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Purchase Money Loans

By Glen W. McGrew*

A loan made to one who desires to use the money to purchase real estate, with a trust deed or mortgage on the premises to be purchased as security for the payment of the debt, is frequently an important factor in real estate transfers. Any legal principle that would expedite the handling of transfers in which this feature is involved should, therefore, be of considerable practical value.

Those who loan money on real estate are, of course, primarily interested in securing a lien upon the premises that is superior to all other claims, such as judgments against the borrower, other mortgages executed by him, mechanics’ liens arising out of his contracts, his wife’s dower, homestead rights, etc. It is a matter of common knowledge, even among many laymen, that a purchase money mortgage of the conventional type, given by the purchaser to the seller to secure the unpaid portion of the purchase price, is a lien on the property superior to all claims of every kind arising through the purchaser. Does a loan to the purchaser, by one who is a stranger to the contract of purchase, enjoy this same privileged position?

Local Practice

It is the commonly accepted opinion among mortgage investment firms, and even among members of the legal profession, in Chicago, that such a loan is not entitled to purchase money priority. This is proved by the invariable local practice of insisting that the trust deed or mortgage, given by the purchaser to the party who advances the money, shall be recorded, and a search made for possible judgments against the purchaser, before the proceeds of the loan are disbursed to the seller to obtain his deed to the purchaser. If the purchaser’s wife happens to be traveling in Europe, it is considered absolutely essential that the trust deed be sent to her for execution, in order that her dower and homestead rights may be waived. Thus it is apparent that title expenses and the time required to complete the transaction, together with interest charges resulting from this delay, could be materially reduced if the holder of notes secured by such a trust deed or mortgage were entitled to the same privileges that are universally accorded to the seller who takes back a purchase money mortgage.

Fiction v. Equity

The cases commonly state as the reason for these privileges, the theory that delivery of a deed by the seller, and the simultaneous delivery to him of a mortgage by the purchaser to secure the unpaid portion of the purchase price, gives the purchaser only a “transitory seizin,” a thing so fleeting and evanescent that it is gone before the lien of judgments against the purchaser, or his wife’s dower, can lay hold upon it. (1 Coke on Littleton, Chap. 5, Sec. 36; 19 R.C.L. 416.) In the words of one learned judge, “The title did vest, but did not rest, in Jones, but [was] ‘like the borealis’ race, that flits ere you can point its place.” (Bunting v. Jones, 78 N. Car. 242.) This smacks too much of the common law fictions to satisfy those who seek the underlying fundamental basis for the rule. The real reason is nowhere better set forth than

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in the case of Banning v. Edes, 6 Minn. 402 (Gil. 270): "The deed and mortgage, then, are to be considered as a single indivisible bargain or contract of sale, and as if they were written in one instrument, and executed at the same instant by both parties. By the mortgage, a condition was annexed to the grant, and whatever passed by the grant, passed subject to the condition. There was no moment of time when Baker (the purchaser) owned, or held, the premises free from the condition, nor when he could voluntarily have conveyed them, except subject to the mortgage. Can a judgment creditor, then, by virtue of his judgment against the purchaser, obtain a greater interest in the premises than the debtor himself had? I think it is well settled, that the lien of the judgment will, in all cases, be limited to the actual interest which the judgment debtor has in the estate. Atk. on Conv., 512; 1 Paige, 128; 4 Paige, 9. The rule is based on principles of justice and public policy, as well as common sense, and can work no hardship to the judgment creditor. So far as the contract between Pairo (the seller) and Baker (the purchaser) is concerned, there can be no question but that it was the intent to give Pairo the first lien on the premises; nor can it be claimed that he would have parted with the premises on any other condition. The judgment creditor having parted with nothing on the strength of this conveyance to Baker, it would be highly inequitable to permit the judgment to be satisfied out of what, in fact, was Pairo's property."

Lender is Part Purchaser

The force of this argument does not weaken when applied to the case of a loan by a third person, to the purchaser, of money with which to make the purchase. This third person is really in a position analogous to that of one who has agreed to buy an undivided fractional interest in the premises at the same time that the borrower purchases the remaining portion. Under this supposed state of facts, a judgment against the borrower would, of course, be a lien only upon his undivided fractional interest (his equity of redemption) in the premises. "A mortgage is pro tanto a purchase, and the bona fide mortgagee is equally entitled to protection as the bona fide grantee." Pierce v. Faunce, 47 Me. 507; cited with approval in Hayden v. Snow, 14 Fed. 70, and Jones on Mortgages, Sec. 877, (8th Ed.).

The proposition is further supported by showing how easily a contrary ruling can be circumvented by the parties. Instead of loaning money to the purchaser, the third party can agree to purchase from the seller the notes which the seller receives from the buyer, secured by a purchase money mortgage. There is no legal obstacle whatever to such an arrangement, even though the seller has previously contracted to sell only for cash, and the purchaser has previously applied for a loan from the third party. In fact, this method of handling the transaction is not infrequently resorted to in our local practice. The final result is exactly the same; the seller gets his cash, the purchaser of the notes gets a lien on the property prior to all claims arising through the mortgagor, and the purchaser acquires only an equity of redemption, which is exactly what each would have had if the loan had been made to the purchaser as originally contemplated.

Weight of Authority

It is not surprising, therefore, to find upon examination of the cases that, by the almost unanimous weight of authority, and with certain qualifications hereinafter discussed, a mortgage loan made to a purchaser is entitled to the same priority that is accorded to the conventional type of purchase money mortgage given by the purchaser to the seller as part of the consideration for the property. The authorities are too numerous to be cited at length at this point, but they will be found collected in 19 R. C. L. 416; 41 C. J. 531; and 40 L. N. S. 272, note. Whence, then, comes our local practice of recording the trust deed or mortgage first, and searching for possible judgments against the purchaser? Is the state of Illinois an exception to the general rule?
The search for an answer to these questions reveals the surprising fact that, not only is Illinois not an exception to the rule, but our Supreme Court, as will appear from the cases hereinafter cited, has gone probably farther than any other court in developing and refining the rule.

**Leading Cases**

There are three cases in point that are more frequently cited than any others, and they may therefore fairly be called the leading cases on the subject. They are Clark v. Munroe, 14 Mass. 351; Jackson v. Austin, 15 Johns. (N. Y.) 477; and Curtis v. Root, 20 Ill. 63. These cases will be examined in chronological order.

The Massachusetts case, decided in 1817, was a contest between Hannah Clark, the widow of the purchaser, claiming dower, and Israel Munroe, assignee of Winthrop, who had furnished the consideration for the deed by which Clark acquired title to the premises in question. The transaction was carried out pursuant to a previous agreement between all the parties, the vendor, purchaser, and lender, and the deed and mortgage were dated, acknowledged, and recorded at the same time. The decision of the court on these facts was as follows: "In the case of Holbrook vs. Finney, 4 Mass. 566, it was decided that a conveyance in fee, and a reconveyance by the grantee to the grantor in mortgage, being considered as parts of the same transaction, did not give to the grantee such a seisin as entitled his wife to have dower in the granted premises. In the case at bar, the mortgage was to a third party; but still the whole constituted but one transaction. We are not able to view the case in any light different from what it would have presented had the mortgage of Clark been made to Andrews and his wife [the sellers] instead of Winthrop."

The New York case, decided in 1818, hinged upon the application to the facts in the case of a statute (1 N. R. L. 375) which declared that "whenever lands are sold and conveyed, and a mortgage is given by the purchaser, at the same time, to secure the payment of the purchase money, such mortgage shall be preferred to any previous judgment which may have been obtained against such purchaser." The lien of the judgment creditor was held to be inferior to that of the mortgage given by the purchaser to a third party who advanced the purchase money. The court declared that "The mortgage in this case comes within the letter of the act. It was executed by the purchaser, Van Deussen, to secure the purchase money, and was given at the same time with the deed, although not given to Cooper, from whom Van Deussen derived title. But this cannot vary the principle upon which the statute appears to be founded. The lessor of the plaintiff advanced the purchase money, and took the mortgage to himself. The Act probably contemplated cases where the mortgage was given to the seller of the land. But the words of the act are not restricted to such cases, and a just and fair construction will warrant its application to the present case."

This case was cited and followed thirty years later in Haywood v. Nooney, 3 Barb. 643, (N. Y.), where it was pointed out that "In its legal effect it is the same as though the purchaser had executed his mortgage to the vendor, for the purchase money, and he had then assigned it to the party advancing the money."

The case of Curtis v. Root, supra, was the earliest decision on the subject in Illinois, (1858), and the principle contended for was heartily endorsed in the following words: "It is a principle of law too familiar to justify a reference to the authorities, that a mortgage given for the purchase money of land, and executed at the same time the deed is executed to the mortgagor, takes precedence of a judgment against the mortgagor. * * * Indeed, nearly all the cases to be met with are cases where the mortgage has been given to the vendor and for the purchase money. Such is not the case before us. The facts were, that the lands were purchased with goods, which might be considered as equitably belonging to the mortgagee, and which the mortgagor sold to the vendor for the land with the con-
sent of the mortgagee, so that in substance the transaction was the same as if the purchase money had been paid by the mortgagee, who took the mortgage to secure himself for the purchase money thus advanced, and the jury have found, and we think properly, that the execution of the deed and mortgage were simultaneous acts. This brings the case within the letter and the equity of the rule as first stated. In point of right and principle, it can make no difference whether the mortgage is given to the vendor for the purchase money, or to another who actually advances the means to pay the purchase money to the vendor." ("It is true, that the judgment, which was affirmed in Curtis v. Root, 20 Ill. 53, was afterwards reversed in the same case, as reported in 28 Ill. 367 and 38 Id. 192, upon other grounds,***" Roane v. Baker, 120 Ill. 308, at page 314.)

Cases Classified

The instances in which the courts of this country have cited and followed these three cases, or others which uphold the same principle, are so numerous that, instead of listing them here, seriatim, the present writer, after an exhaustive search, venture the assertion that no case can be found in the reports, which is opposed to the inclusion of such mortgages in the classification of purchase money mortgages, provided that the facts correspond in every detail with the facts of these three cases. This proviso, it will be noted, excludes the following enumerated classes of cases: (1) Those in which the lender did not deal with the seller, but relied upon the purchaser's mortgage, and paid the proceeds of the loan direct to the purchaser. (2) Those in which the delivery of the deed by the seller to the purchaser and the delivery of the mortgage to the lender were not simultaneous acts, or parts of one transaction. (3) Those in which the facts were such as to estop the mortgagee from claiming a prior lien, e.g., actual notice of another purchase money mortgage from the purchaser to the seller, with no agreement between the parties as to which should have priority; or other equitable considerations which operate to prevent the application of the rule in particular instances. (4) Those in which no mortgage was actually executed, as where the lender relied upon the purchaser's promise to execute a mortgage, which promise later becomes the basis of an effort by the lender to establish his lien in preference to other liens arising through the purchaser. (5) Those in which the recording acts, or other statutes, of particular states, operate in such a way, under certain circumstances, as to give other claimants a lien superior to that of the mortgagee.

Those exceptions falling under classes four and five will be eliminated altogether from this discussion in order to narrow the scope of the inquiry.

The authorities furnish little or no basis for a classification according to the nature of the claim arising through the purchaser, for which priority is sought over the mortgage of the lender; dower, homestead, judgments, mechanics' liens, other mortgages, (except those to the seller, which will be discussed under class three) all fare alike in the different jurisdictions. But the cases falling under the first three classes enumerated above are of great practical importance, and they will now be discussed in order.

Lender Must Deal With Seller

The Illinois Supreme Court was one of the first to lay down a strict rule to the effect that the lender, if he desires his mortgage to enjoy the privileges accorded to a purchase money mortgage, must deal direct with the seller, instead of paying the proceeds of the loan to the purchaser, with the privilege of investing it in the land on which the mortgage is given to secure the loan, or in something else, at his pleasure. The point was first before the court in Jeneson v. Garden, 29 Ill. 199, (1862), where the dower right of the purchaser's widow was held to be superior to the mortgage to secure money loaned to the purchaser. There is nothing in the case as reported to show any agreement between the lender and the seller. The opinion simply states that "This was not purchase money, within
the meaning of our dower law. That means money due the vendor, for land purchased on a credit, and does not mean money borrowed of a third person and invested in the purchase of the land."

There is no intimation that the decision would have been otherwise if the lender had dealt with the seller; in fact, it is rather doubtful whether the court even considered the question, as the facts did not make it necessary for them to pass upon this point. The opinion contains no citations and no reasoning other than the fait above quoted.

**Misleading Decision**

The later case of Eyster v. Hatheway, 50 Ill. 521, (1864), is no doubt, the basis of the local practice in Chicago of recording the mortgage to the lender first and searching for judgments against the purchaser, before closing the deal. The following passage from that case certainly appears to conclude any further discussion on the point. "The statute, in declaring that the homestead right should not be claimed against a debt due for the purchase money, obviously used the language in its ordinary and popular signification. All persons understand the term purchase money to mean the price agreed to be paid for the land, or the debt created by the purchase. It is not understood to mean a debt due another person than the vendor. In this case, the debt was created for money loaned, and not for land purchased. Appellee sold no land to appellant, but he loaned him money. It could not matter, in this indebtedness, whether the money was subsequently paid for the same or for other property. There is nothing in the case which shows the relation of vendor and vendee between these parties, and this provision of the statute only applies to parties occupying that relation, or those representing them, and for a debt created by the purchase of the homestead."

It is not surprising that the ring of finality in this pronouncement should lead the court of at least one other state to cite the case as contra to the weight of authority on the subject. (Ladd & Tilton Bank v. Mitchell, et al, 93 Ore. 668, 184 Pac. 282). This opinion, rendered two years later than Jeneson v. Garden, supra, is likewise devoid of citations on the point under discussion, and here too the court neglects to intimate that there might be any remotely similar circumstances under which a purchase money loan would have preference over dower, homestead, and other claims arising through the purchaser. Counsel and court, in both cases, seem to have overlooked Curtis v. Root, supra, decided only six years before Eyster v. Hatheway.

But the case is misleading, when considered by itself, for before the report of this case was published (the papers having been lost so that it could not be reported in its proper place) the court, in Austin v. Underwood, 37 Ill. 439, decided at the April term, 1865, made this comment: "We said in the case of Eyster v. Hatheway, decided at April term, 1864, that money borrowed of a third person, and paid out by a purchaser of land, cannot be regarded as purchase money. It is the common understanding of the term purchase money, that it means money paid for the land or the debt created by the purchase. In that case, the money was borrowed to pay a pre-existing debt; in this case the land was purchased with the money of appellant and actually paid over by him for the land, not one dollar of it passing through the hands of appellee, and the entire consideration of the indebtedness was the deed to appellant. This case is, therefore, clearly distinguishable from that, for here the entire consideration for the 55 1/2 acres passed directly from the appellant [who advanced the money] to Dibbs, [the seller], and the deed executed to appellee, [the purchaser], on the understanding, he was to give appellant a mortgage on all his land, to secure the payment. "The consideration of the mortgage was purchase money." This decision was cited and followed in Magee v. Magee, 51 Ill. 500, and has never been overruled in any subsequent case. See also: Steinkemeyer v. Gillespie, 82 Ill. 253; Small v. Stagg, 95 Ill. 39; Whittemore v. Shiell, 14 Ill. App. 414.
Wisconsin Follows Suit

The distinction made by the Illinois court on this point was approved by the Supreme Court of Wisconsin in Carey v. Boyle, 53 Wis. 574, 11 N. W. 47, (1881), in the following language: "It must be understood that the extension of this equity to a third person is strictly confined to those who furnish or advance the purchase money to the purchaser in such manner that they can be said to have paid it to a vendor, either personally or caused it to be paid on behalf or for the benefit of the purchaser; and to this extent they become parties to the transaction. It must not be a general loan, to be used by the purchaser to pay the consideration of the purchase or to be used for any other purpose at his pleasure. In such case, simply because the money can be traced into the land as having been paid by the purchaser to the vendor as the whole or part of the purchase money, gives the person who loaned it no such right. This is the distinction made in many of the cases, and especially by the supreme court of Illinois," citing Austin v. Underwood, Magee v. Magee, and Eyster v. Hatheway, all supra.

Some of the language in these three Illinois cases would seem to indicate that in order to be considered as purchase money, the funds must not be used merely to pay the last installment of "a pre-existing debt, created for the purchase of the homestead." But when, in Allen v. Hawley, 66 Ill. 164, the court was confronted with facts that presented this precise question, it was held that, to the extent that the money loaned was applied upon the balance due under a contract of purchase, it was purchase money and was superior to the homestead rights of the purchaser's wife. This is also the rule in Iowa, where in Laidley v. Aiken, 89 Iowa, 112, 45 N. W. 384, it is said that "the fact that Gilpin [the seller] had previously contracted to convey the land does not affect the rights of the parties. The money loaned by the mortgagees was applied in payment of the purchase money, just the same as it would have been if the contract of purchase had been made at the same time that the deed and mortgages were given." The following cases follow the above holding on this minor question, although in some of them the point was not raised, but the facts show the cases to be in point; Marin v. Knox, 117 Minn. 428, 136 N. W. 16; Nicholson v. Aney, 127 Ia. 278, 103 N. W. 201; Prot. Epis. Ch. v. E. E. Lowe Co., 131 Ga. 666, 63 S. E. 136; Demeter v. Wilcox, 115 Mo. 634, 22 S. W. 613; Cake's Appeal, 23 Pa. St. 186; Phillips v. Colvin, 114 Ark. 14, 169 S. W. 316.

Pennsylvania Most Drastic

The Supreme Court of Pennsylvania took an earlier and even more emphatic stand upon the question of the necessity of payment by the lender direct to the seller. The case of Lynch v. Dearth, 2 Pen. & W. 101, (Penn., 1830), is by far the most severe decision on this point that has been found. In this case the seller, purchaser and lender met by appointment. The sheriff was also present, as the seller had obtained judgment for ejectment against the purchaser because of his failure to pay the balance due on the purchase price, which would have entitled him to a deed. The lender paid the proceeds of his loan to the sheriff, who paid it to the seller, who delivered his deed to the purchaser, who delivered his mortgage to the lender. This surely would have satisfied the requirement of the Wisconsin court (Carey v. Boyle, supra), for the money was certainly advanced "in such manner that" the lender could "be said to have paid it to the vendor, either personally or caused it to be paid on behalf or for the benefit of the purchaser; and to this extent" he became a "party to the transaction." And it would also undoubtedly have satisfied the Illinois court, for the money was "actually paid over by" the seller, "not one dollar of it passing through the hands of" the purchaser, and the "consideration of the indebtedness was the deed to" the purchaser, (Austin v. Underwood, supra.) It is submitted that the Pennsylvania court overlooked the fact that the sheriff in this instance
should have been considered as the agent of the seller for the receipt of the money, and the deal constituted one transaction, which was in reality a novation, to which the seller was a party, and not merely a deal between the purchaser and the lender, of which the seller merely had knowledge. One of the judges filed a strong dissenting opinion in which he said in part: "When a man, having good title, sells by articles of agreement, receives part of the money, and is ready and willing to make a good title to his vendee, on receiving the residue of the purchase money, it is not in the power of that vendee, or any person claiming through him, to rescind the contract—refuse to comply on his part, and compel the vendor to pay back what he has received, and keep the land; and yet that is, in effect, what is asked in this case," a judgment creditor of the purchaser being decreed to have a lien superior to that of the lender's mortgage; the lender was thereby compelled to pay off the judgment creditor of the purchaser (which amounted to refunding to the purchaser what he had previously paid on the land), and to take over the premises in satisfaction of his mortgage lien, which is what the seller (in whose shoes the lender stood) would have had to do if the lender had remained aloof from the transaction. It would seem that the Wisconsin Court, in Carey v. Boyle, supra, has announced the correct rule on this point, in simply confining the equity "to those who furnish or advance the purchase money to the purchaser in such manner that they can be said to have paid it to the vendor, either personally or caused it to be paid on behalf or for the benefit of the purchaser; and to this extent they become parties to the transaction. It must not be a general loan, to be used by the purchaser to pay the consideration of the purchase or to be used for any other purpose at his pleasure."

The rule has been consistently applied by the Pennsylvania court, as is shown by the following cases: Campbell & Pharo's Appeal, 12 Casey (36 Pa. St. Rep.) 247, (1860), where the mortgagee won over mechanic's liens arising from the purchaser's contracts, because "The money was not advanced on the credit of the equitable estate at all, but distinctly upon the security of a mortgage upon the legal estate, for the purchase money, under a contract with the vendor himself." Noteste's Appeal, 9 Wright (45 Pa. St. Rep.) 361, (1863), where the purchaser's widow's dower won over the lender's lien because "there was no communication between the vendor and Hoover [the lender] for a security for purchase money." Albright v. LaFayette, 102 Pa. St. Rep. 411 (1883), where it was said at page 418, that "money borrowed by the vendee to pay for land, becomes the money of the borrower, and he may apply it as he pleases; it follows, that a mortgage given to secure its repayment would not be a purchase money mortgage, whether the money was so used, or used for any other purpose." See also, Cohen's Appeal, 10 W. N. C. (Penn.) 544.

In Laidley v. Aiken, 80 Ia. 112, 45 N. W. 354, (1890), the money was paid by the lender direct to the seller, who thereby secured a lien superior to a judgment against the purchaser. If this had not been done, says the court, "it may be that the judgment would be a prior lien." And such was in fact the decision of that court when appropriate facts were presented in the recent case of Ely Sav. Bank v. Graham, 201 Ia. 840, 208 N. W. 312, (1926). These two cases are really contra to the earlier decision of the same court in Kaiser v. Lembeck, 55 Ia. 244, 7 N. W. 519, (1880), in which case the report shows payment by the lender to the purchasers, and by them to the sellers, but the question was apparently not raised by counsel, for the mortgage was held to have been given for purchase money without any discussion of this point by the court. The still earlier case of Gilman v. Dingeman, 49 Ia. 308, (1875), is in accord with the two later cases above cited, for, although the lender paid the money direct to the seller, yet there was no contract between them. Moreover, the decision really turned upon the fact that the mortgage was executed and
recorded long after the deed to the purchaser, and they did not constitute one transaction.

The following cases will also be found to be in accord with the Illinois rule:


No Contrary Rule

No decisions have been found which oppose this rule by declaring unequivocally that no agreement between the lender and the seller is necessary. There is, however, a large group of cases in which it is apparent, or at least properly inferred, that the payment was actually made to the purchaser, and by him to the seller. In none of these cases, however, was the question raised by counsel or discussed by the court, and it cannot therefore be said that they establish a rule in the respective jurisdictions contra to that adhered to by the Illinois, Wisconsin, and Pennsylvania courts. Moreover, in most of these cases other circumstances were of sufficient importance to outweigh the absence of this one element. The following cases are in point:


Instantaneous Seizin

We come now to a consideration of the second class of cases, viz., those in which the lender's priority of lien hinges upon simultaneous execution and delivery of the deed and mortgage. The cases, as stated before, which turn upon the application of the recording statutes of the various states, are not included in the present inquiry. It should also be noted that this phase of the question concerns the conventional type of purchase money mortgage, from the purchaser to the seller, equally with a mortgage to secure a purchase money loan. There is, however, this practical difference to be noted, that, where there are only two parties concerned in the transaction, there is proportionately less occasion for a failure to deliver the deed and mortgage simultaneously, than where three parties must be gotten together by appointment to close a deal. No jurisdiction has been found in which any distinction is made between the two classes of purchase money mortgages, so far as instantaneous seizin is concerned. They were ranked together by Chancellor Kent in the following passage from the 4th volume of his Commentaries, page 39: "A transitory seizin for an instant, when the same act that gives the estate to the husband conveys it out of him, as in the case of a connuusee of a fine, is not sufficient to give the wife dower. Nor is the seizin sufficient when the husband takes a conveyance in fee, and at the same time mortgages the land back to the grantor, or to a third person, to secure the purchase money in whole or in part."

Strict Construction: No Physical Gap

The cases upon this point divide themselves naturally into two classes which arise from either a strict or a liberal application of the doctrine of instantaneous seizin. The strict construction is well illustrated by the case of Moring v. Dickerson, 85 N. C. 466, (1881), from which we quote as follows: "In our view of the case the mortgage given for the purchase money stands upon the higher ground and is entitled to precedence, not upon the ground of any supposed equity in the vendor as such to have the purchase money of the land sold or any right of subrogation in the defendant Farrar to his lien upon the land, but purely and simply upon the ground that..."
the two instruments, being executed at the same moment of time, are to be treated as one and construed as if the association [the seller] had conveyed the land directly to her [the lender] and had not made use of the defendant Dickerson [the purchaser and borrower] as an instrument to that end. If there had been an interval of time between the two transactions during which the title to the land had rested in Dickerson, then this right of priority would have been lost to her and attached to the elder mortgage." To the same effect is Rawlings v. Lowndes, 34 Md. 639, (1871), where the appellee insisted "that although the deed was delivered on the 28th of October, and the mortgage acknowledged and delivered on the 14th of November following, they nevertheless constitute and form parts of one and the same transaction, and the husband's seizin being therefore instantaneous and not beneficial, his widow is not entitled to dower." But the court's reply was that the mortgage "did not take effect until its acknowledgment and delivery; and it is clear that during the time intervening between the 28th of October, the day on which the deed was delivered, and the 14th of November, the day on which the mortgage was acknowledged and delivered, the husband had a beneficial seizin in the land, and a sale by him to a bona fide purchaser without notice, would have passed title even as against the lien of Reed for unpaid purchase money. If, therefore, it was the purpose of Reed, that the dower right of the wife should be postponed to his mortgage, it was his business to see that both instruments were delivered at the same time." The same reasoning controls in the following cases: Western Tie & Timber Co. v. Campbell, 113 Ark. 570, 169 S. W. 253; Cohn v. Hoffman, 50 Ark. 108, 6 S. W. 511; Gilman v. Dingeman, 49 Ia. 308; Cake's Appeal, 23 Pa. St. 186; Calmes v. McCracken, 8 S. C. 98; Faulkner County Bank & Trust Co. v. Vail, (Ark.) 293 S. W. 40, (1927); Savings Bank & Trust Co. v. Brock, 196 N. C. 24, 144 S. E. 365, (1928); State v. Johnson, (Utah) 268 Pac. 561, (1928).

Our own state of Illinois must be classed among those in which the rule is strictly applied, as has already appeared from the passage hereinbefore quoted from Curtis v. Root, supra. See also Christy v. Hall, 46 Ill. 117; Roane v. Baker, 120 Ill. 308; Elder v. Derby et al, 98 Ill. 228.

Liberal Doctrine: One Transaction

The more liberal construction is best illustrated by the decisions of the Supreme Court of Minnesota. In Stewart v. Smith, 36 Minn. 32, 30 N. W. 430, (1885), the purchaser, Burlingham, "being desirous of entering this land by pre-emption, applied to Sidle for money with which to make the entry; that it was agreed between them that Sidle should lend Burlingham the money or land-warrant with which to make the entry, and that, as security therefor, Burlingham should give Sidle a purchase-money mortgage on the land when entered; that pursuant to the agreement Sidle loaned Burlingham the funds with which to enter the land; that thereupon Burlingham immediately went from his home (both parties resided in Minneapolis, 80 or 90 miles distant from the land office) to Forest City, *** and *** on Friday, Sept. 13th, entered the land, paying therefor with the funds loaned him by Sidle, and immediately started back for his home, where he arrived on Sunday, Sept. 15th; that on Monday, September 16th, pursuant to the agreement above referred to, he and his wife executed to Sidle the mortgage in question***". In giving this mortgage precedence over a previously rendered judgment against Burlingham, the purchaser, the court said that "The doctrine which gives precedence, in such cases, to a purchase-money mortgage, is one of equity, and not of statutory origin, and applies to any claim to or lien upon the property arising through the mortgagor. The present case is also sought to be taken out of the operation of the rule because the purchase of land, and the execution of the mortgage, were not simultaneous; Burlingham having entered the land, and obtained his certificate of entry on Friday, September 13th while the mortgage..."
to Sidle was not executed until Monday, September 16th. The rule, as generally stated in the books, is that to give a purchase-money mortgage this precedence it must have been executed simultaneously, or at the same time, with the deed of purchase. Some ground for a narrow and literal construction of this language is furnished by the fact that the reason usually assigned for the doctrine is the technical one of the mere transitory seizin of the mortgagor, rather than the superior equity which the mortgagee has to be paid the purchase money of the land before it shall be subjected to other claims against the purchaser. But it is evident, both upon principle and authority, that what is meant by this statement of the rule is not that the two acts—the execution of the deed of purchase, and the execution of the mortgage—should be literally simultaneous. This would be almost an impossibility. Some lapse of time must necessarily intervene between the two acts. An examination of the cases will show that the real test is not whether the deed and mortgage were in fact executed at the same instant, or even on the same day, but whether they were parts of one continuous transaction, and so intended to be, so that the two instruments should be given contemporaneous operation in order to promote the intent of the parties. The facts bring the case clearly within the rule. There was a previous agreement that Burlingham should, after entering the land, give Sidle a purchase-money mortgage upon it. The mortgage subsequently executed in pursuance of that agreement, and as soon after the entry of the land as was reasonably practicable. Both acts were evidently intended by the parties as parts of a single continuous transaction. This case is cited and followed in Marin v. Knox, 117 Minn. 428, 136 N. W. 15, (1912); New Jersey Bldg. Loan & Inv. Co. v. Bachelor, 54 N. J. Eq. 600, 35 Atl. 745, (1886); Jones v. Tainter, 15 Minn. 512, (Gil. 423); Ray v. Adams, 4 Hun. (N. Y.) 332; Demeter v. Wilcox, 115 Mo. 634, 22 S. W. 613, (1893); East Ruth. Sav. Loan & Bldg. Assn. v. Neblo et al (N. J.) 139 Atl. 172, (1927).

In leaving this phase of the subject, it is almost superfluous to say that the careful practitioner in any jurisdiction will always see to it that the strict interpretation of the rule is complied with by insisting upon simultaneous delivery and recording of the seller's deed and the purchaser's mortgage.

**Lender vs. Vendor**

Finally we have for consideration that class of cases in which a mortgage from the purchaser to the seller to secure part of the purchase price contends for priority with a mortgage to a third party to secure the re-payment of money loaned with which to complete the purchase. A typical case, (so far as the facts are concerned), is that of Koevenig v. Schmitz, et al, 71 Ia. 175, 32 N. W. 320, (1887), in which the purchaser gave a mortgage to the seller for one-half of the purchase price, and also gave a mortgage to a lender to secure his note for money loaned with which to pay the other half of the purchase price. Neither seller nor lender contracted with the purchaser expressly for a first mortgage; neither knew of the purchaser's agreement to give a mortgage to the other. The lender paid the money to the purchaser, who in turn paid it to the seller. The mortgages were delivered simultaneously by the purchaser to the recorder for recording. The case as reported does not state when the deed to the seller was delivered or recorded, but as the mortgages are both stated to have been executed on the same day that the purchase was made, it is fair to assume that the deed to the purchaser was delivered by him to the recorder along with the mortgages. However, the question of instantaneous seizin is not touched upon in the opinion. The court held that "As the liens created by the mortgages accrued at the same instant, neither of the parties has any rights in the property superior to those of the other," and decreed that the proceeds of the property should be applied pro rata to the debts secured by the two
mortgages. It was argued on behalf of the seller that, as the seller surrendered his vendor’s lien when he accepted the mortgage, and as the lender had no prior interest or right in the property, and “surrendered nothing when he accepted the mortgage” [i.e., surrendered no right in the property], that therefore the seller should have priority over the lender. But the court held that “The mortgage created a new and distinct lien on the property. It did not have the effect to continue or preserve the vendor’s lien, but that lien ceased when the parties accepted the mortgage. The vendor’s lien arises by implication of the law. But a mortgage lien is created and measured by the contract of the parties. When a party accepts a mortgage, he acquires the rights and interest simply which accrue under the contract. The law neither adds to nor detracts from them.” The seller was therefore held to have no advantage from the fact that his mortgage was given to secure the purchase money.

**Seller Has Superior Equity**

The decision is, to say the least, shocking to one’s sense of justice. The absence of any authorities cited in support is conspicuous. The weight of opposing authority is irresistible. The facts in Schoch v. Birdsall, 48 Minn. 441, 51 N. W. 382, (1892), are almost identical with those in Koevenig v. Schmitz, supra, but in the Minnesota case the court held that “the plaintiff [seller] was not bound to search for conveyances made by his grantee while the latter was a stranger to the title, and before the execution of his deed, and the defendant [lender] whose mortgage was recorded before plaintiff’s [seller’s] conveyance was not a subsequent bona fide mortgagee, within the meaning of the recording act. In no view of the case is her mortgage entitled to priority,” citing Dusenbury v. Hulbert, 59 N. Y. 541, where it was also said, on page 546, that “A vendor of real estate has no occasion to examine the records for incumbrances created prior to his conveyance. He has the power to protect himself by a qualified or conditional transfer, or by any legal mode of creating a lien to secure himself for unpaid purchase-money. When he conveys and instantly takes a reconveyance as such security, no authority is needed to demonstrate the gross injustice of permitting a prior mortgage from intervening to his prejudice.” Schoch v. Birdsall is cited and followed in the recent case of O’Halloran v. Marriage, et al., 187 Minn. 443, 209 N. W. 271 (1926). The following cases are also unanimous in support: Turk v. Funk, 68 Mo. 18; Boyd v. Mundorf, 30 N. J. Eq. 545; Clark v. Brown, 3 Allen (Mass.) 509; Oliver v. Davy, 34 Minn. 292, 25 N. W. 629; Rogers v. Tucker, 94 Mo. 346; Bank’s Appeal, 91 Pa. St. 163; Van Loben Sels v. Bunnell, et al., 120 Cal. 680, 53 Pac. 266; Boles v. Benham, 127 N. Y. 620, 28 N. E. 657; Brower v. Wittmeyer, 121 Ind. 83, 22 N. E. 975; Truesdale v. Brennan, 153 Mo. 600, 55 S. W. 147; Protection Bldg. & Loan Assn. v. Knowles, et al., 54 N. J. Eq. 519, 34 Atl. 1083, affirmed in 55 N. J. Eq. 822, 41 Atl. 1116; Brasted v. Sutton, 29 N. J. Eq. 513; Montgomery v. Keppel, et al., 75 Cal. 128, 19 Pac. 176; Foster Lbr. Co. v. Harlan County Bank, 71 Kans. 158, 80 Pac. 49; Hinton v. Hicks, 156 N. C. 24, 71 S. E. 1086; Belvin v. Paper Co., 123 N. C. 138, 31 S. E. 655; Frazier v. Center, 1 M’Cord Eq. (S.C.) 270; East Ruth. Sav. Loan & Bldg. Assn. v. Neblo, et al., 139 Atl. (N.J.) 172 (1927); Savings Bank & Trust Co. v. Brock, 196 N. C. 24, 144 S. E. 355 (1928); Ex Parte Johnson, 147 S. C. 259, 145 S. E. 113, (1928).

**Importance of Privity Between Lender and Vendor**

It might be thought at first blush that these cases expose a weakness in the equitable rights of a lender of purchase money, and furnish an argument against classifying his mortgage as a purchase money lien; but in none of the cases cited is there an intimation that, as to all claims arising through the purchaser, other than the purchaser’s mortgage to the vendor, the lender’s mortgage would not take precedence. The cases should rather be taken as indicative of the importance to the lender of contracting with the seller as well as the purchaser, the
point upon which the Illinois, Wisconsin, and Pennsylvania courts laid so much emphasis, as herein before stated. This phase of such a contest between two purchase money mortgages is still better illustrated by Heffron v. Flanagan, 37 Mich. 274, in which the lender's mortgage won precedence because the seller delivered his deed to the purchaser in the presence of the lender, and at the same time the purchaser's mortgage to the lender was delivered, and the proceeds of the loan were paid over to the seller at the request of the purchaser, and the seller was therefore estopped by his silence from claiming that his purchase money mortgage, which had previously been delivered to and recorded by him, was entitled to preference. Other good cases on this point are: Ellsberry v. Duval-Percival Tr. Co., et al., 282 S. W. 1054 (Mo.) (1926); Thompson v. Litwood Oil & Sup. Co., et al 287 S. W. 279 (Tex.) (1926); State v. Johnson, 268 Pac. 361 (Utah) (1922).

Contra Decisions Examined

There are three jurisdictions, viz., Maryland, Ohio and Louisiana, in which decisions have been rendered that appear upon casual inspection to be opposed to the weight of authority, and they should, therefore, have our careful consideration.

The first of these is the Maryland case of Heulsler v. Nickum, 38 Md. 270, in which the court had the task of interpreting a statute which provides that "Whenever lands are sold and conveyed, and a mortgage is given by the purchaser at the same time to secure payment of the purchase money, such mortgage shall be preferred to any previous judgment, which may have been obtained against such purchaser." The opinion first handed down by the court was based upon an absence of instantaneous seizin, the warranty deed of the seller bearing date of Sept. 15, 1869, and the mortgage to a Building and Loan Assn. which advanced the money to the purchaser, being dated Sept. 15, 1869, three days later, which interval was held to permit prior existing judgments against the purchaser to attach and become liens superior to aid mortgage. After this opinion was filed the court's attention was called to an agreement of counsel (which had escaped the court's observation) to the effect that the mortgage and warranty deed had been delivered simultaneously, though bearing different dates. The court then filed a supplemental opinion in which it is stated that the phraseology of the statute above quoted "plainly implies that it referred to cases where the vendor having conveyed the land, took at the same time from the purchaser, a mortgage to secure the payment of the purchase money. The terms "purchase money" do not include any money that may be borrowed to complete a purchase, but that which is stipulated to be paid by the purchaser to the vendor, as between them only it is purchase money; as between the purchaser and lender, it is borrowed money.

"But it is said the spirit and equity of the Act, if not its language, would embrace any one advancing money, to pay for lands bought by another.

"Such a construction is decidedly against the tenor of our decisions referred to in the previous opinion filed in this case. Vide 6 Md., 56, and cases there cited.

"It is equivalent to assigning the vendor's lien without limit, and might subject judgment creditors to many embarrassments, not now foreseen.

"Believing the framers of the law had no such latitudinarian views, we are of the opinion that the mortgage given in this case, is not within the section referred to, and is not preferred to previous judgment creditors."

The decisions referred to as having been cited in the main opinion do not at any point deal with the equitable considerations which have led the courts of so many other states to decree prior rights to mortgages given to secure purchase money loans. The court in the supplementary opinion attempts to make a distinction between a purchase money mortgage of the conventional type, and a mortgage given to secure money loaned to the purchaser with which to make the purchase, but cites no cases other than,
those reviewed in the main opinion, all of which are based on instantaneous seizin. If the deed and mortgage in Heuisler vs. Nickum had been dated, acknowledged, delivered and recorded simultaneously, then the court plainly implies in the opinion as first filed, that the prior judgments against the purchaser would have been postponed to the lien of the mortgage.

The Maryland statute above quoted is identical in wording with that of the New York statute which was the basis of the decision in Jackson vs. Austin, 15 Johns. 477, where it was said that "a just and fair construction will warrant its application to the present case," in which the mortgage was to one who advanced the money with which the purchase was made. This New York case was cited by counsel, but was ignored by the court in rendering its opinion. In the supplementary opinion the court admits that the fact of simultaneous delivery of the deed and mortgage satisfied the requirement of instantaneous seizin, but still refuses to give the mortgage priority over previously rendered judgments against the purchaser on the ground that mortgage was given to secure a loan, and not to secure the payment of a balance due to the seller on the purchase price. No new citations or any reasoning whatever are given in support of the court's arbitrary position in this case.

No Privity Between Lender and Vendor

It should be said to the credit of the court that the opinion as first filed calls attention to the fact that in the mortgage to the lender, "There is no reference whatever to the purchase by the mortgagor of Dempster [the seller] or the application of the money advanced by the Building Association [the lender] to the payment of the purchase money;" and again: "There is nothing in the record, to show privity between Mary Dempster, the vendor, and the Amicable Building Association, the mortgagee. The lien of the vendor was extinguished by the application of the money borrowed from the mortgagee.*** It is interesting to speculate as to what effect it would have had upon the decision if the evidence had shown payment of the proceeds of the loan by the lender direct to the vendor, and if the previously rendered Illinois, Wisconsin, and Pennsylvania decisions on this phase of the question had been cited to the court for consideration. These cases seem to have been overlooked by both counsel and court, and it is very possible that due consideration of them would have won a decision for the lender.

Later Maryland Decisions Confusing

But it is unnecessary to pine and sigh over what might have been, for the Maryland court itself has come to the rescue by qualifying its position in a later decision, that of Glenn, et al, vs. Clark, 53 Md. 380, where we find, on page 609, that "If instead of making the mortgage directly to the vendor, it be made to a third person who furnishes the purchase money, or from whom it is borrowed by the purchaser for the purpose of paying the purchase money, the same principle of equity applies in favor of the mortgagee, provided the whole constituted one and the same transaction; and in such case the rights of the mortgagee are paramount to the right of dower of the wife of the purchaser." This decision places Maryland squarely in line with the weight of authority in other states, at least so far as a purchaser's wife's claim for dower is concerned, and it is difficult to see how the Maryland court can escape from applying this same reasoning to the claim of a judgment creditor of the purchaser, under a judgment rendered prior to the conveyance to the purchaser. Both the dower and judgment claims are legal in nature and are sought to be collected out of property which, to the extent of the mortgage over which priority is claimed, has never been paid for by nor belonged to the purchaser, through whom both claims arise.

The force of the adverse holding in Heuisler vs. Nickum was also much weakened by the following paragraph in Ahern vs. White, 39 Md. 409, at pages 419-420: "In Heuisler vs. Nickum, 38 Md. 270, a party purchased and received..."
deed for the land, and three days afterward mortgaged it, not to the vendor, but to a third party, and we held, after a review of the previous decisions, including that of Rawlings vs. Lowndes, that a prior judgment against the vendee had preference over the mortgage, because of the interval of three days during which the interest of the mortgagor in fee under the deed to him, was subject to be seized in execution on the judgment. An agreement of counsel in the case, which at first had escaped the attention of the court, to the effect that the mortgage was given simultaneously with the deed, and that the money obtained from the mortgagee was applied in payment of the purchase money, induced the filing of a suplemental opinion, in which it was determined that the 3rd section of Article 64 of the Code applied only to cases where it is given to the vendor to secure the purchase money, and not to a case where it is given to a third party, though the money thus obtained may have been applied to pay for the property. That was all the Court intended to decide by this supplemental opinion. The priority of the judgment was left to stand as in the original opinion upon the interval of time between the deed and the mortgage, during which the interest of the purchaser under his deed, was liable to be seized in execution on the judgment."

It will be seen that the court here states that the decision in Heuisler vs. Nickum rests upon the absence of instantaneous seizin, and in the same breath admits that the deeds were simultaneously delivered and the seizin was therefore instantaneous. It is expressly stated that the decision did not turn upon the question of whether a mortgage to secure a loan to the purchaser with which to complete the purchase is a purchase money loan or not. The court therefore admits that its holding on this question, as set forth in the supplemental opinion in Heuisler vs. Nickum, is a mere dictum. It is submitted that this dictum, expressed in a case where a prior judgment was involved, is irreconcilable with the later holding in Glenn vs. Clark, where the dower rights of a purchaser's widow were at stake.

The confusion in which the court has become involved on this subject is made even more manifest by another paragraph from Glenn v. Clark, supra: "The decision of Heuisler vs. Nickum turned upon the construction of the 3d section, Art. 64, of the Code, in which the term "purchase money" was held to mean the sum stipulated to be paid by the purchaser to the vendor, and did not include money that may be borrowed to complete the purchase. This last decision rests upon the construction of the words of the code, and has no application to the doctrine of transitory seizin."

The Maryland Court cannot be said to be unalterably opposed to the principle contended for when that court has made contradictory statements as to the real basis of the decision in Heuisler vs. Nickum, and when it has, in Glenn vs. Clark, held in favor of the principle when the dower of a purchaser's widow is involved, instead of the claim of the purchaser's judgment creditor.

Ohio and Louisiana Not Contra

As to Ohio, it will be found that Stan- sell v. Roberts, 13 Ohio 148, 42 Am. Dec. 193, the leading case on the subject in that state, is very similar to the Illinois case of Eyster v. Hatheway, supra, in that the proceeds of the loan were not paid to the seller, but to the purchaser, and the court calls attention to the fact that the lender was not privy to the sale transaction, and that he looked to no other security than that afforded by the mortgage. The same element is absent from the facts in Building Assn. v. Clark, 43 Ohio St., 427, 2 N. E. 846, and Mutual Aid Bldg., etc., Co. v. Gashe, 6 Oh. Cir. Dec. 779. While this is not sufficient basis for assurance that the Ohio Supreme Court will follow those of Illinois, Pennsylvania and Wisconsin, yet until a proper case is presented to and passed upon by that court, Ohio cannot be said to be an outlaw upon this question.

The case of Fontenot et al, v. Solleau, 2 La. Ann. 774, (1947) is also worthy of comment as not being in harmony with
the weight of authority. Here the purchaser's wife had a valid legal mortgage on her husband's property which was of such a nature as to bind after acquired property. The husband borrowed money from a third party with which to purchase land from the government, and on the same day that the purchase was made he executed a mortgage to the third party to secure the re-payment of the money loaned. The court held that the third party was not "entitled to the vendor's privilege. The privilege of a vendor would have existed in favor of the United States, had they sold on a credit; and in that case a subrogation of such right might have been made in favor of the plaintiffs by the vendor. But as the sale was for cash, and the price was paid down at the time of sale by Soileau, the vendor's privilege never existed. Privileges are matters stricti Juris. They exist only in those cases which the lawgiver has expressly declared. C. C. 3152. The case before us is not protected by the Code, and however strongly its hardship may appeal to the conscience of the defendant, there is no authority in us to relieve the plaintiff." No citations are given in support of this decision. The present writer has found no other case on the subject of purchase money mortgages, either in Louisiana or any other jurisdiction, in which this case is cited or followed. It confers a benefit upon the wife of the purchaser, as mortgagee under a mortgage executed by her husband five years before the purchase was made, for which she gave no consideration whatever, and the court admits that the hardship upon the party loaning the money is not without appeal to one's conscience. The facts are practically identical with those involved in the two Minnesota cases hereinbefore cited, viz., Jones v. Tainter, and Stewart v. Smith, in which cases a contrary decision was announced, and supported by sound reasoning. It is, therefore, submitted that this Louisiana decision is not worthy of consideration by the courts of other jurisdictions. It may be that the decision would have been different if the proceeds of the sale had been paid direct to the seller, as the court does not specify just how the vendor could have made a subrogation of his right in favor of the plaintiffs [lenders]. Louisiana is, therefore, in much the same position as Ohio.

Rules of Practice

Four important rules of practice are deducible from the study of this subject. The first, and most imperative, is that the lender, in order to be sure of securing a purchase money lien, should contract with the seller, as well as with the purchaser, for such a lien, and should pay the proceeds of the loan direct to the seller.

The second is that, as evidence of compliance with the first rule, a recital should be inserted in the seller's deed to the effect that it is subject to the lien of a purchase money mortgage to the lender to secure the payment of notes delivered to the lender by the purchaser, and a further recital that the seller, by delivering this deed, acknowledges receipt, direct from the lender, of the proceeds of said notes. This recital would estop the seller from claiming priority over the lender for any other purchase money mortgage which the purchaser might have given to him. In the mortgage there should be a corresponding recital to the effect that it is given by the purchaser to secure the payment of his notes which he has delivered to the lender, proceeds of which notes the lender is requested to pay direct to the seller.

The third rule is that the deed from the seller to the purchaser, and the mortgage or trust deed from the purchaser to the lender or to his trustee, should be dated and acknowledged, and must be delivered and recorded, simultaneously.

The fourth rule is concerned with the practical problem of the necessity of proving to any prospective purchaser of the notes the fact that the proceeds of said notes, given by the purchaser, were paid by the lender direct to the seller. This is, however, the same problem that exists in the case of the ordinary purchase money mortgage given by the purchaser to the seller. The recital of the facts in the deeds, as above suggested,
would be only prima facie evidence, for purchase money priority in every instance arises from the equities of the case, and not from any contract, or the intention of the parties; it is based on what was actually done, not upon what the parties say they did. Continental-Equitable Title, etc., Co. vs. Conservation Bldg., etc., Assoc., 198 Pa. 295, 109 Atl. 776. The best solution consists in having the entire transaction handled by a responsible bank or trust company as escrowee, the lender depositing the proceeds of his loan with said escrowee, with instructions to pay the same direct to the seller, (not to the borrower), when title conditions have been satisfactorily complied with by the seller. The evidence would thus be always available in the files of the escrowee, a neutral party, showing that all the requirements set forth in the above cited decisions have been complied with, so as to make the mortgage in question a valid purchase money mortgage. The problem is, of course, much simplified if a title guarantee policy on the mortgage is procured, as the evidence need then be submitted but once, viz., to the company issuing the policy.

It is believed that a wide spread acquaintance of realtors, lenders and lawyers, with the equitable principle underlying the decisions herein discussed, will result in the saving of much time and expense in the closing of deals to which the principle is applicable.


Scholarship Cup Changes

Hands

The scholarship averages of the eight fraternities represented at Chicago Kent have been compiled for the second semester of the 1928-29 college term. The averages and relative standing of the fraternities in the scholarship cup contest follows:

Alpha Sigma Iota ............. 1.706
Phi Delta Phi .................. 1.674
Sigma Delta Kappa ............. 1.576
Delta Theta Phi ................. 1.483
Nu Beta Epsilon ............... 1.483
Kappa Beta Pi .................. 1.402
Phi Alpha Delta ................ 1.387
Delta Chi ...................... 1.082

This is the first time that Alpha Sigma Iota have gained possession of the coveted cup. Previously Phi Alpha Delta had won it once, Delta Chi twice, Nu Beta Epsilon three times and Phi DeltaPhi five times.