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# Security Transactions

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# SECURITY TRANSACTIONS

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In *Prudential Insurance Company of America v. Wadford*,[1] our Court held that a real estate mortgage executed prior to the filing of a judgment against the landowner based on an account for merchandise prior to the execution of the mortgage had priority over the judgment even though the mortgage was not recorded until after the judgment was filed. The judgment obtained did not change the creditor to a "subsequent creditor." Of course the recording statute is designed to protect "subsequent" creditors and purchasers for value. The Court refused to upset its later prior decisions, quoting Cooley:[2]

> 'When a principle is once adopted and declared by the courts, the people have a right to regard it as just declaration of the law, and to regulate their actions and contracts thereby. . . . There should never be a disturbance of the same, except upon urgent reasons and a clear manifestation of error.'

What a relief would be achieved for practicing lawyers if all appellate courts, and particularly the United States Supreme Court, would adhere to this well recognized principle of law!

*Carroll v. M & J Finance Corporation*[3] was an action for conversion of an automobile brought against the mortgagee. The facts showed that the only act by the mortgagee tending to prove conversion was that it advertised the automobile for sale while it was in a body shop for repair, it having been taken to the body shop by the owner. Sale of the automobile never took place as it was called off by the mortgagee.

The Court concluded that the lower court should have granted defendant's motion for a directed verdict, saying:

> It is not shown that respondent's possession of the automobile was ever disturbed. It remained at the body shop where she left it and so far as the record discloses,

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1. 232 S. C. 476, 102 S. E. 2d 889 (1958).
2. COOLEY, CONSTITUTIONAL LIMITATIONS (7th ed.) 325.
3. 233 S. C. 200, 104 S. E. 2d 171 (1958).

> she was free to remove it at any time she saw fit. There is no testimony that the Finance Corporation ever exercised any dominion or control over the automobile. It is true that it wrongfully advertised the car for sale but this without more is insufficient to constitute a conversion.

A motion to strike certain allegations from the answer was involved in *Ward v. Federal Insurance Company.*[4] The plaintiff had recovered judgment against one Miller for injuries received through the latter's negligence. Miller was an employee of a subcontractor of Sloan Construction Company, who had been awarded a construction contract by the State Highway Department. Sloan had procured a bond from the defendant herein which guaranteed the "faithful performance of the contract, including the payment of all lawful claims by reason of injuries received in and about the construction." The present action was based on the judgment obtained against Miller and the bond.

In its answer to the complaint, the defendant alleged that Miller was not responsible for the accident and that the judgment was not binding on this defendant. These allegations upon motion were struck from the answer.

In a 3-2 decision the Supreme Court affirmed the lower court's decision saying that the law of agency was not involved, but rather, suretyship. It concluded that since the action was based on contract and the allegations quoted were admitted by the answer, the judgment against Miller, who was engaged in the construction, was binding upon the defendant.

Justice Legge in the minority opinion felt that the stricken portions of the answer above referred to should have been left therein as the pleadings did not sufficiently disclose the terms of the bond. He further indicated that the present judgment may bring about greater liability on the part of the surety than imposed on the principal. This of course would be contrary to the well settled rule in regard thereto.

The right of subrogation by a mortgagee who extends a loan in order to pay off a prior mortgage was involved in *Meaders Brothers v. Skelton.*[5] The facts disclosed that the

4. 233 S. C. 561, 106 S. E. 2d 169 (1958).
5. 234 S. C. 134, 107 S. E. 2d 1 (1959).

third mortgagee made a loan to cancel an existing first mortgage. The second mortgagee then contended that its mortgage had priority over the latter mortgage. Judge McGowan's decree overruling such contention and holding that the latter mortgagee was subrogated to the rights of the first mortgagee to the extent of payment of principal and interest on its mortgage was adopted as the per curiam opinion of the Supreme Court. This is in line with a prior decision of the Court and certainly seems to do justice to the parties.

In relation to our recording statute the Supreme Court for the first time had occasion to define the word "resides" as used therein.[6] It adopted the view expressed by the North Carolina Supreme Court[7] which had stated:

> . . . It thus clearly appears that under these statutes "residence" means something more than a place, and something less than a domicile. The term clearly imports a fixed abode for the time being.

The Court went on to say that the facts of the present case presented a jury question as to where the mortgagor resided when the mortgage in question was executed.

6. G. A. C. Finance Corporation v. Citizens and Southern National Bank of South Carolina, 234 S. C. 205, 107 S. E. 2d 315 (1959).
7. Sheffield v. Walker, 231 N. C. 556, 58 S. E. 2d 356, 359 (1950).