

PROSECUTING ATTORNEY CLAY COUNTY: CHATTEL MORTGAGES:

Can a contract for a crop mortgage be filed as a chattel mortgage; priority question.

May 25th, 1933. ⁶⁻¹⁴

FILED
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Mr. James S. Rooney,
Prosecuting Attorney Clay County,
Liberty, Missouri.

Dear Mr. Rooney:-

We acknowledge receipt of your letter of May 10, 1933, enclosing a letter from Nicholas Mosby, Recorder of Deeds for Clay County, as follows:

"I am enclosing a copy of a Contract for Crop Mortgage marked 'Exhibit A', which has been presented to me for filing.

Will you kindly inform me whether or not such a contract is eligible for filing as a chattel mortgage is filed; and if so, if this contract would take priority over a chattel mortgage filed at a later date.

I will appreciate your prompt reply in regard to this matter as I think it probable that more of these contracts will be presented to me for filing. I would also appreciate having the opinion of the Attorney General of Missouri, if you will be kind enough to write him."

"Exhibit A", referred to above:-

"CONTRACT FOR CROP MORTGAGE
given to

Kansas City, Mo.

WHEREAS I, the undersigned of _____ County, _____, am indebted to _____, in the sum of _____ Dollars, (\$ _____), and said indebtedness being evidenced by _____ certain promissory notes, one for \$ _____ dated the _____ day of _____, 1932, and payable the _____ day of _____, 1932, and one for \$ _____, dated the _____ day of _____, 1932, and payable on the

_____ day of _____, 1932, and

WHEREAS, _____ of said notes becoming due on _____, 1932, still remains unpaid:

NOW, THEREFORE, in consideration of a renewal or extension of the time of payment of said note I hereby agree to execute a chattel mortgage in favor of the said _____, their heirs, successors or assigns, on certain crops to be planted by me in the spring of 1933, to wit:

The above chattel mortgage is to be given as additional security, and I agree to execute said mortgage as soon as the above crops have been sown and a mortgage thereon can validly be made; and I hereby expressly agree that the mortgage so given shall be a valid first lien upon the aforesaid crops.

PROVIDED, that if the undersigned shall pay the indebtedness evidenced by the certain promissory notes mentioned above, on or before the _____ day of June, 1933, then this contract shall be void; otherwise to be in full force and effect.

WITNESS my hand and seal, this 28th day of February, 1933.

_____, Witness _____ (Seal)

_____, Witness _____ (Seal)"

Article 3 Chapter 22, Revised Statutes of Missouri, 1929, sections 3097 to 3102, inclusive, same being the statutory article on Chattel Mortgages, makes no provision for the filing of such an instrument as "Exhibit A". The instrument purports to convey nothing and is not a mortgage but a mere agreement to execute a mortgage at a future time, hence it could not be filed as a chattel mortgage is filed.

Section 11543, Revised Statutes of Missouri, 1929, however, provides as follows:

"Sec. 11543. What shall be recorded.--It shall be the duty of recorders to record: First, all deeds, mortgages, conveyances, deeds of trust, bonds, covenants, defeasances, or other instruments of

writing, of or concerning any lands and tenements, or goods and chattels, which shall be proved or acknowledged according to law, and authorized to be recorded in their offices; second, all papers and documents found in their respective offices, of and concerning lands and tenements, or goods and chattels, and which were received from the Spanish and French authorities at the change of government; third, all marriage contracts and certificates of marriage; fourth, all commissions and official bonds required by law to be recorded in their offices; fifth, all written statements furnished to him for record, showing the sex and date of birth of any child or children, the name, business and residence of the father, and maiden name of the mother of such child or children."

We are of the opinion that the last mentioned section would provide for the recording of such an instrument as "Exhibit A" if it were properly acknowledged according to law.

As to the further question, whether such recorded contract would take priority over a chattel mortgage filed at a later date, we have, after an exhaustive perusal of the authorities, been unable to find any Missouri case construing the particular type of transaction involved herein. The validity of a chattel mortgage is governed by the laws of the state in which the mortgaged property is located. *Steckel vs. Swift & Co.*, 56 S. W. (2d) 806. The absence, therefore, of any authority on this precise question makes it impossible for us to say definitely just what the decision would be should the matter come before the courts of this state. In this connection, however, it seems plausible to advert to the case of *Brunswick & Balke Co. vs. E. L. Martin & Co.*, 20 Mo. Appeals, 158. This case, though different in many ways from our present situation, was a case where in a contract of sale the purchaser agreed to execute a chattel mortgage on the property to secure certain notes given as part of the purchase price, the seller, through his agent, to hold possession of the property until said chattel mortgage was duly executed. Through some mistake the purchaser obtained possession and mortgaged the property to a third party; subsequently, the same purchaser executed the agreed mortgage to the seller. In a contest between the seller and the third party as to their rights the seller prevailed.

As said above, the Brunswick Case does not involve the same legal factors as would a case involving an instrument such as

Mr. James S. Rooney

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"Exhibit A", but in view of the fact that the courts of Missouri have never passed on your exact question, the similarity of the two situations may be indicative as to how our courts would regard it.

Very truly yours,

CHARLES M. HOWELL, Jr.
Assistant Attorney General.

Approved:

Attorney General

CMEJr:LC