

Chattel Mortgages--Comity--Purchaser for Value (Forgan v. Bainbridge, 274 P. 155 (Ariz. 1928))

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RECENT DECISIONS

CHATTEL MORTGAGES—COMITY—PURCHASER FOR VALUE.—Upon the sale of an automobile, a purchase money chattel mortgage given thereon was duly recorded at the proper time and place in the state of Illinois, the situs of the contract. Thereafter, without the knowledge or consent of the mortgagee, the automobile was removed to Texas, where it was pledged by the mortgagor and upon his default, sold to a citizen of Arizona, a *bona fide* purchaser for value. A replevin action was brought by the mortgagee in the Supreme Court of the latter state. *Held*, judgment for plaintiff, *Forgan v. Bainbridge*, 274 Pacific Reporter 155 (Sup. Ct. of Arizona, 1928).

The rule which recognizes the superiority of the mortgagee's lien is almost nation-wide¹ and prevails in Illinois² and Arizona³ but is repudiated in the state of Texas⁴ which prefers the purchaser for value to the mortgagee lienor. The state where property is located may unquestionably regulate the transfer of rights connected therewith⁵ but since comity is based upon reciprocity this Court enforces the rights arising out of the transaction according to the Illinois rule which accords with the law of the forum. Under the Texas rule a valid title passed to the purchaser but such rule does not *ex proprio vigore* extend beyond the jurisdiction⁶ and being opposed to the public policy of Arizona is denied enforcement by it.

CONSTITUTIONAL LAW—CONTEMPT OF COURT—PARDON.—Acting upon a commitment issued by the Clerk of the Supreme Court, the Sheriff delivered respondent to the state's prison farm in execution of a judgment of contempt. Upon the same day the Governor, claiming to exercise the pardoning powers vested in the executive authority of the state, caused his release. The Attorney General immediately filed an information with the Court and upon return of a peremptory writ to show cause, respondent demurred. *Held*, respondent must serve sentence, notwithstanding the attempted pardon. *State v. Shumaker*, 164 N. E. 408 (Sup. Ct. of Indiana, 1928).

¹ Uniform Conditional Sales Law (N. Y. Per. Prop. Law, Art 4, Sec. 60 *et seq.*). See Summary of Statutes in various states. Estrich, *Installment Sales Appendix A.*

² *Mumford v. Carity*, 50 Ill. 370 (1869); *Armitage-Herschell Co. v. Potter*, 93 Ill. App. 602 (1900).

³ Uniform Conditional Sales Act (Chap. 40, Laws of Arizona, 1919).

⁴ *Consolidated Garage v. Chambers*, 111 Tex. 293, 231 S. W. 1072 (1921); *Wooten v. Arnett Auto Parts Co.* (Tex. Civ. App.), 286 S. W. 667 (1926).

⁵ *Goetschius v. Brightman*, 245 N. Y. 186, 191, 156 N. E. 660 (1927).

⁶ *Inter. Harvester Co. v. McAdam*, 142 Wis. 114, 124 N. W. 1042 (1910); *Green v. Van Buskirk*, 5 Wall. 307 (1866).