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For the Minnesota State Bar Association

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Logs and Logging—Abandonment—Salvaging Sunken Logs.—Recently the city council of Minneapolis considered the feasibility of expending funds for the salvage of the millions of feet of logs which carpet the bed of the Mississippi River in the vicinity of that city. ¹ It has been suggested that such an enterprise would be highly impracticable in that it is illegal under the law of Minnesota for anyone other than the original owner, his heirs or assigns, to take possession of such logs. The result, it is said, would be civil liability for twice the value of the logs and criminal indictment for larceny.² Is this the Minnesota law?

¹"Law Declared Barrier Between City and River’s Sunken Wealth.” Minneapolis Tribune, Sunday, Nov. 13, 1921.
²Minn. G. S. 1913, sec. 5475.
The small number of logs that are unmarked or marked with unrecorded marks are declared abandoned property by statute and need not be further considered. Practically all of the logs in question are marked in compliance with statutory provisions which are such that the logs may be treated as chattels capable of identification. To consider the marked logs as lost property will afford no solution of the question of salvaging them in view of the statute making it larceny to appropriate lost property when it is possible to find the true owner. The possibility of identification, however, in no way precludes the application of the doctrine of abandonment of property. To prove that the logs in question are abandoned property, it is essential to maintain first, that the logs are abandoned property according to the rules of the common law and second, that the application of the common law doctrine of abandonment of property is not limited by General Statutes Minnesota 1913, sec. 5475.

There are but few adjudications on the question of abandonment of chattels but in those few cases a uniform rule has been stated by the courts. Intention to abandon all interest therein accompanied by an actual relinquishment will divest an owner of all property interest in a chattel. The actual relinquishment of possession and control over the goods may be effected either by a positive act or by inaction. The intention to abandon must be an intent to release without reservation of any interest whatever to the party so abandoning and without reservation in favor of any specific person. To this extent the cases are in accord, but the courts disagree as to what evidence is competent to establish the existence of an intention to abandon. The possible weight of authority is that the mere fact of failure to retake into possession is not of itself evidence from which a jury may find intent to abandon, though the contrary view has considerable support. The courts are agreed, however, that

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5Minn. G. S. 1913, sec. 5474. 6Minn. G. S. 1913, sec. 5471.
7Minn. G. S. 1913, sec. 8879.
in the presence of some direct evidence of abandonment the fact of failure to retake possession, or nonuser in the case of contract rights, is evidence which the jury may consider in determining the existence of an intent to abandon." The value of the property to the particular individual at the time of the alleged abandonment is considered competent evidence on the question of intent to abandon. As in the case of evidence of failure to retake possession and nonuser, a distinction has been asserted requiring the presence of evidence directly tending to prove abandonment before a jury shall be permitted to consider the element of value." Both of these limitations indicate recognition by the courts of what has been expressed to be "a strong natural presumption that the owner of property or rights intends to preserve them, because this is the customary purpose of such owners, the burden of proof being on him who alleges abandonment." In theory personal property of any value may be abandoned. Statements of several courts, however, would apparently limit the doctrine of abandonment to property of negligible value to the owner at the time of abandonment. Schouler has said:

"To say that a thing of much intrinsic worth was designedly abandoned would rarely be less than a violent assumption."

It would seem that in all cases the element of value would be given its logical weight as evidence of motive for the intention to abandon and should not be considered as an arbitrary limitation as to what property should be subject to the doctrine of abandonment.

La. 987, 64 So. 881; Harkey v. Powell, (1820) 8 N. C. 17, abandonment of an equity of redemption under a chattel mortgage; but see Pau v. Whittington, (1875) 72 N. C. 321, granting that an equitable right to specific performance of a contract is abandonable, it is held that mere lapse of time will not amount to waiver or abandonment.

1 Log Owners' Booming Co. v. Hubbell, (1903) 135 Mich. 65, 97 N. W. 157, 4 L. R. A. (N.S.) 573, logs were not sunken but on an old rollway; Alamosa Creek C. Co. v. Nelson, (1908) 42 Colo. 140, 93 Pac. 1112, abandonment by nonuser and other acts; Ray Coal Mining Co. v. Ross, (1915) 169 Ia. 216, 151 N. W. 63, abandonment of a contract right.


Smith v. Glover, (1892) 50 Minn. 58, 52 N. W. 210, 912.


Kee & Chapell Dairy Co. v. Pennsylvania Co., (1919) 214 Ill. App. 1, 6, aff'd 291 Ill. 218, 126 N. E. 179, speaking of milk bottles salvaged from the city dump, "the bottles were too valuable to permit their abandonment."

_2_ Schouler, Personal Property, 3d Ed., sec. 8, p. 8.
Notwithstanding the limitations placed on the admissibility of evidence of value and failure to reclaim, such evidence probably would be admissible in the problem presented in Minnesota for there is present direct evidence of abandonment, or such evidence of abandonment as has been considered sufficient to justify the reception of evidence of failure to reclaim and value. *Log Owners' Booming Co. v. Hubbell* holds that the fact that an act of removal has not been exercised, of itself, is not evidence of abandonment. The court further states that "if it be true that the owners had run other logs past them for years"—"if the parties had abandoned logging operations on the river"—it would not be an unreasonable inference that they were abandoned. Not only do these conditions exist in Minnesota but a large portion of the logging companies have gone entirely out of the business and in many districts, as in the case of the Mississippi River at Minneapolis, there is not a single logging company in operation. The original owners of the logs have disposed of all the equipment they once possessed which would be indispensable to the collection of sunken logs. Since this evidence justifies in addition a consideration by the jury of the elements of value and failure to retake possession, is it not reasonable to suppose that a jury would find that an intention to abandon existed?

The common law doctrine of abandonment of property is not limited expressly by section 5475. Nor is the doctrine of abandonment inconsistent with the terms of the statute, nor with the protection sought to be afforded by such statute.

Economic reasons are apparent that prompt the salvage of this valuable remnant of the lumbering industry. In the absence of express adjudications in Minnesota on the legality of the salvaging of sunken logs and in view of the fact that salvaging operations might cause friction in communities where the lumbering industry still thrives, it is reasonable to suppose that capital will not be freely invested in this venture. If the repeal of section 5475 would tend

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18(1903) 135 Mich. 65, 97, N. W. 157. See Smith v. Glover, (1892) 50 Minn. 58, 72, 52 N. W. 210, 912, for the view of the Minnesota court.

19"Whoever shall wilfully take, carry away, or otherwise convert, without the consent of the owner, any log, pile, cant, or other timber, not his own, from the waters of any lumber district, or from any land upon which the same has been floated or cast by such waters, and whoever shall cut out or otherwise affect the marks . . . shall be guilty of larceny, and shall also be liable to the owner for twice the value of such timber, in a civil action therefor, etc."
to induce prompt action, is not that step desirable? The statute was passed to protect a vast industry that was of necessity carried on in uninhabited regions affording but meager protection from thieves, but this reason has ceased to exist. Affirmative and permissive legislation may be necessary to insure extensive results but it would seem that the economic value of this resource justifies such action.

Enforcement of Foreign Recorded Chattel Mortgage.—The question as to what effect the court of the forum shall give to a foreign mortgage properly executed and duly recorded in a foreign jurisdiction, when the mortgaged property is removed by the mortgagor from the latter jurisdiction and sold in the former, is a matter not infrequently coming before our courts. The weight of authority, in the absence of statute, is that when personal property is properly mortgaged and the mortgage duly recorded in the jurisdiction where the property is situated, such mortgage will be recognized and enforced, by virtue of comity, in another jurisdiction to which the mortgagor has subsequently removed the property, even though the rights of purchasers for value without actual notice are thereby superseded. By "comity" is meant the extension of constructive notice of a recorded mortgage in the foreign jurisdiction into the jurisdiction of the forum. The courts which deny the foregoing doctrine are few, the Texas court in a recent decision throwing its weight with the minority.

Regardless of whether a mortgage is treated as creating merely a lien on, or a transfer of, the mortgaged property, the rights of the mortgagor should be protected. If a chattel mortgage creates merely a lien right, such lien right, being based on and created by


Farmer v. Evans, (Tex. 1921) 233 S. W. 101. In this case the mortgaged property was removed by the mortgagor without the knowledge or consent of the mortgagee, but the court refused to recognize the priority of the mortgagee's rights. The decision, however, is based on Texas statutes requiring the recording of a foreign mortgage.
contract, should be recognized by other jurisdictions and the mort-
gagee given priority over purchasers for value without actual
notice.

"It has always been the policy of the courts to give force and
effect to a contract made in another state if the contract could be
upheld under the law of such state; and rights once acquired under
a contract will not be forfeited simply because the subject of the
contract is by one of the parties moved into a foreign jurisdiction.
The right remains the same regardless of the law of the state to
which the subject of the contract is removed."

If the mortgage operates as a transfer of property, then al-
though the mortgagor retains possession, the mortgagee should
nevertheless be protected on the ground that he cannot be deprived
of his property without his consent. The mere possession of the
mortgagor will not estop the mortgagee. If a mortgagor, contrary
to his agreement, removes the mortgaged property into another
state, does he not thereby become a converter? When he dis-
poses of the mortgaged property, he is certainly a converter. A
general discussion of the cases in which a man may be held to have
conveyed title to another when he himself does not have that title
will be found in the present number of the Review.

The equity in favor of a purchaser for value of the mortgaged
property without actual notice of the mortgage is certainly strong.
In a Michigan case it was said that it would be unreasonable to re-
quire a citizen of Michigan to take notice of the files and records
of Nebraska, such notices having no extraterritorial effect. In an-
swer to this it has been said that it is no greater hardship to require
purchasers to examine the records of another state or buy at their
peril than to examine the records of a sister county, which in the
absence of statute are good throughout the state.

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123, p. 98; Jones, Chattel Mortgages, 4th Ed., sec. 460, p. 524. And in
Massachusetts and North Carolina criminal prosecution under statutes
has taken place for selling mortgaged property. Commonwealth v. Damon,
(1899) 105 Mass. 580; State v. Ellington, (1887) 98 N. C. 749, 4 S. E. 534;
see I Bishop, New Criminal Law, 8th Ed., sec. 572 a-2, p. 353.
6 Article by Professor Ballantine, Purchase for Value and Estoppel,
ant p. 87.
7 Corbett v. Littlefield, (1890) 84 Mich. 30, 47 N. W. 581, 11 L. R. A.
95, 22 A. S. R. 681.
A number of states make a distinction as to whether the mortgaged property is removed with or without the mortgagee's knowledge and consent. If removed with his consent, then the mortgagee forfeits his rights of priority.\(^6\) If he has taken such steps as are required for his protection by the law of the state to which the property has been removed the mortgagee is, of course, protected.\(^7\) If a mortgagee is willing, according to this view, to place his security in a situation where it may mislead citizens in the state to which the property has been removed, he should not be heard to complain. In such cases, the mortgagee negligently has placed it within the power of the mortgagor to deceive and defraud purchasers in the state to which the property has been removed, and he will be estopped. There is much to commend in the foregoing view and there is a tendency of recent authority to follow it.\(^8\)

In view of the very mobile character of certain kinds of property, such as automobiles and stock, and in view of the ease and rapidity with which property may be transported over modern good roads, it may be argued that in the interest of free and unhampered trade, foreign mortgages should not be recognized. But it is an easy and comparatively inexpensive matter to inquire as to incumbrances against property, even in another state. No one is under the necessity of buying from a stranger, and in many instances there is some suspicious circumstance, like a "good bargain," to put the purchaser on his guard.


\(^7\) In Alabama and Georgia, it is required that a foreign mortgage be recorded within a certain specified time. Johnson v. Hughes, (1889) 89 Ala. 588, 8 So. 147; Armitage-Herschell Co. v. Muscogee Real Estate Co., (1903) 119 Ga. 552, 46 S. E. 634. But a foreign chattel mortgage to be effective in the state of the forum must be recorded in the foreign state before the property is removed to the forum, otherwise the property goes to the state of the forum free of any lien as to creditors, and subsequent filing will create no lien upon it in the forum. Yund v. First National Bank, (1905) 14 Wyo. 81, 82 Pac. 6; Smith v. Consolidated Wagon, etc., Co., (1917) 30 Idaho 148, 163 Pac. 609; Sublett v. Hurst, (Tex. Civ. App. 1914) 164 S. W. 448.

\(^8\) Moore v. Keystone Driller Co., (1917) 30 Idaho 220, 163 Pac. 1114. And Tennessee, in receding from a former position refusing priority to foreign mortgages, limited the enforcement of foreign mortgages against purchasers for value without actual notice to those cases where the mortgaged property was removed without knowledge or consent of the mortgagee. Newsum v. Hoffman, (1911) 124 Tenn. 369, 137 S. W. 490.