagee had no notice that it was joint property, and there be no fraud in the transaction. One partner has authority to sell and trans-

(1) v Fennemore 17 Barb. 428.
(2) Stewart v Slater 6 Duer 96.
fer all the copartnership effects directly to creditors
of the firm although the latter is at the place of busi-
ness and might be consulted. As a mortgage of personal
property need not be under seal and as a mortgage of
such property of a firm, made by one of the partners to
secure a debt of the firm, is valid, the addition by him
of a seal does not violate it. (1)

As to individual debts one partner cannot mortgage
copartnership property and such a mortgage would be of
no effect to the extent only of the interest of the mort-
gagor, and the equities of the other partners and part-
nership creditors would attach. Since the interest of
an individual partner consist only of his share of the
surplus remaining after the payment of the debts and

(1) Milton v Masher 7 Met 244.
settlement of the accounts of the firm, there would be no actual lien on the property; and it is not until that interest is ascertained and set apart as the share of the mortgagor that his mortgage is available against any specific property.

Corporations have power to mortgage both their real and personal property unless restrained by their charter for the purpose of securing debts either for debts or other considerations, but as to their franchise, it cannot be mortgaged except under a statute allowing such. The power to mortgage corporate property is co-extensive with the power to alienate it absolutely. Thus, authority given to a company by special act of the legislature to transfer all its property and rights to another cor-
poration, confers upon it authority to mortgage its property and rights to others. And, generally, a charter conferring the right to acquire a lien, transfer and dispose of property of every kind, confers power to mortgage. So, also, if a corporation, besides being authorized to acquire, purchase, dispose of and convey real and personal property, is empowered to negotiate its paper and to borrow money, it has power to mortgage its property to secure the loan.

The power of trading corporations to mortgage its property as security for money borrowed in the prosecution of its business exist by implication in the absence of charter limitations. Although to mortgage the whole corporate property includes the right to mortgage property in whatever way acquired and for debts whenever in-
curred or to mortgage any part of the property.
Description of Property.

The description of property intended to be mortgaged, should be such as to distinguish from other similar articles or should contain some hint or direct the attention of such parties who may read or examine the mortgage to any source of information beyond the words of the parties to it, or should be such as to enable a third person to identify the property, aided by inquiries which the mortgage itself indicates and directs. But between the mortgagor and mortgagee such specific description is not necessary. (1) Chattel mortgages are often made on part of a lot of property and in cases of

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and the mortgagees as to which portion of the property is
or was intended to be covered by the mortgage. Whenever
it becomes necessary to identify the property described in a mortgage from other property of a similar kind or show what was intended to be conveyed, extrinsic
evidence is admissible. (1) If at the time of making the mortgage the description is sufficiently definite to ascertain the property mortgage, the mortgagor cannot by his acts so effect the property by changing or mixing it with other property or otherwise effect it so as to impair the mortgagee's lien. (2)

Where a mortgage covers articles of a particular kind in a place with other similar articles belonging to

(2) Dunning v Stearns 9 Barb. 630.
the mortgagor and a separation is necessary, the right of selection is given to the mortgagee, but such a description can vest no title as to third persons. Where the description fails to describe the property a delivery of it to the mortgagee will make the mortgage good.

The intention of the parties is the principle point in the construction of a chattel mortgage and should always be followed by the courts in interpreting the instrument.

If the mortgage provides for the annexation of a schedule or enumeration of the things which are covered by the mortgage (1), or contains a reference to a schedule or description to be found in some other deed or mortgage, the scope of the mortgage is generally determined by the terms of the schedule; and if the schedule is

omitted, after being referred to in the mortgage, the mortgage is invalid, unless it contains some independent general description which is sufficiently definite to identify the property mortgaged in whole or in part. (1)

If there is a conflict between the mortgage and the schedule, the former must control, as a schedule is only a means of ascertaining with more certainty the property covered by the mortgage (2), but the scope of the mortgage cannot be so enlarged by the general description as to include things unlike those which are specifically described. (3)

(1) Van Husen v. Radcliffe 17 N. Y., 580
(3) Russell v. Winne 37 N. Y., 591.
Execution and Delivery.

When the instrument is in proper form, the next stop is to deliver it to the mortgagee and have it executed. Since a chattel mortgage is of no effect without a delivery and acceptance it is evident that delivery is one of the essential incidents to the execution of the instrument. (1) Delivery means a transfer from the mortgagor to the mortgagee of such a nature as to show the intention of the parties, and its effect is to change the title that is to vest the mortgagor legal title in the mortgagee and it is always essential so as to perfect the mortgagee title as regards to the rights of third persons. No particular form is required in delivery, it may be made by words, acts or the combination of them.

(1) Jones on Chattel Mortgages, 106.
both, the rule as to contracts in offer and acceptance apply to mortgages. It is not necessary for either of the parties to do these acts in person. The delivery, as well as the acceptance, may be done for the mortgagor and mortgagee respectively by their duly authorized agent. (1) While a delivery of the mortgage to the recorder for registration is not in itself sufficient to support a presumption that the mortgagee has accepted the mortgage, and hence not sufficient to pass title to the mortgaged property (2) not even when it is shown that the mortgagee knows of the execution of the mortgage and of its delivery to the recorder; yet if the delivery to the recorder is in pursuance of the agreement of the parties to the mortgage, there will be sufficient evidence

(2) Dale v. Bodman 3 Met. 139.
of delivery and acceptance, in order to pass title. But the agreement must relate specifically to the mortgage which is recorded, in order to be equivalent to an acceptance.

An agreement that whenever a mortgage is executed it shall be delivered to the recorder, is held to be insufficient proof of acceptance. The possession of the note and mortgage by the mortgagee supports the presumption that they have been duly delivered and accepted. On the other hand, the possession of these papers by the mortgagor raises the presumption either that they have not been delivered, or that they have been satisfied. As long as the rights of third parties have not intervened, the mortgagee may accept the mortgage at any subsequent time. It is a question of fact for the jury whether there has been a delivery
and acceptance. (1) Where the mortgage is given to
secure two or more debts payable to different persons,
it is not necessary to deliver the mortgage to each
mortgagee. Delivery to one is sufficient.

If a chattel mortgage be dated, it is presumed that
it was executed on the given day, but it is admissible
to prove a mistake in the mortgage date. (2) And if the
mortgage contains no date, it is always possible to prove
by parol evidence when the mortgage was executed. But
it is not possible to show that the day of execution was
later than the day of acknowledgement, unless you like-
wise prove an error in the latter date. A chattel
mortgage need not be under seal.(3) There is this
distinction between personal and real property: person-

(1) Robertson v Jackson 1 Wend. 478.
(2) Fuller v Acker 1 Hill 173.
(3) Dispatch Line v Bellamy Co. 12 N. H. 205.
al property could always be transferred without the use of a deed; while real property could not. A seal never has been held necessary to a bill of sale of personalty; while all conveyances of real property are sealed by the parties executing it. (1)

The execution of a chattel mortgage, and the filing of the same, without the knowledge or authority of the mortgagee, is unsufficient. The carrying of an instrument to an office to be filed or recorded is not a delivery, nor evidence of a grantee's acceptance, (2) unless it is deposited and left in charge of the register for the use of the mortgagee, and the mortgagor intends to part with the possession and all power and control over the instrument; but where a mortgage is sent to

(1) Milton v Mosher 7 Met. 244.
(2) Jackson v Phipps 12 Johns. 418.
the recorder's office by the mortgagor, without the knowledge of the mortgagee, and is wholly subject to the mortgagor's control, with no intent of present delivery, it is invalid. And, though made effectual by a subsequent acceptance, or a satisfaction of the mortgage, it cannot effect the rights of another, which mortgagee acquired by a prior satisfaction of a mortgage to him of the same property recorded at the same time.