

Volume 12 | Issue 3

1961

Personal Property

Joseph Kalk

Follow this and additional works at: <https://scholarlycommons.law.case.edu/caselrev>



Part of the [Law Commons](#)

Recommended Citation

Joseph Kalk, *Personal Property*, 12 W. Res. L. Rev. 545 (1961)

Available at: <https://scholarlycommons.law.case.edu/caselrev/vol12/iss3/22>

This Article is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

PERSONAL PROPERTY

CHATTEL MORTGAGES

In last year's survey,¹ an appellate court case was discussed in which a finance company, which levied execution on the mortgaged property as the property of the mortgagor, was held to have waived its mortgage lien, and a repairman who had only a common-law artisan's lien, which was admittedly second to such chattel mortgage, was promoted to the position of first and best lien.² The case was criticized. It has been further criticized by the Supreme Court of Ohio.³ The court reasoned that the doctrine of merger applied to the *debt* but not to the *security*. Therefore, while the debt is merged into the judgment, the security remains unaffected so long as the obligation for the security exists, and it matters not that the obligation changes from a note to a judgment. The court further pointed out that the appellate court had not only misapplied the doctrine of merger, but had completely disregarded former supreme court decisions on this matter. Needless to say, the decision of the court of appeals was reversed.⁴

GIFTS

In a recent probate controversy,⁵ it developed that the decedent gave his brother a duplicate key to his safety deposit box and said, "There is something in there which belongs to you. It is money." Subsequently, decedent entered the safety deposit box on several occasions. The brother never entered the box until after decedent's death.

The brother argued that the money, which was found in the safety deposit box, contained in envelopes which bore his name, was his property on either one of two theories, *viz*, that his brother had created a trust for his benefit, or that a valid inter vivos gift had been made.

The court of appeals held that no trust was created, for, in order to do so, either words of trust must be used, or the circumstances must be such as would clearly indicate a trust. Here, the court felt the language, "There is something in there which belongs to you," was clearly not words of trust. The decedent did not indicate that he was holding the property for his brother. The court further felt that the circumstances did not indicate a trust, for there was no evidence whatsoever as to what the decedent had done with such monies as might have been

1. See discussion in Kalk, *Personal Property, Survey of Ohio Law — 1959*, 11 WEST. RES. L. REV. 412, 413 (1960).

2. Sun Finance & Loan Co. v. Hadlock, 162 N.E.2d 131 (Ohio Ct. App. 1959).

3. Sun Finance & Loan Co. v. Hadlock, 171 Ohio St. 89, 167 N.E.2d 780 (1960).

4. *Ibid.*

5. Moll v. Moll, 109 Ohio App. 393, 166 N.E.2d 531 (1959).