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Constitutional Law--Contempt of Court--Pardon (State v. Shumaker, 164 N.E. 408 (Ind. 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-wide [1] and prevails in Illinois [2] and Arizona [3] but is repudiated in the state of Texas [4] which prefers the purchaser for value to the mortgagee lienor. The state where property is located may unquestionably regulate the transfer of rights connected therewith [5] 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 jurisdiction [6] 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).

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[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).

The Supreme Court claimed inherent power to receive a charge of contempt and enforce execution of its judgment.[1] The majority were of opinion that the Constitution limits the Governor's power to condonation of crimes and that while contempt is an offense it is not criminal in nature and hence beyond the scope of his authority.[2] The Chief Justice, supported by one other judge [3] declared that such conclusion was contrary to his conviction and wholly at variance with decisions of the United States Supreme Court.[4]

Since the framers of the Constitution expressly declared that the power extended to "all *offenses* except treason and impeachment," [5] the dissenting opinion merits careful consideration, if not approval.[6] The offense is one against the State [7] and in a system of government providing for three coördinate branches, the effect of nullifying a check or restraint used by one department upon another is to remove the shield intended for the individual's protection against a tyrannical exercise of power by one or the other of these departments.[8]

CONSTITUTIONAL LAW—JUDGES—QUORUM—APPEAL AND ERROR.—The county of Hudson, New Jersey, applied to the Supreme Court of the state for a judgment respecting the status of its citizens under an Election Law.[1] The matter being of great public importance all the members of the court heard the argument and that tribunal having rendered its decree [2] denying the application the county appealed, giving due notice of its intention to ask for a preference. *Held*, preference denied. *In re* Hudson County, 144 A. 169 (N. J. 1928).

The Supreme Court judges compose part of the Court of Errors and Appeals [3] and since all of them participated in determination of the hearing they are disqualified from taking part in the hearing of the appeal.[4] A constitutional quorum cannot, therefore, he assembled at this time and advancing the cause for argument

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[1] Garrigus v. State *ex rel.* Moreland, 93 Ind. 239; Dale v. State, 198 Ind. 110, 150 N. E. 781 (1926).
[2] Constitution, State of Indiana, Art 5, Sec. 17.
[3] Martin, *C. J.* and Gemmill, *J.*
[4] *Ex parte* Grossman, 267 U. S. 87, 45 Sup. Ct. 332, 69 L. ed. 1115 (1925).
[5] *Supra* Note 2.
[6] State *ex rel.* Shick v. U. S., 195 U. S. 65, 24 Sup. Ct. 826 (1904).
[7] Van Orden v. Sauvinet, 24 La. Ann. 119, 13 Am. Rep. 115 (1872).
[8] *Ibid.* at 121.

[1] A Supplement to an Act entitled An Act to Regulate Elections (Revision of 1920, passed May 5, 1920 [P. L. 1920, p. 615] and the amendments and supplements thereto, passed October 9, 1928 (P. L. c. 291).
[2] 143 A. 536 (Oct. 1928).
[3] Constitution, N. J., Art. 6, Sec. 2, Par. 1.
[4] *Ibid.* Par. 6. See also Gardner v. State, 21 N. J. Law, 557, 558 (1845).