a drain, the plea of not guilty puts him to proof that the defendant had the use and control of the drain. Id. 290. In summing up, this author says: "If the defendant is charged with acts of omission, nonfeasance, and neglect of duty, the facts creating the duty must be proved and the defendant's neglect established."

So far as we can see, there was not any exception to this rule at common law, and no reason has been suggested why the plea should have a narrower scope under our code practice. In fact, Shannon's Code, § 4634, provides that "the defendant may enter a general denial of the plaintiff's cause of action, equivalent to the general issue heretofore in use."

It certainly would be a curious anomaly in practice should it be held that the plea of not guilty raised the general issue in the present case, yet that its effect was to admit the averment of negligence upon which the plaintiff rests his right to recover. No such result follows. The burden was on plaintiff to make out his case, and, failing in the particular indicated, the judgment is reversed.

(112 Tenn. 309)

SNYDER v. YATES et al.

(Supreme Court of Tennessee. Feb. 15, 1904.)

FOREIGN CHATTEL MORTGAGE—REGISTRATION —PRIORITY OVER ATTACHING CREDITORS.

1. A chattel mortgage executed, acknowledged, and recorded in Illinois, and accompanied by a certificate reciting that the recorder is clerk of the circuit court and ex officio recorder, and that the mortgage was duly recorded, is not entitled to registration in Tennessee, so as to give notice to creditors of the mortgagor.

2. A chattel mortgage executed and recorded in Illinois on property afterwards transferred to Tennessee will not be given priority over the liens of local attaching creditors.

Appeal from Chancery Court, Hickman County; J. W. Stout, Chancellor.

Suit by Martin Snyder, as trustee, etc., against J. C. Yates and others. From a decree of the Court of Chancery Appeals affirming a decree for defendants, plaintiff appeals. Affirmed, and petition for rehearing dismissed.

W. B. Leech, for appellant. J. A. Bates, for appellees.

WILKES, J. This case presents a contest between a mortgagee and attaching creditors of one Meixsell with respect to certain mules and sawmill machinery. The attaching creditors established their right to priority before the chancellor, and his decree has been affirmed by the Court of Chancery Appeals.

The facts found by the Court of Chancery Appeals, so far as necessary to be stated, are that Meixsell executed a chattel mortgage to Snyder upon the mules and machinery in question. It was acknowledged before Stricklin, a justice of the peace of Saline county, Ill., and was recorded by John B. Lee in volume 5 of Chattel Mortgages of said county. John B. Lee, in his certificate, recites that he is clerk of the circuit court and ex officio recorder for said county and state, and that the mortgage was duly recorded. It was afterwards recorded without any further probate or certificate in the register's office of Hickman county, Tenn., to which place the mortgagor brought the property after the mortgage had been registered in Illinois, and where he engaged in the stave manufacturing business. The mules and machinery were levied upon by attachments and executions at the instance of local creditors of Meixsell after the registration of the instrument in Hickman county. An original bill was then filed enjoining further proceedings by the creditors, and it was amended so as to make it a replevin suit under which plaintiff retained possession of the property, giving bond. It was afterward sold, and it is agreed that the proceeds are sufficient to satisfy the claims of the creditors if they are entitled to recover as against the trustee.

The sole question presented to this court is whether the complainant's rights under these mortgages are superior to those of the attaching or levying creditors. All other questions are eliminated.

The rights of complainant depend entirely upon the validity and effect of the mortgage executed in Illinois and its registration in that state. Without passing upon the sufficiency of the pleadings in this case, we are of opinion that complainant is not entitled to priority over the attaching creditors. The subject of the probate of instruments and their registration, and the effect of such registration as to third persons, is governed purely by local statutes, and is a matter entirely unknown to the common law. The statute laws of a state have of themselves no extraterritorial force, and whatever effect they have in foreign states they have by virtue of the laws of such state, or under the doctrine of the comity of states.

The Court of Chancery Appeals rightly held that the statutes of Tennessee do not provide for the registration in this state of the mortgage in question, and that its registration could not operate as notice to the creditors of the mortgagor.

This leaves the complainant to stand alone upon the doctrine of comity. This is the doctrine under which contracts made, rights acquired, and obligations incurred in one country and in accordance with its laws are recognized and enforced by the courts of another country.

In Harrison v. Sterry, 5 Cranch, 299, 3 L. Ed. 104, it is said by the court, speaking through Chief Justice Marshall: "The law of a place where a contract is made is, generally speaking, the law of the contract; that is, it is the law by which the contract is to be expounded. But the right of priority forms no part of the contract itself. It is ex-

¶ 2. See Chattel Mortgages, vol. 9, Cent. Dig. § 166.

trinsic, and is rather a personal privilege, dependent on the law of the place where the property lies, and where the court sits which is to decide the case."

That was a case of bankruptcy involving property belonging to a firm residing in England, upon which the United States, as a creditor, claimed priority under the rule of comity as against British creditors claiming under a trust assignment in the nature of a mortgage made in England upon a cargo of the ship Semiramis, and certain debts owing by parties in South Carolina, and the claim of priority of the United States was sustained.

This distinction has been recognized and enforced in many cases, and is well settled.

In Le Prince v. Guillemot, 1 Rich. Eq. 213, it was held that a marriage settlement constituting a lien in France was valid here, but that such lien gave no priority over American creditors.

In Underwriters Wrecking Co. v. The Katie, 3 Woods, 186, Fed. Cas. No. 14,342, the mortgage on the vessel in the home port was given priority over previous liens acquired in a foreign jurisdiction.

In Donald v. Hewitt, 33 Ala. 545, 73 Am. Dec. 431, a lien of a local attaching creditor was preferred to a previous mortgage lien in another state.

In Crowell v. Skipper, 6 Fla. 583, it was held that, although a contract is to be construed according to the lex loci contractus, the property rights under it are subject to the regulations of the country into which the property affected may be brought.

In Lee v. Creditors, 2 La. Ann. 604, a foreign lienholder was held to have acquired no priority in local insolvency proceedings.

In Corbett v. Littlefield, 84 Mich. 35, 47 N. W. 581, 11 L. R. A. 95, 22 Am. St. Rep. 684, a subsequent attaching creditor was given priority over a prior chattel mortgage.

In Saunders v. Williams, 5 N. H. 215, a subsequent attachment was given priority over a previous assignment in insolvency.

The same doctrine has been held in a large number of cases, and we think that it is a better doctrine and not in conflict with any of our adjudications, and not passed on in any of them because not involved, but is in perfect harmony with our statutes and policy on the subject of registration. There are decisions, however, holding a contrary doctrine.

Under our statutes a chattel mortgage is equally good between the parties whether registered or not. The sole purpose and effect of registration is to effectuate notice of it to third persons. The only constructive notice which can bar a creditor is that which the statute causes to flow from a proper registration or noting, although a purchaser may be barred by actual notice. This is the effect of our statutes in respect to chattel mortgages executed within our state, and foreign statutes and the doctrine of comity cannot give any greater or more enlarged effect.

A chattel mortgage executed in another state will be expounded and enforced by the laws of this state upon proper averments and proof of the laws of the state where made, just as if it had been made here; but a different doctrine applies where it is attempted to go further, and affect third persons, especially the creditors of the mortgagor, with constructive legal notice of the mortgagee's rights.

When parties to a foreign contract are impleaded in the courts of this state, this court will expound and enforce the contract according to the laws of the country where it was made, if such laws are properly pleaded and proven; but it will not, in a question of priority, set aside its own statutes and rules to the prejudice of its own citizens.

We are satisfied that the Court of Chancery Appeals has reached the correct result, and its decree is affirmed.

On Rehearing.

(Feb. 27, 1904.)

Upon petition to rehear it is strongly urged that the holding in this case is opposed to previous adjudications of this court; and we are cited to the cases of Eaves v. Gillespie, 1 Swan, 128; Lally v. Holland, Id. 401; Bank v. Hill, Fontaine & Co., 99 Tenn. 42, 41 S. W. 349; Hughes v. Abston, 105 Tenn. 70, 58 S. W. 296—as holding the contrary doctrine.

The case of Eaves v. Gillespie, 1 Swan, 128, is not at all in point. It has simply held in that case that a parol gift of a slave in a state that has no statute requiring such gift to be by deed a writing will have the effect to transfer the legal title to the donee. In that case the gift of the slave was made in South Carolina, and delivery was also made then, and title vested by the lex loci before the slave was removed to Tennessee. This being so, the fact that gifts of slaves were required in Tennessee to be evidenced by deed or writing could not divest or disturb that title which already vested. But the proof in that case did not show that the gift, being to a married woman, was to her sole and separate use, and the husband was entitled to the slave jure mariti, and, having sold her to an innocent purchaser with no notice of the separate estate, the court refused to execute any implied or secret trust in favor of the wife as against such purchaser. The case in no sense involved the effect of our registration laws.

In the case of Lally v. Holland there was a defective registration of a deed, and the court held that it would not be constructive notice, and, there being no actual notice, a bona fide innocent purchaser would take the property free from any claim under an instrument with the defective registration. This is really an authority for the view laid down in the original opinion. In Bank v. Hill, Fontaine & Co., 99 Tenn. 42 et seq., 41 S. W. 349, cotton was covered by a trust

deed made in Arkansas. It was shipped to Memphis, and sold to Hill, Fontaine & Co. in payment of a pre-existing debt for advancements made upon an agreement to ship the cotton to Hill, Fontaine & Co. The Arkansas deed of trust was not registered in Tennessee, and Hill, Fontaine & Co. had no actual notice of it. It was held that a chattel mortgage good in a foreign state would be upheld and enforced in this state when the property was subsequently brought into this state, and the rights of such vendee or mortgagee will be protected against purchasers as well as attaching and execution creditors; citing quite a number of cases.

But this protection to purchasers and creditors will be given only when it is not contrary to some settled public policy declared by statute or otherwise, or, as stated on page 46: "A party who obtains a good title to movable property absolute or qualified by the laws of another state, when it is there located, will be entitled to maintain and enforce it in the foreign forum against both creditors and purchasers acquiring rights subsequent to its removal, subject alone to the qualification or limitation that there is no statute a public policy contrary thereto." But it was held that Hill, Fontaine & Co. could not hold the proceeds of the cotton sold by them, first, because they claimed to hold it for an antecedent debt; and, second, because they had sufficient information to put them on inquiry which would have disclosed to them the prior rights of the Arkansas parties. They could not, therefore, be classed as innocent purchasers, and entitled to protection as such.

The case of Hughes v. Abston, 105 Tenn. 70, 58 S. W. 296, simply approves and follows the case of Bank v. Hill, Fontaine et al., and limits the rule as is done in the latter case to instances when the result would not be contrary to sound public policy, declared by statute or otherwise.

That was a case simply when a factor had sold cotton covered by a foreign mortgage, and it did not appear whether the factor still held the proceeds or had paid them over to the mortgagor. There were no rights of creditors or purchasers involved, but simply a question whether the proceeds should be held as those of the mortgagor.

While the language used in these cases is somewhat broad in defining the rights of purchasers and creditors, yet when limited to cases when sound public policy is contravened, and where no statutes are involved, they are in no way applied to the present view, which we consider the rule most in accord with sound public policy and the spirit and object of our registration laws.

Counsel has cited quite a number of cases holding a doctrine different to this, but, as before stated, we think this the better doctrine, and not applied to our previous adjudications when properly applied and limited.

The petition to rehear is dismissed.

(112 Tenn. 615)

STATE v. RED RIVER TURNPIKE CO.

(Supreme Court of Tennessee. Jan. 30, 1904.)

CORPORATION—FORFEITURE OF CHARTER—SUIT BY STATE—DISMISSAL WITHOUT CONSENT OF RELATORS.

1. Though a suit in the name of the state and by the Attorney General of the district where brought for the forfeiture of the charter of a corporation, as authorized by Shannon's Code, § 5165, subsec. 4, may be instituted, under section 5169, on the information of any person, on giving security for costs, such a suit may be dismissed on the petition of the Attorney General without the consent of the relators.

2. That the relators in a suit for the forfeiture of a corporation's charter have incurred considerable costs does not affect the right to dismissal of the suit on application of the Attorney General.

Appeal from Chancery Court, Sumner County; J. W. Stout, Chancellor.

Suit by the state, on the relation of private parties, against the Red River Turnpike Company. From a judgment dismissing the suit on application of the Attorney General, the relators appeal. Affirmed.

Chas. T. Cates, Atty. Gen., and Dismukes & Baskerville, for the State. B. F. Allen and J. D. G. Morton, for turnpike company.

BEARD, C. J. This was a bill in the name of the state, by certain relators, asking a decree of forfeiture of the charter of the defendant corporation. Subsequently it was dismissed by the chancellor on petition of the Attorney General asking such order upon the ground that neither the public welfare nor the interests of the state of Tennessee required a further prosecution of the suit or the forfeiture of defendant's charter. This action of the chancellor is called in question by the relators, who have brought this case to this court by appeal.

This suit was instituted under the authority of subsection 4 of section 5165 of Shannon's Code, and it is conceded, and, if not so, it is nevertheless true, the state is an essential party to the proceeding; and, further, that the relators could not have used the name of the state for its prosecution save by the consent of the Attorney General, indicated by his signature to their bill. The contention of the appellants is, however, that, this consent having once been given, he has committed the state to its prosecution, and has thus exhausted all control over the suit.

It would seem, without the aid of the authority, that this contention must be unsound. The state, in the first place, for the improvement of a highway in the interest of the public, granted this charter to parties proposing to build the turnpike in question. Not only are the rights exercised by the corporation derived from, but all the burdens borne by it are imposed by, the state. From these considerations we think it naturally would follow that the state alone should determine when it would en-