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NOTES

OWNERSHIP OF LIVESTOCK BRANDS AND MARKS AS AFFECTED BY CHATTEL MORTGAGES

The Wyoming Territorial Legislature in 1882 enacted a statute¹ which, after first setting forth the necessary requisites for sufficiency of description in a chattel mortgage covering livestock, provided that such mortgage "shall be held to convey and cover all the cattle, horses, mules, sheep or other live stock which shall then be marked or branded with the said mark and brand belonging to the mortgagor, and which thereafter may be acquired by him, and be marked and branded with the said mark and brand, *and also such mark or brand*;² . . ." This statute has remained, in the same words, upon the statute books of the State of Wyoming, up to the present time.³ It is not duplicated in the statutes of any other state in which the livestock industry has been of sufficient importance to justify the enactment of legislation relative to brands and marks on livestock.

The statute under consideration first purports to make any mortgage on livestock sufficient to cover *all* livestock belonging to the mortgagor at the time of the execution of the mortgage, which are branded and marked with the brand and mark appearing in the description in the mortgage. The applicability of this provision is questionable in at least two conceivable situations.

First, the case in which the mortgagor and mortgagee have inserted in the mortgage contract a specific provision making it applicable only to a separate, specified herd of livestock, which comprises a lesser amount than the total number owned by the mortgagor. It would seem, in the absence of the Wyoming statute, that such words in a mortgage should be given effect as an expression

1. S. L. Wyo. Terr. 1882 c. 11 sec. 8.

2. Italics supplied.

3. Wyo. Comp. Stat. 1945 sec. 59-102.

of the intention of the parties, for it is generally acknowledged that what the mortgage covers is a question of intent;⁴ and such a mortgage would probably not be held to be void for uncertainty of description. It has been held that a chattel mortgage on two hundred ten head of sheep, "now branded and marked . . . as follows, two-wit: Underbit on each ear and 'Padlock' brand", was not void for indefiniteness and uncertainty, even though the mortgagor owned a total of nine hundred and twenty head of sheep, all of which had the same mark and brand. This holding was in a suit between the mortgagee and a purchaser from the mortgagor who purchased with knowledge of the mortgage.⁵ If such a mortgage would be deemed valid in the absence of the Wyoming statute, it would not seem unreasonable, in a similar case arising under the Wyoming statute, to hold that the statute makes available additional rights to mortgagees, which they may waive, and that a mortgage must be deemed to have waived these rights in a case in which he has agreed to a limitation of his security by express provision of the mortgage contract.

The second case in which it is conceivable that the statute might be held inapplicable is the one in which it is the unexpressed intention of the parties that only a specified, separate herd of livestock, which is less than the total number owned by the mortgagor, shall be covered by the mortgage. Of course, if the mortgagee, in pursuance of the intent of the parties in such a case, proceeded, upon foreclosure, only against that specified, separate herd, then there can be little doubt that the statute would have no application, for there is no controversy occasioning either party to urge its application. Where the mortgagee does urge the statute's application, however, prior to or at the time of foreclosure, the problem does not permit such an obvious solution. In this situation, whether the court would hold that the intentions of the parties governed so as to negative the effect of the statute is at least doubtful.

The statute under consideration also purports to make any mortgage on livestock sufficient to cover all livestock which may thereafter be acquired by the mortgagor and be marked and branded with the mark and brand appearing in the description. In the foregoing discussion, it is suggested that the court would deem the statute inapplicable to at least those cases in which a contrary intent expressly appears in the mortgage agreement. The same argument should equally apply to this provision. It is not necessary, however, that the proposition be rested solely on this argument, as the Wyoming Supreme Court has considered the statute in respect to the provision purporting to cover and convey after-acquired property, in *P. J. Black Lumber Co. v. Turk*.⁶ The court held the statute to be inapplicable where the mortgagor was not the owner of the brand mentioned in the mortgage, at the time of the execution thereof, but did thereafter become the record owner of a brand similar to that one. The court

4. 1 Jones, *The Law of Chattel Mortgages and Conditional Sales* (Bowers Ed. 1935) sec. 62, p. 124, 125.

5. *Nichols v. Jackson County Bank*, (1931) 136 Ore. 302, 298 Pac. 908.

6. (1936) 50 Wyo. 361, 62 P. (2d) 519, rehearing denied (1937) 50 Wyo. 377, 63 P. (2d) 805.

cited Section 67-211, Wyo. Rev. Stat. 1931,⁷ which makes it unlawful for any person to claim or own any brand or mark which has not been recorded, and said: "We cannot presume that the parties intended anything unlawful, and it is certain, accordingly, that it was not in the contemplation of the parties that any cattle subsequently acquired by the Turks and marked with the same brand as that mentioned in the mortgage should be covered by the mortgage."⁸ The court also said: "It is stated that a chattel mortgage will be held to cover after-acquired property only if the court, under its terms, would have decreed specific performance of a contract to sell or pledge it. And it can scarcely be doubted what a court of equity would say when asked to enforce an agreement which never existed and could not well be said to have been in contemplation of the parties."⁹ The fact that the court, in the above quoted portions of the opinion, put considerable stress upon the intention of the parties would be a reasonable basis for an implication that the statute should be construed to be inapplicable to mortgages, which, by their terms, have expressly negated any coverage of after-acquired property.

The foregoing discussion of two of the provisions of Section 59-102 Wyo. Comp. Stat. 1945 involving the applicability of these provisions in certain situations has raised questions of some interest in their own right. However, the primary purpose of the preceding discussion has been to establish, as a premise for the discussion of yet another provision of the said statute, that cases may arise in which the mortgagee would be restricted, in spite of the statute, to foreclosure on only a portion of the livestock owned by the mortgagor and bearing his brand. When such a case does arise, then the problem of ownership of the brand itself is presented by the further provision of the statute which contemplates that when the description of cattle in a chattel mortgage is by brand, the *brand* itself is covered. The problem has not yet been presented to the Wyoming Supreme Court for a decision. When a case arises requiring a determination of the problem, several interesting questions would probably be answered, e.g.: After foreclosure on only a portion of the livestock owned by the mortgagor, is the mortgagor required by Section 56-516, Wyo. Comp. Stat. 1945 to apply for a new brand with which to rebrand his remaining livestock? Or is the purchaser at the foreclosure sale unlawfully identifying his livestock with a brand not recorded in his name, in violation of section 56-504, Wyo. Comp. Stat. 1945? In whom is the title to the brand, and who has the right to its use? The *Turk* case gives no help in the answering of such questions, for in reference to that portion of the statute contemplating that the brand itself shall be covered by a mortgage describing livestock by such brand, the court said: "We have searched, but have searched in vain, to find a statute of some other state like or similar to section 71-102."¹⁰ The statute has not been analyzed by counsel for either party herein, and we think it advisable, accordingly, to leave the determina-

7. Wyo. Comp. Stat. 1945 sec. 56-513.

8. (1936, 50 Wyo. 361, 373, 62 P. (2d) 519, 521.

9. (1936) 50 Wyo. 361, 373, 62 P. (2d) 519, 521.

10. Wyo. Comp. Stat. 1945 sec. 59-102.

tion of the full meaning thereof for the future, when further light may be shed upon it by other situations."¹¹

Thus, the statute under consideration appears to be unique. Although New Mexico enacted, in 1923, a statute similar in wording, it is sufficiently modified in certain significant particulars so as to avoid any questions herein discussed.¹² Of the several states in which some legislation has been enacted relative to brands and marks on livestock, eight states, including Wyoming, have statutes¹³ expressly providing that a recorded brand and mark is to be deemed the property of the person adopting and recording the same, and as such, subject to sale, transfer, assignment, devise and descent, as is other personal property. The statutory provisions in these states would probably be sufficient to authorize a mort-

11. P. J. Black Lumber Co. v. Turk, (1936) 50 Wyo. 361, 375, 62 P. (2d) 519, 522.

12. N. Mex. Stat. 1941 Sec. 63-512, which provides: "In any mortgage upon neat cattle or other animals or upon any herd of such animals it shall be a sufficient description thereof to set forth the recorded brand or mark of the mortgagor with which such animals are branded or marked, and such mortgage duly executed shall be held to give to the mortgagee or his assigns, or any purchaser, at a foreclosure sale thereof all the rights possessed by the mortgagor, to identify, prove ownership and recover such animals, *and unless otherwise provided therein* (italics supplied) shall be held to cover all the animals then branded or marked with such recorded brand or mark belonging to the mortgagor, and which may be thereafter acquired by him and branded with said brand or mark, and also all the natural increase of such animals."

13. Ariz. Code 1939 Sec. 50-315: ". . . The brand adopted and recorded shall be the property of the person so adopting and recording the same, and the right to its use may be sold and transferred. No sale or transfer thereof shall be valid, except by bill of sale duly signed and acknowledged as deeds for the conveyance of real estate are acknowledged, and recorded in the office of the live stock sanitary board." Colo. Ann. Stat. 1930 Sec. 7093: "Any brand recorded in compliance with the requirements of this act shall be the property of the person, association or corporation causing such record to be made, and shall be subject to sale, assignment, transfer, devise and descent, as personal property. . . ."

Idaho Code 1932 Sec. 24-1008: "Any brand, eartag or ear-mark recorded in accordance with the requirements of this chapter shall be the property of the stock grower in whose name the same shall be recorded, and shall be subject to sale, assignment, transfer, devise and descent, the same as personal property. . . ."

Neb. Comp. Stat. 1929, Cum. Supp. 1937 Sec. 54-131: "Any brand or mark recorded, in compliance with the requirements of this act, shall be the property of the person, persons, association or corporation causing such record to be made and shall be subject to sale, assignment, transfer, devise and descent, as personal property. . . ."

N. Mex. Stat. 1941 Sec. 49-905: "Any brand recorded in accordance with the requirements of this article shall be considered as the property of the person causing such record to be made, and shall be subject to sale, assignment, transfer, devise and descent, the same as other personal property."

Ore. Comp. Laws Ann. 1939 Sec. 32-1117: "Any brand recorded in compliance with the requirements of this chapter shall be the property of the person, firm, association or corporation causing such record to be made and shall be subject to sale, assignment, transfer, devise and descent as personal property. . . ."

Utah Code Ann. 1943 Title 3-5-124: "Any brand and mark recorded in accordance with the requirements of this article shall be considered as the property of the person causing such record to be made and shall be subject to sale, assignment, transfer, devise and descent the same as other personal property." Title 3-5-125: "A duly recorded brand and mark may be sold, transferred or assigned by an instrument in writing duly acknowledged by one witness. Such sale, transfer or assignment shall not become effective until the same is recorded with the state board of agriculture." Wyo. Comp. Stat. 1945 Sec. 56-511: "Any brand or mark recorded in accordance with the requirements of this chapter shall be considered as the property of the person causing such record to be made, and shall be subject to sale, assignment, transfer, devise and descent, the same as personal property. . . ."

gage of brands and marks, as such, but only when specifically provided for in the mortgage. Such statutes, then, only serve to accentuate the novel features presented by Wyo. Comp. Stat. 1945 Sec. 59-102.

JOSEPH F. MAIER

MIGRATORY DIVORCES SINCE WILLIAMS V. NORTH CAROLINA

In 1940, Otis Williams and Lillie Hendrix, domiciliaries of North Carolina, went to Nevada to obtain divorces from their respective spouses. After satisfying the residence requirement under the Nevada statute, each of them obtained a divorce. Both divorces were granted on constructive service. They married and returned to North Carolina where they lived together as husband and wife until they were convicted of bigamous cohabitation. The North Carolina Supreme Court sustained the convictions.¹ The decision was based on *Haddock v. Haddock*² which held that the state of New York, the matrimonial domicile where the wife still resided, need not give full faith and credit to a foreign decree obtained by the husband who wrongfully left his wife in the matrimonial domicile, service on her having been obtained by publication.

In a 1942 decision known as *Williams v. North Carolina I*,³ the Supreme Court of the United States reversed a judgment of conviction by expressly overruling *Haddock v. Haddock* and holding that if either spouse is domiciled in a state where a divorce is granted upon constructive service, the divorce must be recognized in other states irrespective of whether it was rendered by a court of the matrimonial domicile. The United States Supreme Court had previously said, in *Bell v. Bell*,⁴ that no valid divorce could be decreed, on constructive service, by courts of a state in which neither party was domiciled. The rule of *Bell v. Bell* is still followed in modern decisions,⁵ but the United States Supreme Court refused to consider this rule in *Williams I* because the State of North Carolina did not seek to sustain the judgment on that ground.⁶

In 1944, the Supreme Court of North Carolina again sustained the decision of bigamous cohabitation in the case of *State v. Williams*.⁷ The court looked into the question of domicil and based the decision on *Bell v. Bell* instead of *Haddock v. Haddock* by reasoning that, since the jury found that the petitioners were actually domiciled in North Carolina when they brought their actions for divorce in Nevada, they had not acquired a bona fide domicil in Nevada and therefore the foreign decrees were void in North Carolina. In 1945, the Su-

1. *State v. Williams*, (1941) 220 N. C. 445, 17 S. E. (2d) 769.

2. (1906) 201 U. S. 562, 26 Sup. Ct. 525, 50 L. Ed. 867, 5 Ann. Cas. 1.

3. (1942) 317 U. S. 287, 63 Sup. Ct. 207, 87 L. Ed. 279, 143 A. L. R. 1273.

4. (1900) 181 U. S. 175, 21 Sup. Ct. 551, 45 L. Ed. 804.

5. *Evans v. Evans*, (D. C. C. A. 1945) 149 F. (2d) 831, Cert. denied (1945) 326 U. S. 738, 66 Sup. Ct. 48, 90 L. Ed. 43; *Cohen v. Cohen*, (Mass. 1946) 64 N. E. (2d) 689, 163 A. L. R. 362; *Hall v. Hall*, (Miss. 1946) 24 So. (2d) 347; *Reed v. State*, (Tex. Cr. App. 1944) 187 S. W. (2d) 660.

6. *Williams v. North Carolina*, (1942) 317 U. S. 287, 63 Sup. Ct. 207, 87 L. Ed. 279, 143 A. L. R. 1273.

7. (1944) 224 N. C. 183, 29 S. E. (2d) 744.