

525.

COUNTY RECORDER—DETERMINATION OF PARTIES TO CHATTEL MORTGAGE FROM LANGUAGE OF INSTRUMENT—FEES FOR INDEXING—SPECIFIC CASE.

SYLLABUS:

In indexing the names of parties to a chattel mortgage under the provisions of Sections 8562 and 8572, General Code, the county recorder, in determining the "parties thereto," is limited to the language of said instrument, and may not index and charge therefor, the name of a person whose only connection with said instrument, as disclosed by the language therein, is that his office is named as the place of payment of the debt secured by said chattel mortgage.

COLUMBUS, OHIO, June 15, 1929.

HON. JOHN K. SAWYERS, JR., *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

"I am enclosing herewith a copy of a letter received from J. R. R., county recorder, Monroe County, Ohio, together with an attached form of chattel mortgage made out to fit the problem presented to him.

His letter is self-explanatory and raises a question along the line covered by Opinion Number 3037 of the Attorney General rendered December 19, 1928, in regard to the fees of chattel mortgages.

Kindly advise this office on the question raised in Mr. R.'s letter."

The county recorder's letter which you enclosed, reads as follows:

"You will please find enclosed a copy of a chattel mortgage which I have enclosed for your benefit in computing the correct charges for filing the same in this office.

On December 26, 1928, I received circular Number 657 of the Bureau of Inspection and Supervision of Public Offices, which circular covered Opinion No. 3037 of the Attorney General rendered December 19, 1928, in regard to the fees of chattel mortgages, upon which I have tried to base the charges of this office.

You will note, after reading the enclosed form, that it does not contain an assignment, but is made payable at the office of Universal Credit Company, while the mortgage is given to The A. E. Kennard & Son Co.

I believe that the indexing of this instrument would be as follows: Heber Hines to The A. E. Kennard & Son Co. The A. E. Kennard & Son Co., from Heber Hines. The A. E. Kennard & Son Co., to Universal Credit Co., and Universal Credit Co., from The A. E. Kennard & Son Co., making in all four entries in our chattel mortgage index, and furthermore, I believe that the correct fees would be under the above ruling, .36c, while the mortgagor refuses to pay more than .25c. The question is, 'Is this chattel assigned, and is it necessary to index it to The Universal Credit Co.?'"

The pertinent parts of said chattel mortgage reads as follows:

"Original—to be sent to
Universal Credit Company.

The undersigned Mortgager hereby purchases from the undersigned mortgagee, subject to the terms and conditions hereinafter set forth, the following property, complete with standard attachments and equipment, delivery and acceptance of which is hereby acknowledged by mortgagor, viz.:

(Here follows description of automobile.)

For \$291.50 on or before delivery, leaving a Deferred Balance of \$456.00 payable at the office of Universal Credit Company, in 12 installments of \$35.00 each on the same day of each successive month and commencing one month from the date hereof, or as indicated in Schedule of Payments below, with interest thereon after maturity at the highest lawful contract rate, and if this contract be placed with an attorney for collection, 15% of the amount due hereunder as attorney's fees, or if prohibited, the amount prescribed by law.

(Here follows Schedule of Payments, and this is followed by the usual terms and conditions of a chattel mortgage.)

Executed in triplicate, one copy of which was delivered to and retained by the mortgagor, this -----day of ----- 1929.

Signed -----
(Purchaser-Mortgagor's Signature.)

(Seller-Mortgagee's Signature.)"

There are no other words or figures on said instrument which can be construed as an assignment, and as stated in the letter of the county recorder, supra, said chattel mortgage "does not contain an assignment, but is made payable at the office of Universal Credit Company, while the mortgage is given to The A. E. Kennard & Son Co." The question of the county recorder, therefore, is as to whether the words in said chattel mortgage "payable at the office of Universal Credit Company" indicate and in fact effect an assignment of said chattel mortgage and whether it is necessary to index it to the presumed assignee.

In Opinion No. 3037, to which you refer, my predecessor held as stated in the syllabus, that:

"1. Where an assignment of a chattel mortgage is made after the original mortgage has been filed, it is the duty of the county recorder to charge a fee of six cents for each party to the assignment for indexing such assignment.

2. Where a chattel mortgage is presented with an assignment already made, it is the duty of the county recorder to charge the amount provided for the filing of the original mortgage and in addition thereto, six cents for each party to the assignment."

It is noted that in each paragraph of the syllabus the answer assumes that an assignment of the chattel mortgage has in fact been made, but does not consider the sufficiency of an assignment.

Assignments of choses in action need not be in writing: *Gamble vs. Carlisle*, 3 N. P. 279; 6 D. 48; as a verbal assignment is valid and conveys a good title, except in the case of certain kinds of property especially provided for by statute, such as assignment of leaseholds and other interests in land, and assignment of a patent or interest therein.

In the case of *Robbins, et al. Partners, vs. Klein, Lichtenstader & Company, et al.*, 60 O. S. 199, Bradbury, C. J., at page 205, says:

"We know, however, of no rule of law that requires a written instrument

to effect the transfer of a debt by assignment, although that method may be both usual and prudent. Many cases are found in the books that uphold the assignment of a debt or even a part thereof, although not witnessed by any written instrument whatever, or accompanied by a delivery of the possession of the instrument which witnesses the debt. * * * In *Barthol vs. Blakin, et al.*, 34 Iowa, 452, it was held that a note and mortgage could be assigned 'verbally.'

However, the foregoing has reference only to the rights of the parties and not to the duties of the recorder. The county recorder must consider the rights of the parties as evidenced in the instrument before him, and if said instrument itself does not contain the evidence of an assignment, he may not assume that said assignment has been made. The chattel mortgage under consideration states that the payments are to be made at a specified office, namely, The Universal Credit Company, but there is nothing in said instrument to indicate that said Universal Credit Company is the assignee of said funds. Promissory notes and other evidences of indebtedness frequently contain statements that the same are payable at a certain bank, but it cannot be said that this effects an assignment of the interests of the payees in said instrument. While no particular mode or form is necessary to effect a valid assignment, yet it is clear that there must be sufficient words upon said chattel mortgage to effect an assignment of the interest of the payee therein.

The term assignment is defined in 5 C. J. page 836 as "a transfer, or making over to another of the whole of any property, real or personal, in possession or in action, or of any estate or right therein." And at page 906, it is stated:

"Where the assignment is in writing no special form of words or language is required to be used, although the operative words of an assignment generally used are 'sell, assign, and transfer,' or 'sell, assign, and set over.' It may be in the form of an order on the debtor or holder of the fund assigned to pay his debt or fund to another person. Any language, however informal, if it shows the intention of the owner of the chose in action to transfer it, will be sufficient to vest the property therein in the assignee."

The foregoing quoted language supports the statement herein previously made that the assignment must be made in language which at least shows the intention of the owner of the chose in action to transfer it.

It seems evident that the language in the instant chattel mortgage is not sufficient to show the intention of the owner to make a transfer or assignment thereof, and the Universal Credit Company is therefore not a party to said instrument.

Section 8562 of the General Code prescribes the duty of the county recorder upon the filing of the chattel mortgage and reads in part as follows:

"The officer receiving such an instrument shall indorse thereon the time of receiving it and its consecutive number, and enter in a book to be provided by the county the names of all parties thereto, alphabetically arranged, with the number of the instrument, its date, the day of filing it, and the amount secured thereby, which entry must be repeated, alphabetically, under the name of every party thereto. * * * "

The county recorder is commanded to enter in a book the names of "all parties thereto." It is also provided that the entry must be repeated alphabetically under the name of "every party thereto."

Section 8572, General Code, provides what fees the county recorder may charge

for performing the duties prescribed in the section hereinbefore quoted. Said section reads in part as follows :

“For services in respect to chattel mortgages, or instruments for conditional sales, as provided in this chapter, the officer shall be entitled to receive the following fees: For filing each instrument or copy, six cents; for searching each paper, six cents; for making the entries upon the filing of an instrument, six cents for each party thereto; * * * ”

In addition to the fee allowed for filing each instrument, and the fee for searching each paper, there is a fee for making the entries upon the filing of said instrument “for each party thereto.” It will be noted that under the provisions of Section 8562, supra, the duty of the county recorder is to make an entry in his book of the names of the parties thereto and to repeat said entry under the name of every party thereto. It will also be noted that under the provisions of Section 8572, supra, the county recorder is authorized to charge in addition to the fees for filing the instrument and searching each paper, a fee for each party thereto. It is evident that in filing chattel mortgages and in making the entries required by law the county recorder is authorized to consider the parties to the chattel mortgage and the amount of his fees in such cases is based upon the number of the parties to said instrument.

It is therefore my opinion, specifically answering your question, that the language used in the instant chattel mortgage is insufficient to show the intention of the owner thereof to transfer or assign the same to the Universal Credit Company, and said company is not a party to said instrument, and it is therefore not necessary for the county recorder to index the name of said company.

Respectfully,

GILBERT BETTMAN,
Attorney General.

526.

SQUIRRELS—LEGALLY OBTAINED OUTSIDE OHIO—MAY BE POSSESSED ALIVE IN ENCLOSURES AT ANY TIME AS PETS.

SYLLABUS:

Under Section 1400 of the General Code of Ohio, squirrels lawfully purchased or taken outside of the State of Ohio and brought into Ohio may be possessed alive in enclosures at any time as pets.

COLUMBUS, OHIO, June 15, 1929.

HON. PERRY L. GREEN, *Director Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date, which is as follows :

“The following is a letter from the Chief of the Division of Fish and Game:

‘Would suggest that you ask the Attorney General for a ruling as to whether or not it is permissible to keep squirrels in enclosures as pets when bought outside the state, as Section 1400 states that squirrels, legally taken, may be possessed alive at any time as pets, while Section 1397 states that