

June 2014

## A Treatise on Mortgages (Book Review)

John P. Maloney

Follow this and additional works at: <http://scholarship.law.stjohns.edu/lawreview>

---

### Recommended Citation

Maloney, John P. (2014) "A Treatise on Mortgages (Book Review)," *St. John's Law Review*: Vol. 9: Iss. 2, Article 40.  
Available at: <http://scholarship.law.stjohns.edu/lawreview/vol9/iss2/40>

This Book Review is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized administrator of St. John's Law Scholarship Repository. For more information, please contact [cerjanm@stjohns.edu](mailto:cerjanm@stjohns.edu).

rather on the basis of whether what they produce is in the best interests of society.

This, and a number of other distinctly minor things tend to detract slightly from the excellence of the work. In his discussion of the specialist, Mr. Flynn leaves the impression that the specialist is in a position to make tremendous amounts of money. Undoubtedly he would, if he only acted in the way Mr. Flynn says he should act. Unfortunately for the specialists, however, many of them have proved quite as fallible as the customers and, by guessing trends incorrectly, have lost considerable sums. Here and there, Mr. Flynn makes errors in fact which it is impossible to detail in a review of this sort. Thus, at page 63, he lists the taxes which are paid on stock purchases. The taxes are actually higher than those listed. However, the customer does not pay taxes on the purchase of securities if he buys them in round-lots. Moreover, even the man who trades in odd-lots does not pay the tax on purchases in certain few cases. On page 53, Mr. Flynn refers to the transfer taxes "and other expenses which brokers manage to invoke." No clue is given to what these other expenses are, but it may be said that the brokers almost invariably absorb the transfer taxes themselves and that "other expenses" are absent, except if reference is had to the interest charges.

In summary, it might be repeated that Mr. Flynn has done a very meritorious job. He has assembled a good deal of information, especially in the second part of the book, which is not easily available elsewhere. And while all people may not agree with the analysis of the remedies, none will dispute the carefulness or the thoroughness of the study.

EMANUEL STEIN.

New York University.

---

A TREATISE ON MORTGAGES. By William F. Walsh. Chicago: Callaghan and Co., 1934, pp. xlviii, 376.

By a wise and careful use of space, Professor Walsh has succeeded in a thorough restatement of the fundamentals of the modern law of mortgages within the confines of 357 pages. The author starts with the law of the gage of Glanvill and shows how the law of mortgages affected by the law of land both "at law" and "in equity," evolved into the modern "lien" and "title" theories. An examination of the cases cited by the author reveals a progressive attitude in the New York courts due to their refusal to be influenced by the technicalities between law and equity.<sup>1</sup> In fact, in the law of mortgages a real merger in that state was accomplished prior to the code.<sup>2</sup> And a present comparison of the fundamentals of the "lien" theory of New York and the so-called "title" theory of other states further proves that the distinction between the two should be eliminated.

---

<sup>1</sup> The influence of Mansfield upon the early New York judiciary may have been a factor. See Lloyed, *Mortgages—The Genesis of the Lien Theory*, 32 YALE L. J. 233.

<sup>2</sup> P. 28 *et seq.*

Chapter II has an interesting and valuable exposition of equitable mortgages. This chapter should be especially valuable to practicing lawyers. The footnotes and cases upon which the study is based, form a large part of the text material and contain many illustrations and examples of problems which the lawyer meets in practice. The difficult problems that arise out of mortgages on after-acquired property and the unsatisfactory condition of the law form the basis of Chapter III. Although the author points out, in his discussion of mortgages on shifting stocks of goods, how cumbersome and ineffective are the provisions of Section 45 of the Personal Property Law in New York, he does not suggest a remedy which might be the basis of legislation. In New York, the Bench and Bar would welcome suggestions from the author as to legislation on this difficult and at present unsatisfactory part of mortgage law.

The discussion in Chapter IV, entitled "The Mortgage Debt," is the clearest and best explanation that this reviewer has seen of the problem involved in the question, "Does a mortgage need consideration?" The author's thorough understanding of the nature of a mortgage and of the law of debt, has enabled him clearly to point out the mistakes and confusion that have resulted in the cases, especially in New York. The concept of a mortgage as a grant of a non-possessory interest in land is further illustrated in the chapter on the Rights and Duties of a mortgagor and mortgagee. Indeed, the author's insistence on analyzing the relationship on that basis appears in other places in the book.

The determination in *Holmes v. Gravenhorst*,<sup>3</sup> that the mortgagor has the rights of ownership until a sale in foreclosure, supports the author's conclusions as to the fundamentally equitable character of the rights of a receiver of rents and profits in a foreclosure action. A further perusal of the chapters on Foreclosure, Priorities, Redemption and Assignments resolves all doubts as to the soundness of this equitable principle.

The approach of the author is, of course, historical, and there is nothing startlingly new in his arrangement of material. However, the text differs from that of many treatises in that the statements of principles are not mere head-notes to foot-notes. The author is ever ready to take a position and state his views of cases which he believes to be unsound. This is done in language which shows a clarity of thought and a complete mastery of the subject matter. To accomplish the task which the author set himself, required not only a sound knowledge of Property Law and Equity, but a talent for arrangement and separation of the important from the non-essential. This is maintained throughout the book so that in a relatively small volume he has succeeded in setting forth the important and essential principles of the Law of Mortgages.

JOHN P. MALONEY.

St. John's University School of Law.

---

<sup>3</sup> 263 N. Y. 148, 188 N. E. 285 (1933).