

RECORDERS:

Where chattel mortgages convey personal property, and also affecting real property, they should be recorded.

September 17, 1940

9-26



Honorable J. Jules Brinkman
705 Olive Street
St. Louis, Missouri

Dear Sir:

This will acknowledge receipt of your letter of August 21st, 1940, in which you ask for an opinion in the form of four questions set out below--

"1. May the Recorder of Deeds accept a copy of a chattel mortgage on a coal stoker for filing, in place of entering the contents in a book where the real estate in which it is installed is located in the City of St. Louis and the mortgagor resides in the City of St. Louis?

"2. When the holder of a chattel mortgage on a coal stoker presents said chattel mortgage to the Recorder for recording in the real estate records, for the purpose of giving constructive notice to the purchasers of the real estate, is it the duty of the Recorder to record it in such records if properly acknowledged?

"3. Where the owner of the chattel resides in St. Louis County and the chattel mortgage on the chattel in question has been properly recorded in St. Louis County and the chattel or fixtures is installed in real estate situated in the City of St. Louis, is it the duty of the Recorder to record said instrument in the real estate

records in said city when he is requested to do so, in order to give constructive notice to the purchasers of the real estate?

"4. Where the chattel is installed in real estate in St. Louis County and the owner of the chattel and the real estate is a resident of the City of St. Louis, is it the duty of the Recorder of the City to accept a copy of a chattel mortgage on said chattel where requested to do so, in order to give constructive notice to the purchasers of the chattel?"

Section 3097, Article III, Chapter 22, R. S. Mo. 1929, pertaining to chattel mortgages, is in part as follows:

"No mortgage or deed of trust of personal property hereafter made shall be valid against any other person than the parties thereto, unless possession of the mortgaged or trust property be delivered to and retained by the mortgagee or trustee or cestui que trust, or unless the mortgage or deed of trust be acknowledged or proved and recorded in the county in which the mortgagor or grantor resides, in such manner as conveyances of land are by law directed to be acknowledged or proved and recorded, or unless the mortgage or deed of trust, or a true copy thereof, shall be filed in the office of the recorder of deeds of the county where the mortgagor or grantor executing the same resides, and in the case of the city of St. Louis, with the recorder of deeds for said city, * * * * *"

This section gives the mortgagee two methods of securing the protection offered by the recording acts,

either to record the mortgage or have it filed. It is the privilege of the mortgagee to choose which method he desires. This section also directs in which county the record shall be kept.

The section above referred to is followed in the same article and chapter by Section 3099, which is amended in the Laws of 1935, page 209, which prescribes the charge for filing chattel mortgages, and Section 3100 also amended by Laws of 1935, page 208, which directs the disposition of chattel mortgages or copies which have been filed.

Section 11543 of Article 2, Chapter 74, R. S. Mo. 1929, makes it the duty of the recorder to record certain instruments and is in part as follows:

"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; * * * * *

There follows several other classifications of instruments.

It being the duty of the recorder by this last section to record the instruments named therein, and properly executed and offered for record, and the privilege being given the mortgagee in a chattel mortgage to either record or file the mortgage, or a true copy, it would follow that it is the duty of the recorder to accept for filing a chattel mortgage, or true copy thereof, when properly executed and offered for filing and the filing fee tendered. In *Bank of Malden v. Wayne Heading Co.*, 198 Mo. App. 601, a case in which a corporation having its legal residence in Dunklin County had executed a chattel mortgage on personal property located in another county and had filed the mortgage in the county where the property was located and not in the county of its residence, the court held the

mortgage void as to third parties in the following language:

"We hold therefore that the residence of the defendant corporation was in Dunklin County and that the failure to record the mortgage there made same void. * * * * *

Section 11544, R. S. Mo. 1929, requires that several classes of instruments mentioned in Section 11543, supra, shall be recorded in separate volumes according to their classification. Conveyance of real and personal property are both found in the first classification, and under this section the record of these two types of conveyances should be kept in the same volume. However, Section 11545, R. S. Mo. 1929, requires that instruments conveying chattels for personal property alone shall be kept in separate volumes.

In the case of Jennings v. Sparkman, 39 Mo. App. 663, the court, in discussing Section 3815, R. S. 1879, which is now Section 11545, R. S. Mo. 1929, at l. c. 668, said:

"But the respondent contends that the deed falls within the provisions of section 3815 of the Revised Statutes of 1879, which provides:

"Instruments in writing, conveying chattels or personal property alone, which, by any law of this state, are required to be recorded or admitted of record in any recorder's office in this state, shall be recorded in a series of volumes separate from those used for recording conveyances of real estate."

"We are of opinion that this contention is not tenable. We concede the position, contended for, that instruments, in order to impart con-

structive notice, must not only be recorded in the proper county, but also in the proper book, but we find nothing in the statutes, reading them together, or even seriatim, which leads to the conclusion that, where the same instrument affects real estate and conveys personal property, the law necessitates in all cases a double record. The word 'alone,' in the section last quoted, can certainly not be rejected as surplusage. It may reasonably be said that, where the real estate and personal estate to be affected, and the grantor's residence, are in different counties, the law necessarily contemplates a double record, one in the county where the real estate to be affected is situated, and the other where the grantor resides. It may also be justly claimed that, in such event, the record of the deed in the county where the grantor resides should be made in the personalty book, because as far as that county is concerned it affects personalty alone. This is the only construction that can be given to the various provisions of law on the subject, which harmonizes them all, and gives effect to each, and which is in harmony with the analogous decision in *Anthony v. Butler*, 13 Peters, 431."

This rule has been followed in the case of *Faxon v. Ridge*, 87 Mo. App. 299. Also in *Long v. Gorman*, 100 Mo. App. at page 45, in which the following quotation is taken:

"This question is answered in the affirmative by the decision of this court in the case of *Jennings v. Sparkman*, 39 Mo. App. 663, where it was ruled that a deed of trust conveying

both an interest in land, a lot of mules and other personal property, was properly recorded in the series of books kept for recording instruments affecting real estate, and that when so recorded it imparted constructive notice to the world that both the interest in the land and the personal property were conveyed by the instrument. The Kansas City Court of Appeals in Hume Bank v. Hartsock, 56 Mo. App. 291, approvingly cited the Jennings case.

"This ruling seems to us to set a trap to catch even the diligent searcher for recorded mortgages on personal property, for who would think to look to the records wherein instruments affecting lands are required to be recorded for mortgages on personal property in view of the fact that the statute requires chattel mortgages to be recorded in a separate series of books? But we are not prepared to say that this court, in the Jennings case, misconstrued the statutes pertaining to the recording of these instruments, but are prepared to say that the Legislature ought to throw the trap by providing for the recording of these double-barreled mortgages affecting both real and personal property in both series of books, or by requiring the recorder to make an index that would direct the searcher to the book and place where they are recorded."

These cases and the statutes above referred to would furnish authority for recording in the real estate records conveyances which convey both real and personal property. In addition to the above statutory provisions, Section 3039, Article 1, Chapter 22, R. S. Mo. 1929, provides as follows:

"Every instrument in writing that

conveys any real estate, or whereby any real estate may be affected, in law or equity, proved or acknowledged and certified in the manner hereinbefore prescribed, shall be recorded in the office of the recorder of the county in which such real estate is situated."

In the case of Gaunt v. Alabama Bound Oil & Gas Co., 281 Fed. 653, the word "affect" is defined at l. c. 656, as follows:

"* * Appellant urges that this suit was not of a nature to extend the term of the lease, because the words of the lease, a suit 'affecting the above-described premises,' refer to a suit which would hazard or injuriously affect the lessee's title. There are some instances in which the word 'affect' may be given this restricted meaning; but the usual meaning of the word 'affect' or 'affecting,' as referred to an object, is to act upon, operate upon, or concern such object, and suits of the nature of partition act upon the land and the title of the parties thereto. Nichols v. Voorhis, 74 N. Y. 28, 29; Ensworth v. Holly, 33 Mo. 370, 372; Manger v. Crowe, 219 Ill. 12, 15, 76 N. E. 50; Swigart v. Commissioners of Highways, 277 Ill. 281, 284, 115 N. E. 378; 2 Cor. Jur. 311. Webster's New International Dictionary defines the word 'affect' as to lay hold on; to act upon; to produce an effect upon; and gives, as synonymous, to operate, act on, concern."

An agreement which prevents a fixture attached to land from becoming a portion of the land to which it is attached under this definition would certainly be an instrument affecting real estate.

In the case of *Kelvinator St. Louis v. Schader*, 39 S. W. (2d) 385, the court, in holding that a chattel mortgage containing an agreement with fixtures attached to realty should not become a part of the real property, when a record only in personal property gave no notice of the agreement affecting the real estate, said:

"This leads us to the inquiry as to whether the filing of the chattel mortgage in the city of St. Louis covering such appliances placed in a building in St. Louis county, furnishes such constructive notice as will enable the mortgagee to recover the property in question as against a third person not having actual notice.

"It will be observed that section 3039 of our statute not only requires that every instrument in writing that conveys real estate shall be proved or acknowledged and certified in the manner prescribed and shall be recorded in the county in which such real estate is situated, but it also requires that every instrument in writing, whereby any real estate may be affected, shall likewise be proved or acknowledged and certified and recorded in the office in the county in which such real estate is situated. All other matters affecting real estate are required to be filed and recorded in the county where the real estate is located, and therefore it would be useless to file a deed of trust, a notice of lis pendens, a leasehold or a mechanic's lien claim in any other county than that in which the property is located. If, therefore, it is necessary to prevent an article from becoming a fixture by reason of the fact that it is a part of a complete system, that the mortgage affecting the same

Hon. J. Jules Brinkman

(9)

September 17, 1940

shall be recorded in the county where the real estate is situated, a recording thereof in any other place would be as ineffectual as if it was not recorded at all, and consequently would be binding only between the parties to the mortgage, and would furnish no notice to third parties. Barnard State Bank v. Lankford, 223 Mo. App. 519, 11 S. W. (2d) 1084, 1087."

CONCLUSION

From the above sections of the statutes and cases it is the conclusion of this department that it is the duty of the recorder of deeds to accept for filing a chattel mortgage, or a true copy thereof, when properly executed by a resident of the county and tendered for filing together with the proper filing fee; that if it is not of record in the county where the mortgagor resides it is not valid against third persons without actual notice; that any instrument which affects real property must be recorded in the county where the real estate is located to furnish notice.

Respectfully submitted

W. O. JACKSON
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APPROVED:

COVELL R. HEWITT
(Acting) Attorney General

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