

Mortgage--Assignment--Validity of Conditional Sale Contract as Against Subsequent Mortgagee (Kommel v. Herb-Gner Construction Co., 256 N.Y. 333 (1931))

St. John's Law Review

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Recommended Citation

St. John's Law Review (1931) "Mortgage--Assignment--Validity of Conditional Sale Contract as Against Subsequent Mortgagee (Kommel v. Herb-Gner Construction Co., 256 N.Y. 333 (1931))," *St. John's Law Review*: Vol. 6 : No. 1 , Article 27.
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol6/iss1/27>

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expressed by the terms of the policy.⁴ The plaintiff did not intend to guarantee the good faith of those with whom it chose to negotiate. The terms of the policy are clear and the extension of liability makes the type of policy contended for by the defendant nearly impossible to formulate.

J. F. K.

MORTGAGE—ASSIGNMENT—VALIDITY OF CONDITIONAL SALE CONTRACT AS AGAINST SUBSEQUENT MORTGAGE.—Defendant construction company purchased certain electric light fixtures for installation in an apartment house owned by it under a conditional sale contract reserving title in the seller until payment had been made. Thereafter it executed and delivered to two individuals its bond for the repayment to them of the sum of \$30,000, accompanied by a mortgage on the house and "all fixtures and articles of personal property, now or hereafter attached to, or used in connection with the premises." No money was advanced by the mortgagees for the delivery of the mortgage to them. The mortgagees assigned the mortgage to the plaintiff who advanced the sum of \$20,000, which was turned over to the mortgagor. Plaintiff had no knowledge of the terms of the conditional sale contract. The mortgage and assignment were recorded prior to the filing of the conditional sale contract. This action was brought to foreclose the mortgage and to have the conditional sale contract adjudged void. On appeal from an order of the Appellate Division reversing a judgment in favor of plaintiff, *held*, for plaintiff. The mortgage had its legal inception in the hands of the plaintiff-assignee. He was a purchaser without notice and the lien of his mortgage attached to the fixtures. *Kommel v. Herb-Gner Construction Co.*, 256 N. Y. 333, 176 N. E. 413 (1931).

The general rule in New York is that one who takes an assignment of a mortgage takes it subject not only to latent equities that exist in favor of the mortgagor but of third persons.¹ This principle

⁴The bond covered property loss "through larceny, whether common law or statutory, embezzlement, robbery, holdup or theft by any person whomsoever while the property is in transit * * * in the custody of any of the insured's partners or any of the employees or any messenger temporarily employed, or through negligence of any such employee or messenger having custody of the property while in transit as aforesaid such transit risk to begin immediately upon receipt of such property by the transporting employee or employees or partner or messenger temporarily employed and to end immediately upon delivery thereof at destination."

¹*Bush v. Lathrop*, 22 N. Y. 535 (1860); *Schafer v. Reilly*, 50 N. Y. 61 (1872); *Trustees of Union College v. Wheeler*, 61 N. Y. 88 (1874); *Decker v. Boice*, 83 N. Y. 215 (1880); *Bennett v. Bates*, 94 N. Y. 354 (1884); *Owen v. Evans*, 134 N. Y. 514, 31 N. E. 999 (1892); *Stevenson Brewing Co. v. Iba*, 155 N. Y. 224, 49 N. E. 677 (1898).

has governed in determining the rights and liabilities of an assignee of a mortgagee and mortgagor. Its application is necessarily predicated upon the existence of a mortgage evidencing an enforceable debt.² In the principal case, the mortgagees were without power to enforce the mortgage for they had made no advances under the bond. It was not a binding obligation. A mortgage has its inception when first it is delivered to somebody with the intention of having it become a binding obligation upon which the one to whom it is delivered could sue in case the conditions of the mortgage were not performed.³ Upon delivery to the plaintiff it became binding; it had its legal inception in his hands and he, therefore, was to be regarded as the original mortgagee.⁴ Plaintiff is not then bound by the knowledge which his assignors may have had of the existence of the conditional sale contract. The failure of the conditional vendor to comply with the filing requirements rendered the reservation of title void as to the plaintiff mortgagee and the lien of his mortgage attached to the fixtures.⁵ The decision fairly adjudicates the rights of the parties and effectuates the provisions of the Personal Property Law which were enacted to protect innocent purchasers and incumbrancers against secret claims of third parties.

R. L.

REAL PROPERTY—RIGHT OF STATE TO TAX PROPERTY WHICH IS TO REVERT TO IT.—Plaintiff claims freedom from tax imposed on a covered dock which it erected on state property in the Hudson River. Said dock was built pursuant to an agreement whereby the plaintiff provided that at the expiration of twenty years “the dock shall revert to and become the property of the state.” Defendant seeks to hold the plaintiff liable for the tax during the twenty years before said property reverts to the state, claiming that the plaintiff as owner till that time is liable. On appeal from a judgment of the Special Term affirming a judgment for the defendant at the Trial Term, *held*, the court refused to attach undue significance to the words “shall revert to and become the property of” and decided that “such language does not warrant an intermediate ownership.” Re-

² *Kommel v. Herb-Gner Construction Co.*, 256 N. Y. 333, 337, 176 N. E. 413, 415 (1931).

³ *Payne v. Burnham*, 62 N. Y. 69 (1875); *Eastman v. Shaw*, 65 N. Y. 522 (1875); *Claffin v. Boorum*, 122 N. Y. 385, 25 N. E. 360 (1890); *Spicer v. First National Bank*, 55 App. Div. 172, 66 N. Y. Supp. 902 (3d Dept. 1900), *aff'd*, 170 N. Y. 562, 62 N. E. 1100 (1902); *Verity v. Sternberger*, 62 App. Div. 112, 70 N. Y. Supp. 894 (1st Dept. 1901), *aff'd*, 172 N. Y. 633, 65 N. E. 1123 (1902).

⁴ *Eastman v. Shaw*, *supra* note 3 at 528.

⁵ *Cohen v. 1165 Fulton Ave. Corp.*, 251 N. Y. 24, 166 N. E. 792 (1929); N. Y. REAL PROPERTY LAW, L. 1922, §§65, 67.