

VENUE: Ordinarily venue in a criminal case for removing and concealing mortgaged property is in the county of the residence of the defendant.

8/21
August 25, 1939



Mr. G. Logan Marr
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Dear Sir:

We are in receipt of your request for an opinion as to the venue of an offense of removing or concealing mortgaged property with the intent to hinder, delay and defraud the mortgagee.

Section 4100 R. S. 1929 is the statute setting out the offense of disposing of mortgaged property and is as follows:

"Every mortgagor or grantor in any chattel mortgage or trust deed of personal property who shall sell, convey or dispose of the property mentioned in said mortgage or trust deed, or any part thereof, without the written consent of the mortgagee or beneficiary, and without informing the person to whom the same is sold or conveyed that the property is mortgaged or conveyed by such deed of trust, or who shall injure or destroy such property, or any part thereof, or aid or abet the same, for the purpose of defrauding the mortgagee, trustee or beneficiary or his heirs or assigns, or shall remove or conceal, or aid or abet in removing or concealing such property,

or any part thereof, with intent to hinder, delay or defraud such mortgagee, trustee or beneficiary, his heirs or assigns, shall, if the property be of the value of fifty dollars or more, be deemed guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the penitentiary not exceeding five years, or by imprisonment in the county jail not exceeding six months, or by a fine of not less than one hundred dollars, or by both such fine and imprisonment. And if such property be of less a value than fifty dollars he shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one hundred dollars, or by both such fine and imprisonment."

The statute sets out three separate offenses which are:

- (1) selling, conveying or disposing of mortgaged chattels;
- (2) injuring or destroying such chattels; and
- (3) removing or concealing same with the intent to hinder, delay or defraud the mortgagee, his heirs or assigns.

Section 3377 R. S. 1929 is the general venue statute and is as follows:

"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."

This general statute will apparently cover every offense set out under Section 4100, except that of removing mortgaged chattels with the intent to hinder, delay or defraud, since the selling, injuring or destroying and the concealment of property must take place at a definite location.

A search of Missouri cases reveals only a few in which the defendant was charged with and convicted of removing mortgaged chattels with the intent to defraud, and in none of these cases was the question of venue directly raised. Each of the cases mentioned charged the defendant in the county of his residence, which in all cases was the county in which the mortgaged chattels were located.

In the case of State vs. Frank Miller 255 Mo. 223, the defendant resided in St. Louis, Missouri, and gave a chattel mortgage for a part of the purchase price of furniture. The defendant loaded the furniture on a freight car at the Union Station where it was transported to Wisconsin. No question of the jurisdiction of the court in St. Louis City was raised and an inference may be drawn that the venue was proper.

A search of the cases in other jurisdictions fails to reveal any case in which this question was directly passed upon. In two of such cases, however, the courts raised a similar hypothetical question. In State vs. Julien 48 Iowa Reports 445, the defendant was charged with selling or concealing mortgaged property in Plymouth County. The facts revealed that the defendant removed the property from Plymouth County but sold same in the State of Kansas. We find the following in the opinion of the court, l.c. 447:

"It is true the property could not be legally sold, but the defendant cannot be convicted for a sale unless it was made in that county. An intent to sell, conceal, or dispose of, wherever formed, does not constitute a crime. It is difficult to see how a sale in Kansas can relate back so as to become a sale in Plymouth county in this State. Nor can a concealment at Decatur, Nebraska,

or elsewhere, by relation, constitute and make a concealment in such county. Elasticity is an unknown quantity or quality in a criminal statute. The State v. Lovell, 23 Iowa, 304.

* * * * *

There is no evidence tending to show where the defendant was when he started to Kansas. He may have been in either Sioux or Plymouth county. If the defendant started from either place and went to Kansas, and there sold the property without the consent of the mortgagee, we think this would amount to a concealment or disposal of the property in such county, for while so removing the property he was 'hiding or putting it away.'

In the case of Robberson v. The State 3 Tex. App. Reports 502, the defendant was charged with fraudulently disposing of a bale of cotton. The facts showed that the cotton was removed from one county and sold in another, the indictment being filed in the county from which the cotton was removed. The argument of the state's attorney is quoted at length in which we find the following, l.c. 503:

" * * * But, suppose the cotton had been removed from the latter county, out of the state, where would the venue lay? I say, in the county where the mortgage was given, and subsisting at the time of such fraudulent removal, selling, or disposition."

The court in its opinion did not contradict this statement by the state's attorney but approved same by implication in its opinion where we find the following, l.c. 506:

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"This prosecution is not pretended to be based upon a removal of the property beyond the state, but can only be maintained on the clause making it penal to sell the property; which necessitates the inquiry as to whether, under this clause, the prosecution could be maintained in a county other than the one in which the selling took place."

All of the cases emphasize the consideration of the provisions of the mortgage itself which, in this state, ordinarily provides that the property shall not be removed from the county of the defendant's residence without written consent of the mortgagee.

We are of the opinion, after a consideration of all the above authorities, that the venue for the offense of removing mortgaged property with intent to hinder, delay or defraud the mortgagee, his representatives, heirs or assigns, ordinarily lies in the county where the mortgaged chattels were lawfully situated by authority of the mortgagee at the time of such fraudulent removal where the property is removed from this state.

Respectfully submitted,

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APPROVED:

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RLH:RT