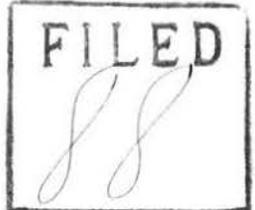


PROSECUTING ATTORNEY:

Where chattel mortgage is filed in one county and unauthorized sale of the chattel is made in another county, the latter county is the proper county in which to bring the prosecution.

March 8, 1934. 3-13



Mr. William E. Stewart,
Prosecuting Attorney,
Edina, Missouri.

Dear Mr. Stewart:-

We have your letter of December 16, 1933, in which was contained a request for an opinion as follows:

"I have the following question that I would like to ask you. The Guaranty Finance Corporation of Edina has a chattel mortgage on an automobile owned by one Fred Johnson. The chattel mortgage was filed in the office of the Recorder of Deeds of Knox County, Missouri. The said Fred Johnson sold the automobile described in the chattel to Martin Brothers of Kahoka, Missouri, the sale was made in Kahoka, Clark County, Missouri. Where is the proper county to bring the prosecution? I am of the opinion that the crime was committed in Clark County. I would like to have a reply as early as possible."

Section 3377, Revised Statutes of Missouri, 1929, provides as follows:

"Sec. 3377. Offenses, where punished.--Offenses committed against the laws of this state shall be punished in the county in which the offense is committed except as may be otherwise provided by law. (R.S. 1919, Sec. 3722)."

The offense referred to in the letter above quoted is made an offense against laws of this state by Sec. 4100, Revised Statutes of Missouri, 1929. The sole matter for decision, therefore, is as to which county is the county in which the offense was committed.

A search of the laws and decisions of this state has failed to yield any case where this matter has been expressly passed on, but a very slight digression in the field of analogy will solve our problem.

In this connection we advert to the often cited case of State vs. Shaeffer, 89 Mo. 271. This was a case of obtaining money under false representations and the Supreme Court at page 280 stated as follows:

Mr. William E. Stewart

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"We entertain no doubt that the place where the money or goods are obtained, without regard to where the representations were made, is the place where the party should be prosecuted."

In addition, see 9 Ruling Case Law 1293, where it is stated:

"As a general rule the accused must be tried in the county where the act of appropriation or conversion took place."

Also, to the same effect the case of Ex Parte Hammond 59 F. (2d) 683, at page 685.

In our present case the prospective defendant did nothing unlawful in Knox County; he merely placed a mortgage on his automobile. It was in Clark County that he perpetrated his unlawful acts, therefore there should he be prosecuted. For instance, the Court in the Shaeffer case above cited said that there was nothing unlawful per se in the false representations made in another place, but that it was the obtaining money as a result of those false representations wherein the crime lay. The Shaeffer case is a stronger case than the one at hand, but it clearly illustrates the attitude of our courts.

Very truly yours,

CMHJr:LC

CHAS. M. HOWELL, Jr.
Assistant Attorney General.

Approved:

Attorney General.