

"1. That this was a negotiable promissory note, according to the Statute of Illinois, where it was made, as well as by the general mercantile law.

"2. That its negotiability was not affected by the fact that the title to the cars for which it was given remained in the vendor until all the notes of the series were fully paid, the title being so retained only by way of security for the payment of the notes, and the agreement for the retention for that purpose being a short form of Chattel Mortgage."

In *Merchants Bank v. Dunlop*, 9 Man., 623 (1894), the lien clause read, "The title, ownership and right of possession of the property for which this note is given shall remain in Watson Manufacturing Co., Ltd., until this note or any renewal thereof is fully paid. The Watson Manufacturing Co. shall provide all repairs required for this binder, also any improvements that may be added to their binders before the date of the accompanying notes are payable." Judge Killam held that "these instruments were negotiable promissory notes notwithstanding the special provision at the end, which should be construed as a memorandum to show that the payees had promised to provide the things mentioned as part of the consideration of the defendants' promise to pay the note, and not a condition, attached to the absolute promise to pay."

In *Choate v. Stephens*, 116 Mich., 28 (1898), the lien clause read, "Nevertheless it is understood and agreed by and between the undersigned and the said Low's Art Tile Soda-Fountain Co. that the title to the above-mentioned property does not pass to the undersigned, and that until all said notes are paid the title to the aforesaid property shall remain in the said Low's Art Tile Soda-Fountain Co., who shall have the right in case of non-payment at maturity of either of said notes, without process of law to enter, and retain immediate possession of said property wherever it may be, and remove the same. Payable at the Preston National Bank." It was "held that the clause retaining the title does not impair the negotiability of the note." The instrument "imports an absolute, not a conditional, sale, with reservation of title by way of security."

The finding of the courts in the three preceding cases cited has not been controverted by any different or later decisions.

The three following cases have been cited as against the negotiability of lien notes, but do not afford such proof, because the lien clause is radically different in these cases.

In *Dominion Bank v. Wiggins*, 21 Ont., A.R. 275 (1894), the lien clause read, "The title and right to the possession of the property for which this note is given shall remain in Wiggins Bros. Manufacturing Co. until this note is paid." Judgment in this case was first given the Bank as indorsee, but the Court of Appeal in reversing the judgment of the lower court, held that "the lien clause was fatal to the negotiability of the note," and further, that "the money was the consideration for the sale of the property as neither the title nor the right of possession was to pass until payment. If that is so it follows the purchaser is not compellable to pay when the day of payment arrives unless at the same time he gets the property with a good title," and as the property in this case has been taken back by the vendor before the maturity of the note and sold to a third party the endorsee bank failed in its suit to recover on the note.