

Louisiana Law Review

Volume 7 | Number 1
November 1946

Removal of a Mortgaged Chattel from the Parish of Recordation - Effect

Cecil C. Cutrer

Repository Citation

Cecil C. Cutrer, *Removal of a Mortgaged Chattel from the Parish of Recordation - Effect*, 7 La. L. Rev. (1946)
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wedded to the notion that consideration is a requisite to irrevocability. This jurisprudence, nevertheless, has no necessary application to offers of a different nature and the instant case may constitute some indication that Article 1809 will be given its intended meaning to such extent.

NINA NICHOLS

REMOVAL OF A MORTGAGED CHATTEL FROM THE PARISH OF RECORDATION—EFFECT—Plaintiff claimed a privilege under the provisions of Act 209 of 1926¹ for the cost of repairing a truck seized in Rapides Parish. Intervenor alleged that he was the holder of unpaid notes secured by a chattel mortgage on the truck recorded in Grant Parish. Plaintiff resisted the intervention on the ground that he was not affected by a chattel mortgage recorded only in Grant Parish. *Held*, the effect of recordation of a chattel mortgage in the parish where the property is to be located and in the parish of the mortgagor's domicile, in compliance with Act 172 of 1944,² is to give the mortgage effect anywhere in the state without further recordation. *Sinclair v. Crew*, 26 So. (2d) 331 (La. App. 1946).

Recordation of chattel mortgages was required in the original chattel mortgage act of 1912.³ The act provided criminal sanctions for removing the property from the parish of original recordation.⁴ But in 1924,⁵ when the question was raised as to enforceability of the mortgage after removal to another parish without consent of the mortgagee, the court held that the mortgage was not enforceable in the parish to which the property had been removed without local recordation. In 1936⁶ the statute was amended to provide that a mortgage recorded where it was executed and where the mortgagor was domiciled was effective

1. Dart's Stats. (1939) §§5047-5048. This act creates a lien in favor of owners or operators of garages, or any place where automobiles or other machinery is repaired. The act gives those persons the right of provisional seizure to enforce the lien.

2. La. Act 172 of 1944, § 3 [Dart's Stats. (1939) § 5022.3]: "In order to affect third persons, every chattel mortgage must be by authentic act. . . . A multiple original . . . shall be filed in the office of the Recorder of Mortgages of the parish where the mortgaged property is to be located . . . and also in the office of the Recorder of Mortgages of the parish of the mortgagor's domicile . . ."

Section 4: ". . . filing shall be notice to all parties of the existence of the mortgage. . . ."

3. La. Act 65 of 1912.

4. La. Act 65 of 1912, §§ 6, 9.

5. *Wilson v. Lowrie*, 156 La. 1062, 101 So. 549 (1924). This position was later affirmed in *Gulf Finance and Securities 5025, Co. v. Taylor*, 160 La. 945, 107 So. 705 (1926).

6. La. Act 178 of 1936 [Dart's Stats. (1939) §§ 5023, 5025, 5026].

against third parties throughout the state. In 1944,⁷ however, a new chattel mortgage statute was drafted by the Louisiana State Law Institute for the purpose of integrating the several statutes dealing with chattel mortgages.⁸ At the same time, the redactors sought to delete unnecessary verbiage and to clarify ambiguities in the earlier acts. It was generally understood by the drafters and the legislature that only minor changes were made in the statutes and that these, for the most part, were editorial in nature.⁹ Therefore, the interpretation of the statute reached in *Sinclair v. Crews* is in accordance with the legislative intent and with the rule of the previous statute.¹⁰ Furthermore, the position is analogous to the rule that a chattel mortgage properly recorded in another state will be recognized in Louisiana although not recorded here after removal of the chattel to Louisiana.¹¹

The case appears correctly decided, but it does not resolve a more fundamental problem. The amendment of 1936 merely shifted the burden from the mortgagee to the buyer or other third party, and did not advance the solution of the real problem—namely, protection of all parties concerned.¹² The purchaser of a chattel, for example, is left without a practical method of ascertaining whether he is obtaining the property free from encumbrances.¹³ The recordation laws of Louisiana, however, have been adopted primarily for the protection of third parties dealing

7. La. Act 172 of 1944 [Dart's Stats. (1939) §§ 5022.1-5022.12].

8. The 1944 act repealed La. Act 198 of 1918 [Dart's Stats. (1939) §§ 5022-5033] as amended by La. Acts 81 of 1922 [Dart's Stats. (1939) § 5028], 232 of 1924 [Dart's Stats. (1939) § 5028], 189 of 1932 [Dart's Stats. (1939) § 5023], and 178 of 1936 [Dart's Stats. (1939) §§ 5023, 5025, 5026]; La. Act 157 of 1928 [Dart's Stats. (1939) §§ 5035, 5036]; La. Act 119 of 1924 [Dart's Stats. (1939) § 5034] La. Act 166 of 1932 [Dart's Stats. (1939) § 5036.1]; La. Act 67 1934 [Dart's Stats. (1939) § 5036.2].

9. See Daggett and Bennett, Louisiana Legislation of 1944 (1944) 6 LOUISIANA LAW REVIEW 7.

10. It is well settled that courts do not favor repeals of settled principles by implication. The legislature in the enactment of a statute will not be presumed to intend to overturn established legal principles unless such intention is made clearly to appear by expressed declarations or by unmistakable implication. See cases cited in 50 Am. Jur. 332, § 340. The 1944 statute was drafted for the purpose of consolidating previous acts and deleting unnecessary words. The new statute was meant to make only minor changes in the existing law. Thus, the application of the concept above would achieve the same result reached in the principal case.

11. General Motors Acceptance Corp. v. Nuss, 195 La. 209, 196 So. 323 (1940).

12. For a discussion of the protection of the social interests involved in chattel mortgage recordation provisions, see Daggett, Suggestions for the Consideration of the Council of the Louisiana State Law Institute (1943) 5 LOUISIANA LAW REVIEW 377, 379.

13. The attorney representing the purchaser would be under the obligation of examining the records of the sixty-four Louisiana parishes before he could assure his client that he obtained a free title.

with the property in good faith and on the strength of the public records. This was the rationale of the famous case of *McDuffie v. Walker*¹⁴ where the court held that knowledge of the conveyance of immovable property on the part of a second vendee did not excuse the first vendee from making the recordation required by the Civil Code.¹⁵ This same doctrine has been held applicable to both mortgages¹⁶ and chattel mortgages.¹⁷

In 1943 the Louisiana State Law Institute had the problem under advisement. That body proposed the introduction of a Central Registration System for Louisiana.¹⁸ Due to objections by the bar and other interested parties, the proposal never reached the legislature. It was felt by those objecting that the Central Registration System would involve unnecessary delays. This difficulty can be readily remedied, however, by means of telephone and by use of modern equipment for transcribing conversation. Chattel mortgages could be deposited in the office of the clerk of court, who could telephone a summary to the Central Registration Bureau immediately, following up the call by mailing the mortgage itself. Any checks of title could be requested by telephone, and the mortgage certificate could be orally given by return call to the party requesting it. A permanent record of all conversations between the registration clerk and the other party could be made, dated and filed in the office of the clerk. This procedure would provide a means for running an immediate state-wide check, and the preservation of the recorded conversation would insure permanence of records. The conversation could be followed by a confirmation in writing for the attorney's files. The expenses of such a procedure would vary little from those of the present system. By taking advantage of such recent developments in science, the Central Registration System can offer an efficient, inexpensive and desirable solution to the problem of protecting all parties dealing with chattels.

CECIL C. CUTRER

TAXATION—TAX EXEMPTION OF PROPERTY DEVOTED TO CHARITABLE UNDERTAKING—The United Seamen's Service, Incorporated, a non-trading corporation organized under the laws of New York, brought a mandamus proceeding to cancel state and local property

14. 125 La. 152, 51 So. 100 (1910).

15. Art. 2266, La. Civil Code of 1870.

16. *Adams and Co. v. Daunis*, 29 La. Ann. 315 (1877).

17. *Krivos v. Simmons*, 16 La. App. 421, 134 So. 727 (1931). See also Elder, Recent Interpretation of the Chattel Mortgage Act (1932) 7 Tulane L. Rev. 128.