

# Michigan Law Review

---

Volume 53 | Issue 1

---

1954

## Securities - Sufficiency of the Property Description and Its Relations to the Notice Provided by a Recorded Chattel Mortgage

Judson M. Werbelow S.Ed.  
*University of Michigan Law School*

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Property Law and Real Estate Commons](#), and the [Securities Law Commons](#)

---

### Recommended Citation

Judson M. Werbelow S.Ed., *Securities - Sufficiency of the Property Description and Its Relations to the Notice Provided by a Recorded Chattel Mortgage*, 53 MICH. L. REV. 118 (1954).

Available at: <https://repository.law.umich.edu/mlr/vol53/iss1/8>

This Response or Comment is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

SECURITIES—SUFFICIENCY OF THE PROPERTY DESCRIPTION AND ITS RELATION TO THE NOTICE PROVIDED BY A RECORDED CHATTEL MORTGAGE—The great number of decisions which deal with descriptions of property in chattel mortgages may have resulted in a clarifica-

tion of the applicable law. Such continuous litigation, however, would seem to indicate that either the law has not yet provided a satisfactory solution to the description problem or that the real difficulty lies outside the area of description. If the controversy is between the mortgagor and the mortgagee the problems are relatively few, but when persons who were not original parties to the mortgage enter the picture, the mobility and lack of unique features which are characteristic of most chattels have caused problems that call for investigation, analysis and possibly a revision of the present law. From the mortgagor's point of view a distinguishing and desirable feature of the chattel mortgage is that he may either retain or obtain possession of the mortgaged property. Chattel mortgage recording acts have been used to dispel inferences of fraud which may appear in such a situation.<sup>1</sup> For the acts to be effective a recorded mortgage should apprise any interested person of the mortgagee's security interest. On the other hand the matter of primary concern to the mortgagee is what he must do to preserve the security provided by the mortgage. The mortgage of machinery or household goods is illustrative of the general type of situation to be discussed and no attempt will be made to consider the special problems involved in the mortgage of automobiles<sup>2</sup> or to treat the conflicts of laws issues raised by the movement of mortgaged chattels across state lines. The primary aims of this comment are to point out what the law requires in the nature of description, to analyze the value of these requirements in the light of the recording acts, to examine possible alternative security devices, and to suggest some useful steps that may be taken to augment the present system.

### I. *The Legal Requirements*

A. *Validity as between the Mortgagor and Mortgagee.* While the expression of a theoretical basis is seldom found in the judicial opinions, it is generally held that a chattel mortgage, absent other defects, is valid if the description is such that the property intended to be mortgaged can be identified.<sup>3</sup> Parol evidence is admissible to show the circumstances existing at the time of the mortgage as evidence of intent and to aid otherwise in identifying the mortgaged property.<sup>4</sup> Theoretic-

<sup>1</sup> 1 DUFFEE, *CASES ON SECURITY* 489-492 (1951).

<sup>2</sup> For a review of the peculiar problems of automobile mortgages see 25 *IND. L.J.* 337 (1950); 33 *MARQ. L. REV.* 54 (1949); 16 *MO. L. REV.* 156 (1951).

<sup>3</sup> *Mott v. Johnson*, 112 *Wash.* 18, 191 P. 844 (1920); *Robson v. Maloney*, 42 *Wash.* (2d) 874, 259 P. (2d) 836 (1953).

<sup>4</sup> *Erich v. Dunkly*, 79 *Cal. App.* (2d) 345, 179 P. (2d) 638 (1947); 1 *JONES, CHATTEL MORTGAGES AND CONDITIONAL SALES* 94 (1933).

cally this rule can be explained in a "title" state by analogy to the principle of property law that a conveyance which does not adequately identify the property to be conveyed is void.<sup>5</sup> In a "lien" state it would seem that a consensual lien is created only when the description, a term of the mortgage contract, is sufficiently definite to be capable of legal enforcement.<sup>6</sup> Thus the general rule is explainable under either theory of chattel mortgages and seems relatively free from objection in its practical application.

B. *The Requirement of Notice to Third Parties.* When questions arise involving persons who were not parties to the mortgage, the inquiry shifts from the validity of the mortgage to the sufficiency of notice which the mortgage will supply to non-parties once it is recorded. Without distinguishing between purchasers from the mortgagor,<sup>7</sup> purchasers at a foreclosure sale,<sup>8</sup> persons claiming by virtue of an execution,<sup>9</sup> or other mortgagees,<sup>10</sup> the almost universal starting point of the courts in these cases is that the description must suggest reasonable inquiries, which, when pursued, will lead to an identification of the mortgaged property.<sup>11</sup> While parol evidence may be admitted to aid in identifying a chattel as that which was intended to be mortgaged, it is not admissible to supply omissions in the written mortgage once recorded.<sup>12</sup> Beyond the general rule as stated, the cases do not contain many factual similarities. However, the courts have indicated that the inclusion of certain information in the description, viz., ownership, location or possession of the property at the time of the mortgage will

<sup>5</sup> 4 TIFFANY, REAL PROPERTY, 3d ed., §990 (1939).

<sup>6</sup> 1 WILLISTON, CONTRACTS, rev. ed., §24 (1936); 1 CORBIN, CONTRACTS §100 (1950). To the effect that contract principles are applicable to description problems in chattel mortgages see *Raeuber v. Central Nat. Bank*, (D.C. Ohio 1953) 112 F. Supp. 865.

<sup>7</sup> *Huse v. Estabrooks*, 67 Vt. 223, 31 A. 293 (1894); *Scoggan v. Dillion*, (Ky. 1952) 252 S.W. (2d) 35; *Neece v. Guerin*, 210 Ark. 954, 198 S.W. (2d) 161 (1946); *Tragar v. Jackson*, 230 Minn. 544, 42 N.W. (2d) 16 (1950).

<sup>8</sup> *Shellhammer v. Jones*, 87 Iowa 520, 54 N.W. 363 (1893).

<sup>9</sup> *The Westinghouse Co. v. McGrath*, 131 Iowa 226, 108 N.W. 449 (1906); *Trinity State Bank v. Bowie Contracting Co.*, (Tex. Civ. App. 1950) 232 S.W. (2d) 863; *McFerrin v. Clarksville Wood Industries*, 217 Ark. 383, 230 S.W. (2d) 49 (1950).

<sup>10</sup> *Preston v. Caul*, 109 Iowa 443, 80 N.W. 522 (1899); *Sims v. McFadden*, 217 Ark. 810, 233 S.W. (2d) 375 (1950); *Mathews v. Couie*, (La. App. 1948) 35 S. (2d) 794.

<sup>11</sup> 1 JONES, CHATTEL MORTGAGES AND CONDITIONAL SALES §54 (1933); A.L.I. UNIFORM COMMERCIAL CODE §9-110 (1952) provides: "For purposes of this Article any description is sufficient whether or not it is specific if it reasonably identifies the thing described."

<sup>12</sup> *Tragar v. Jackson*, 230 Minn. 544, 42 N.W. (2d) 16 (1950); *Garmon v. Fitzgerald*, 168 Miss. 532, 151 S. 726 (1934); 1 JONES, CHATTEL MORTGAGES AND CONDITIONAL SALES 94 (1933).

enable the mortgage to satisfy the "reasonable inquiry" test.<sup>13</sup> When the chattel is unusually difficult to describe the court will often state that the mortgagee has done the best he could as a justification of a decision in favor of the mortgagee.<sup>14</sup> Although many chattels do not have distinguishing serial numbers, the omission of such numbers where available may cause a court to find the description to be inadequate.<sup>15</sup> It would seem that a careful mortgagee can meet the test of "reasonable inquiry" by including the following items in his mortgage: the number and a general description of the chattels, either the location, ownership or possession of the mortgaged property, and any serial numbers or other features peculiar to the chattel in question.

## II. *Value of the Description Requirements in Light of the Scope of the Recording Acts*

While the legal standard of an effective description is fairly clear, the value of a description which measures up to this standard in imparting notice to third parties is questionable. Assuming that a third person can discover and examine a mortgage by searching the public records, the "reasonable inquiry" test would seem to provide a commendable distribution of the burdens of identifying the mortgaged property. When a mortgage is executed containing information as to the location or possession of a chattel sufficient to meet the "reasonable inquiry" test, neither its validity nor its notice value is legally affected by a subsequent change in these facts.<sup>16</sup> But when the mortgagor takes the mortgaged property out of the county in which the mortgage is

<sup>13</sup> *The Westinghouse Co. v. McGrath*, 131 Iowa 226, 108 N.W. 449 (1906); *Everett v. Brown*, 64 Iowa 420, 20 N.W. 743 (1884); *Huse v. Estabrooks*, 67 Vt. 223, 31 A. 293 (1894); *Hauseman Motor Co. v. Napierella*, 223 Ky. 433, 3 S.W. (2d) 1084 (1928).

<sup>14</sup> *Adamson v. Horton*, 42 Minn. 161, 43 N.W. 849 (1889); *B. M. Behrends Bank v. Satre*, (D.C. Alaska 1953) 109 F. Supp. 917.

<sup>15</sup> *Walker v. Fitzgerald*, 157 Minn. 319, 196 N.W. 269 (1923); *United States v. United Aircraft Corp.*, (D.C. Conn. 1948) 80 F. Supp. 52; *Burroughs Adding Mach. Co. v. Robertson*, (6th Cir. 1925) 9 F. (2d) 619.

<sup>16</sup> *B. M. Behrends Bank v. Satre*, (D.C. Alaska 1953) 109 F. Supp. 917; *Adamson v. Horton*, 42 Minn. 161, 43 N.W. 849 (1889). A.L.I. UNIFORM COMMERCIAL CODE §9-401(3) (1952) provides: "A filing which is made in the proper place in this state remains effective even though the debtor's residence or place of business or the location of the collateral is thereafter changed [*Alternative provision*: a filing which is made in the proper county in this state remains effective for one hundred and twenty days after the debtor's residence or place of business or the location of the collateral is changed to another county of this state but becomes ineffective thereafter unless a copy of the financing statement signed by the secured party is filed in the new county within said period.]" Pa. Stat. Ann. (Purdon, 1954) tit. 12A, §9-401(3) is an adoption of this alternative provision.

recorded, a search of the records of the county in which the chattel is now located would prove to be a fruitless task. A description, no matter how detailed and accurate, would be of no value in such a case. And if, for example, the mortgagor sells the property to one who is not aware of the mortgagee's interest in the chattel, a search of the record for mortgages of that subsequent purchaser by one with whom he is dealing would not reveal the existence of the encumbrance on the chattel. Thus in many instances a third person will be unable to discover the existence of the mortgage, let alone try to identify the mortgaged property; yet he is charged with constructive notice of the mortgagee's interest in the chattel. It appears that the law leaves something to be desired, not so much in its description requirements, but in the scope of the recording acts.

### III. *Alternative Security Devices*

It would seem that creditors should be encouraged, if only by a stricter application of the "reasonable inquiry" test, to use a security device which not only is satisfactory from the creditor's viewpoint, but which overcomes the notice complications existent in the present chattel mortgage law.

A. *The Pledge.* The usefulness of the pledge is greatly limited by the requirement that the pledgee have possession of the pledged chattel or lose his security interest;<sup>17</sup> this has been pointed to as a principal factor in the development of the chattel mortgage.<sup>18</sup> Functional limitations would seem to negate any notice advantages to be gained through the greater use of the pledge.

B. *Conditional Sales Contracts.* Although the conditional sale seems to be satisfactory from the creditor's point of view, it appears to have no advantage over the purchase money chattel mortgage in supplying notice to subsequent purchasers. The conditional sales contract is recorded on a town or county basis<sup>19</sup> and the "reasonable inquiry" test is used to determine the adequacy of a conditional sales contract property description.<sup>20</sup>

<sup>17</sup> BROWN, *PERSONAL PROPERTY* §135 (1936).

<sup>18</sup> 1 DUFFEE, *CASES ON SECURITY* 486 (1951).

<sup>19</sup> 2 U.L.A. 10 (1922) states that twenty-three states require recording on a county-wide basis while seven states provide for recording in the office of the town clerk. 2 U.L.A. 44 (1953 Supp.) indicates that since the original compilation two additional states provide for county-wide recording while a third has changed from town to county recording.

<sup>20</sup> *National Cash Register Co. v. Marks*, (6th Cir. 1926) 13 F. (2d) 628; *Trusco Finance Co. v. Childs*, 87 Ga. App. 789, 75 S.E. (2d) 336 (1953); *CIT Corp. v. De*

C. *The Trust Receipt.* The trust receipt is not advantageous in the single transaction situation where one or a few chattels are used as security.<sup>21</sup> The entruster cannot proceed against one who, without actual notice of the limitations on the trustee's power of sale, purchases from the trustee.<sup>22</sup> The chattel mortgagee, on the other hand, may bring an action not only against the debtor but also against those taking possession from the debtor.<sup>23</sup>

Considering both the value of the security device to the creditor and its features as a provider of notice to third parties, it appears that at the present time no security device superior to the chattel mortgage is available for use in the situation under discussion.

#### IV. *Improving the Chattel Mortgage*

Since there is an apparent lack of satisfactory substitutes for the chattel mortgage, improvements on that device might well be in order. It has been pointed out above that the narrow scope of operation of common recording acts denies to the creditor any real assurance that the chattel will not be moved to a new location and there be sold. Various attempts have been made to broaden the scope of the recording acts while still retaining a fundamentally county-wide system. Many statutes require that the mortgage be recorded in the county in which the mortgagor resides if he is a resident of the state when the mortgage is executed.<sup>24</sup> The quite obvious purpose of this requirement is to protect third parties dealing with the mortgagor after he has carried the mortgaged property out of the county in which the mortgage was executed. Other statutes require a recording of the mortgage in the county where the property is located when the mortgage is executed.<sup>25</sup> At least one state also requires that if the property is moved out of the

Graff Lumber Co., 194 Minn. 169, 259 N.W. 807 (1935). Cf. Burroughs Adding Mach. Co. v. Robertson, (6th Cir. 1925) 9 F. (2d) 619.

<sup>21</sup> 9A U.L.A. 314 (1951) states: "This act shall not apply to single transactions of legal or equitable pledge, not constituting a course of business, whether such transactions be unaccompanied by delivery of possession, or involve constructive delivery, or delivery and redelivery, actual or constructive, so far as such transactions involve only an entruster who is an individual natural person, and a trustee entrusted as a fiduciary with handling investments or finances of the entruster. . . ."

<sup>22</sup> 9A U.L.A. 304 (1951).

<sup>23</sup> Neece v. Guerin, 210 Ark. 954, 198 S.W. (2d) 161 (1946); Tragar v. Jackson, 230 Minn. 544, 42 N.W. (2d) 16 (1950); Smith & Co. v. McLean, 24 Iowa 322 (1868); United States v. United Aircraft Corp., (D.C. Conn. 1948) 80 F. Supp. 52.

<sup>24</sup> Ill. Stat. Ann. (1950) c. 95, §4; Iowa Code Ann. (1950) §556.3; Mich. Comp. Laws (1948) §566.140; 32 N.Y. Consol. Laws (McKinney, 1940) §232; Ohio Rev. Code (Baldwin, 1953) §1319.02.

<sup>25</sup> Cal. Civ. Code (Deering, 1949) §2957; Mich. Comp. Laws (1948) §566.140.

county within a reasonable time thereafter the mortgage must be recorded in the county to which the property is removed.<sup>26</sup> Where this is the state of the law, a search of the records of the county in which the chattel is located will reveal the mortgage in most cases where the mortgagor is in possession of the chattel. To strengthen the overall system, civil<sup>27</sup> and criminal<sup>28</sup> penalties have been applied to persons disposing of the mortgaged property without informing the transferee of the encumbrance thereon. While various combinations of these scope-widening provisions have been utilized, it would seem that a much better method of broadening the scope of the recording acts is available. Suggesting that a title certificate system similar to that used for automobiles be used for every chattel would seem to present the best solution to the notice problem, but such a system is obviously impractical. Congress indicated a possible solution when it provided that all aircraft mortgages be recorded in Washington, D. C.<sup>29</sup> thereby enabling one dealing with the possessor of an airplane to ascertain whether or not that person has mortgaged the property. This might be effective in the case of a particular chattel, but the administrative burden would probably prevent utilizing this system for all chattel mortgages. Yet it would seem that a state-wide recording system may well be the answer to many of the problems inherent in the present system and would nullify many of the complications caused by the mobility of chattels.<sup>30</sup> Under such a

<sup>26</sup> Cal. Civ. Code (Deering, 1949) §2957; A.L.I. UNIFORM COMMERCIAL CODE §9-401(3) (1952) (alternate provision).

<sup>27</sup> Ill. Stat. Ann. (1950) c. 95, §6.

<sup>28</sup> Cal. Pen. Code (Deering, 1949) §538; Miss. Code Ann. (1942) §2151; Ohio Rev. Code (Baldwin, 1953) §1319.18. Here the description must be sufficient to meet only the test of validity between the parties. *Albritton v. State*, (Miss. 1951) 52 S. (2d) 608; *State v. Murphy*, 214 S.C. 517, 53 S.E. (2d) 402 (1949).

<sup>29</sup> 62 Stat. L. 494 (1948), 49 U.S.C. (1952) §523. *United States v. United Aircraft Corp.*, (D.C. Conn. 1948) 80 F. Supp. 52, represents an application of the "reasonable inquiry" test under this statute.

<sup>30</sup> A.L.I. UNIFORM COMMERCIAL CODE §9-401 (1952), provides: "(1) If filing is required by this Article (subsection (1) of Section 9-302) in order to perfect a security interest, the place of filing is as follows: (a) when the collateral is accounts other than those arising from the sale of farm products by a farmer, chattel paper, contract rights, inventory or equipment other than equipment used in farming operations, then in the office of the (Secretary of State) (and in addition if all of the debtor's places of business are in a single county, in the office of the . . . of that county); (b) when the collateral is consumer goods, equipment used in farming operations, farm products, or accounts arising from the sale of farm products by a farmer, then . . . in the county of the debtor's residence or if the debtor is not a resident of this State then . . . in the county where the goods are kept, and in addition when the collateral is crops . . . in the county where the land on which the crops are growing or to be grown is located." In its adoption of the Uniform Commercial Code, Pennsylvania went a long way toward clarifying this provision. *Pa. Stat. Ann. (Purdon, 1954) tit. 12A, §9-401*: "(1) If filing is required by this Article (subsection (1) of Section 9-302) in order to perfect a security interest, the place of



system one letter to the state office in which chattel mortgages are recorded would answer the question of whether or not a named person has mortgaged chattels and, if so, a copy of the mortgage or mortgages should be available to determine which chattels have been mortgaged. Of course, state-wide recording would not prevent unauthorized sales to third parties followed by further sales by such purchasers, nor would such recording solve problems arising from the movement of mortgaged chattels across state lines. But if civil and criminal sanctions for the disposition of mortgaged property without notifying the transferee of the encumbrance are added to a system of state-wide recording, some of the existing failures of the present recording system would be eliminated. A disadvantage of such a system would appear in the delay caused in consummating transactions. However, where the transaction is such that one is willing to make an investigation as to encumbrances, the disadvantage of delay would be outweighed by the element of safety introduced. While piecemeal legislation is no doubt valuable, the possibility of state-wide recording offers a comprehensive solution to the problem and should be seriously considered by the legislature of every state which has not enacted such a statute.

*Judson M. Werbelow, S.Ed.*

filing is as follows: (a) when the collateral is accounts other than those arising from the sale of farm products . . . or is chattel paper, contract rights, inventory or equipment other than equipment used in farming operations, then in the office of the Secretary of Commonwealth and in addition if all of the debtor's places of business are in a single county, in the office of the prothonotary of that county." Emphasis added. This section clearly provides for state-wide recording of chattel mortgages.