

## CHAPTER 8

# Security and Mortgages

AUSTIN T. STICKELLS

**§8.1. Grant of mortgage as acceptance of earlier deed.** Under the existing law of Massachusetts a deed becomes effective upon acceptance by the grantee.<sup>1</sup> The recording of a deed without the knowledge or consent of the grantee is not effective to pass title.<sup>2</sup> Consent of the grantee may be shown by acts, such as the making of a deed or mortgage to a third person.<sup>3</sup>

Does the grant of a mortgage constitute an act of acceptance by the grantee of the earlier conveyance? *Juchno v. Toton*<sup>4</sup> holds that the giving of a subsequent conveyance by the grantee constitutes acceptance only if the grantee had knowledge of the grant to him at the time he executed the subsequent conveyance, even though the subsequent conveyance was in the form of a mortgage.

**§8.2. Recovery for tortious injury to security interest.** The problems that arise when a third party tortiously interferes with the security interest of a vendor was the subject of considerable discussion by the Supreme Judicial Court in 1958. In *Bell Finance Co. v. Gefter*<sup>1</sup> and *Harvard Trust Co. v. Racheotes*<sup>2</sup> the Court held that the vendor had a sufficient interest to permit him to maintain a suit against the third-party wrongdoer even prior to the vendee's default. The general problem again came before the Court during the 1959 SURVEY year in *Equitable Credit Corp. v. Treadwell*.<sup>3</sup> The tort involved was the conversion of the secured chattels, rather than tortious injury to them, but the result was the same and the plaintiff therefore recovered for

AUSTIN T. STICKELLS is Professor of Law at Boston University and a member of the American and Boston Bar Associations.

§8.1. <sup>1</sup> *Bianco v. Lay*, 313 Mass. 444, 48 N.E.2d 36 (1943); *Meigs v. Dexter*, 172 Mass. 217, 52 N.E. 75 (1898); *Harrison v. The Trustees of Phillips Academy*, 12 Mass. 455 (1815).

<sup>2</sup> *Barnes v. Barnes*, 161 Mass. 381, 37 N.E. 379 (1894).

<sup>3</sup> *Creeden v. Mahoney*, 193 Mass. 402, 79 N.E. 776 (1907). See also *Blackwell v. Blackwell*, 196 Mass. 186, 81 N.E. 910 (1907). The grantor may also be an agent for purpose of acceptance by acts.

<sup>4</sup> 338 Mass. 309, 155 N.E.2d 162 (1959).

§8.2. <sup>1</sup> 337 Mass. 69, 147 N.E.2d 815 (1958). This case and the *Racheotes* case, cited in note 2 *infra*, were extensively discussed in 1958 Ann. Surv. Mass. Law §§3.2, 7.2, 9.1, 18.9.

<sup>2</sup> 337 Mass. 73, 147 N.E.2d 817 (1958).

<sup>3</sup> 338 Mass. 99, 153 N.E.2d 882 (1958).

the injury to its security interest in the chattels. Damages were not limited to the amount of the debt remaining outstanding, which had been the holding of the *Racheotes* case on its particular facts. The mortgagors-vendees in *Treadwell* were not parties to the action and the Court could not determine the extent of their interest in the recoveries against the two defendants. Thus the plaintiff held any excess over the mortgage indebtedness for the mortgagors' benefit and the interest of the mortgagors will have to be determined in separate proceedings.

