order setting aside a general verdict of a jury and granting a new trial. Thus, the action of the Ohio General Assembly in amending the Appellate Procedure Act was in line with the general trend throughout the country.

It seems unfortunate that the Supreme Court of this state, in the light of the widespread tendency to enact legislation of the kind under consideration and in the light of the proven benefits derived therefrom, should have seen fit to take such a narrow and formal view of the constitutional provision. The effect of the decision is to place Ohio appellate procedure in a virtual straight-jacket by insisting that the definition of the term final order be confined to those orders which have in the past been recognized as final. The right of a successful party to a judgment on the verdict which has been rendered in his favor would certainly seem to be a substantial right which, when finally determined, might fairly be deemed to be a final determination of the party's right to that verdict. If it could reasonably be considered as such, the legislature ought to have the power to call it a final order and bring it within the realm of the appellate court's procedure. The action of the General Assembly in so doing need not have been considered as enlarging the jurisdiction of the Court of Appeals, for it merely provided by law for the exercise of jurisdiction already conferred.

While the Supreme Court deplores the treatment of the term "judgments" in a limited sense,[19] it has itself given that term a greatly restricted meaning in narrowing the definition of final order.

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CHATTEL MORTGAGE

CHATTEL MORTGAGES — IS THE MORTGAGEE PROTECTED BY THE RECORDING ACT?

In two recent lower court cases the question of priority of a recorded chattel mortgage has been under consideration. In the first case the defendant was the chattel mortgagee of an automobile sold to one James Goltie. The mortgage was duly filed in the recorder's office. While such mortgage was on file, Goltie purchased four tires from the plaintiff under a conditional sale agreement. The new tires were placed on the mortgaged car by the plaintiff and the conditional sale agreement was

[19] *Hoffman* v. *Knollman*, 135 Ohio St. 170, 176-79, 20 N.E. (2d) 221 (1939).

properly filed. Goltie defaulted in payments due the defendant and the car was repossessed. The plaintiff brought an action to recover for the value of the tires. The court held that the recording of the chattel mortgage on the car gave the plaintiff constructive notice of the defendant's prior claim and that no lien on the tires superior to the defendant's was acquired. *Goodrich Silvertown Stores* v. *F. M. Rugg Motor Co.*, 28 Ohio L. Abs. 206 (1939).

In the second case the plaintiff was the mortgagee of an automobile of which one Helen Kehnert was mortgagor. Prior to the purchase of the car and the filing of the mortgage, Helen Kehnert had moved into a suite in the defendant's hotel. Sometime later she left the hotel owing a balance on her account of $289. She left the mortgaged car in the hotel garage. Because of default in payments due on the car, the plaintiff filed an action of replevin for the car. The defendant answered alleging that it had been impressed with an innkeeper's lien upon the said automobile by reason of provisions of Ohio G.C. sec. 5984. The court held that an innkeeper's lien takes priority over that of a previously recorded chattel mortgage. *General Motors Acceptance Corp.* v. *Kehnert*, 28 Ohio L. Abs. 208, 13 Ohio O. 244 (1939).

The two cases are of interest because they present fact situations in which constructive notice usually given by the recording of chattel mortgages is found ineffective as a protection to the mortgagees. It is a fundamental rule of mortgage law that a prior recorded mortgage will prevail over all subsequent mortgages and liens asserted against the same property. This recording rule is found both in the law of real property mortgages and in the law of chattel mortgages. By force of the real property recording acts, a subsequent purchaser or mortgagee takes subject to a duly recorded mortgage, as affected with constructive notice thereof. TIFFANY, REAL PROPERTY (2d ed.) Vol. 3, p. 2559. In the field of personal property the filing of a chattel mortgage according to the statute providing therefor furnishes constructive notice to subsequent lienors or mortgagees of rights conferred upon prior parties by such instrument. BROWN, PERSONAL PROPERTY, p. 488.

In jurisdictions outside of Ohio under facts similar to those in the *Goodrich* case, where the tire vendor has retained title to the tires placed on the mortgaged car through the device of a conditional sale or chattel mortgage, the cases have held that the doctrine of accession does not apply so as to pass title in the tires to the car mortgagee. *Clark* v. *Wells*, 45 Vt. 4, 12 Am. Rep. 187 (1872), the leading case; *Bosquet* v. *Mack Motor Truck Co.*, 269 Mass. 200, 168 N.E. 800 (1929); *Snyder* v. *Aker*, 134 Misc. 721, 236 N.Y.S. 28 (1929); *Clarke* v. *Johnson*,

43 Nev. 359, 187 Pac. 510 (1920); *Motor Credit Co.* v. *Smith*, 181 Ark. 127, 24 S.W. (2d) 974 (1930); 68 A.L.R. 1242. The usual theory is that if title is retained by the tire vendor, the tires do not become such an inseverable part of the car so as to pass title to the car mortgagee. But in the cases where the tire vendor has not retained title in himself, the courts have consistently applied the doctrine of accession and held that the tires became a component part of the car and title to the tires is regarded as vested in the car mortgagee. *Blackwood Tire and Vulcanizing Co.* v. *Auto Storage Co.*, 133 Tenn. 515, 182 S.W. 576, L.R.A. 1916E 254, Ann. Cas. 1917C 1168 (1916); *Diamond Service Station* v. *Broadway Motor Co.*, 158 Tenn. 258, 12 S.W. (2d) 705 (1929); *Purnell* v. *Fooks*, 32 Del. 336, 122 Atl. 901 (1923); *Spritzer* v. *Rutgers Chevrolet Co.*, 12 N.J. Misc. 782 (1934); 68 A.L.R. 1245.

The Ohio cases follow the general rule that a recorded chattel mortgage does not cover after acquired accessories easily severed from the chattel where title to such accessories has been reserved in the vendor. A mortgage covering a "string of tools" used for drilling oil has been held not to cover after acquired appliances attached to the mortgaged property when title to the appliances was reserved in the vendor. *Nerzorg* v. *National Supply Co.*, 18 Ohio C.D. 112, 7 Ohio C.C. (N.S.) 461 (1905). A conditional vendor of a radio attached to a mortgaged car has been allowed recovery from the car mortgagee. *Mechanic* v. *Schaeffer*, 23 Ohio L. Abs. 129, 7 Ohio O. 505 (1937). A tire vendor retaining title by means of a chattel mortgage has been allowed recovery from a car mortgagee. *Rite Credit Tire Co.* v. *A. B. Williams Auto Sales Co.*, 10 Ohio L. Abs. 428 (1931). Recovery has been allowed by a tire vendor retaining title in itself where it had no knowledge that the tires were to be placed on a mortgaged car. *Continental Finance Co.* v. *Gold Seal Tire Co.*, 6 Ohio L. Abs. 26 (1927). In the *Rite Credit Company* case, *supra*, the tire vendor had constructive notice of the car mortgage when it placed the tires on the car.

The judge in the *Goodrich* case stresses the constructive notice given by the recording. The *Rite Credit Company* case is criticized and two cases involving artisan's liens are cited and followed for the proposition that the recording of the mortgage gave constructive notice to all subsequent lienors. *Metropolitan Securities Co.* v. *Orlow*, 107 Ohio St. 583, 140 N.E. 306, 32 A.L.R. 992 (1923); *Kellar* v. *Evans*, 14 Ohio App. 265, 31 Ohio C.C. (N.S.) 545 (1920). Such reliance is unwarranted. The *Goodrich* case can be distinguished on its facts from those cases in as much as the tires can be easily severed from the car

while such is not the case where permanent repairs have been made. The *Goodrich* case, therefore, is clearly out of line, not only with the prevailing view in other jurisdictions, but also with the view of the Ohio cases.

In the *Kehnert* case, *supra*, the other principal case, where the contest was between the chattel mortgagee of a car and a hotel impressing an innkeeper's lien, the court found an exception to the rule of priority from filing the mortgage. Since the relationships of the parties are comparable, following the analogy of the law giving a recorded chattel mortgage priority over subsequent artisan's liens, it seems that the recording rule might have been applied without exception so as to permit the car mortgagee to prevail. The innkeeper's lien, however, has from early times in the common law been favored by the courts. This was because of his obligation to receive all travelers and because of the extraordinary responsibility of the innkeeper for the goods brought in the inn. BROWN, PERSONAL PROPERTY, p. 495. At common law the lien extended not only to the guest's own goods but also to goods of a third person and even to stolen goods. It has been held that the fact that the innkeeper knew that the property belonged to a third person did not deprive him of his lien, as for example, where the goods consist of sample trunks of a traveling salesman. 14 R.C.L. 540. Thus, it seems, that under the common law rules governing innkeeper's liens, the decision in the *Kehnert* case is correct and the hotel should be entitled to impress an innkeeper's lien on the mortgaged car even though constructive notice of the mortgagee's rights was given by the recording.

Today the innkeeper's lien is almost universally regulated by statute. The Ohio General Code, sec. 5984, allows the innkeeper a lien on the "baggage and other property in and about the inn *belonging to or under the control of his guests.*" This statute has been interpreted as being declaratory of the common law and such is the rule today. *Thoma* v. *Remington Typewriter Co.*, 20 Ohio C.D. 691, 11 Ohio C.C. (N.S.) 174 (1908); *Cooperider* v. *Myre*, 37 Ohio App. 502, 505, 175 N.E. 235, 236 (1930); *M. & M. Hotel Co.* v. *Nichols*, 21 Ohio L. Abs. 66, 68, 5 Ohio O. 387, 388 (1935). Thus, an innkeeper has been allowed a lien on a typewriter brought into the hotel by a guest who had acquired it by false pretenses. *Thoma* v. *Remington Typewriter Co.*, *supra.*

Although the judge in the *Kehnert* case, feeling bound by the doctrine of *stare decisis*, gives the innkeeper a lien on the mortgaged car, he does so reluctantly. In *dictum* he takes issue with the Ohio view that the statute is declaratory of the common law and says that the

evident intent of the legislature was not to subject the property of wholly innocent persons to such a lien. He further contends that the words "under control of" cannot mean other people's property under the control of the guest, but rather property belonging to the guest under the control of the guest. The judge stresses the fact that the extraordinary protection afforded the innkeeper at common law is no longer necessary since his responsibility for a guest's goods has been greatly modified by other statutes. Ohio G.C. sections 5981, 5982, 5983. These specifically limit the innkeeper's responsibility. Thus, since the reason for the common law rule giving the innkeeper extraordinary protection has ceased to exist, it seems that the rule itself should be discarded. A more just rule would protect chattel mortgagees who have given constructive notice of their prior rights by filing as provided in the recording act. PHILIP AULTMAN

CONSTITUTIONAL LAW

LEGISLATIVE SUCCOR FOR THE MOTOR CAR DEALER

Recent years have heard from all sides the cry of overcrowding in business, of unfair competitive practices, and of ruinous competition. The retail end of the motor car industry has been no exception. Conspicuous among its troubles have been the competition of the fly-by-night seller in the sale of new cars, and of the finance companies in the sale of repossessed and rebuilt cars, the junk dealers, the abuse of automobile financing, price cutting through the devices of dumping and excessive trade-in allowances, the traffic in stolen cars, and the bootlegging of cars from other states. But back of these tribulations lies the fact that various economic factors have spawned a host of automobile dealers, the consequences of which have been a large percentage of failures and a very low margin of net profit.[1] Studies of the Research Division of the N. R. A. reveal that at the end of 1934, there were 106,000 automobile retail outlets in the United States, with the average dealer grossing between $30,000 and $50,000 yearly.[2] Forty-two per cent of all dealers sold less than fifteen cars per year, forty per cent between fifteen and seventy-five and less than eighteen per cent over seventy-five.[3] The

[1] Clark, "Make Money Little Businessman or Else," *The Saturday Evening Post*, July 30, 1938, at 23.

[2] U. S. National Recovery Adm., Evidence Studies, 50 Preliminary Draft 21.

[3] *Ibid* at 23. It is very improbable that dealers selling less than fifteen cars annually will show a profit. Yet incidental and overhead expenses increase only slightly with the increase in the number of cars sold and by eliminating the sub-marginal dealer a substantial profit would be available to those remaining.