

Comment on Recent Decisions

BIGAMY—JURISDICTION OF OFFENSE.—A married man living in Texas was married in Oklahoma to a second Texas woman. Immediately after the ceremony the parties returned to Texas and lived openly as husband and wife. In a prosecution for bigamy defendant was held not guilty under the Texas statute, which reads as follows: "Any person who has a former wife or husband living who shall marry another *in this state* shall be confined to the penitentiary. . ." *Hopson v. State* (Tex. 1930) 30 S. W. (2d) 311.

At common law, bigamy was an offense of ecclesiastical cognizance only, but it was early made a felony by statute. 1 Jas. I c. 11 (1603). All the law of bigamy is therefore statutory. By this early statute the act of marrying the second time was the offense, and only the courts of the jurisdiction where this marriage took place could entertain a prosecution for the offense. 2 WHARTON, CRIMINAL LAW (9th ed. 1885) 491. Thus it was possible for a person to have two or more husbands or wives with perfect security if he took the precaution not to have the ceremony performed in England or Ireland. 1 Hale, P. C., 693; 1 East P. C. 466. To remedy this situation, Parliament has passed statutes giving jurisdiction to courts in any county where the person is apprehended if he is a British subject, no matter where the second marriage was performed. 9 Geo. IV c. 31, s. 22 (1829); 24 and 25 Vict. c. 100 (1861). These statutes have been uniformly upheld. *Russell's Trial* (1901) 1 A. C. 466; *Reg. v. Topping* (1856) 7 Cox C. C. 103; *Reg. v. Audley* (1907) 1 K. B. 383.

Similar statutes in the United States and Canada have been declared unconstitutional, however, because they are contrary to the provisions in state constitutions giving defendants the right to a trial in the county where the crime is committed. *Walls v. State* (1877) 32 Ark. 565; *State v. Smiley* (1889) 98 Mo. 605, 12 S. W. 247; *State v. Cutshall* (1892) 110 N. C. 538, 15 S. E. 261; *Reg. v. Plowman* (Can. 1895) 25 Ont. Rep. 656. Thus the place where the second marriage is performed is still material where the act of marrying the second time is the crime. Consequently, the same result would have been reached on the jurisdictional ground in the principal case even though the phrase "in this state" had been omitted from the statute.

Many states have overcome the jurisdictional difficulty by creating two separate offenses by statute: bigamy, in which the act of marrying the second time is the crime, as before, and cohabitation, usually also called bigamy, in which living with the second spouse while the first is still alive is the crime. *Brewer v. State* (1877) 59 Ala. 101; *State v. Stewart* (1906) 194 Mo. 345, 92 S. W. 878; *State v. Steupper* (1902) 117 Iowa 591, 91 N. W. 912; *State v. Durphy* (1903) 43 Ore. 79, 71 Pac. 63; *Keneval v. State* (1901) 107 Tenn. 581, 64 S. W. 897; *People v. Ellis* (1928) 204

Cal. 39, 266 Pac. 518. Texas, however, has no statute of the second type, and by a proper interpretation of its statute the principal case could not have been decided otherwise. At least four other states are similarly deficient in that the cohabitation with a second spouse married outside the state is not bigamy. *Kimser v. Commonwealth* (1918) 181 Ky. 727, 205 S. W. 951; *State v. Ray* (1909) 151 N. C. 710, 66 S. E. 204; *McBride v. Graeber* (1915) 16 Ga. App. 240, 85 S. E. 86; *State v. Stephens* (1919) 118 Me. 237, 107 Atl. 296. H. C. H., '31.

CONFLICT OF LAWS—EFFECT OF RECORD OF CHATTEL MORTGAGE.—An important question in the law of chattel mortgages relates to the effect the recording in one state has when the mortgaged property is removed to another state. A recent Arizona case holds that "chattel mortgages recorded in the state where executed and there conveying constructive notice, continue to have the same effect when property is removed to another state." *Davis v. Standard Accident Ins. Co.* (Ariz. 1929) 278 Pac. 384. This rule, arbitrarily laid down, would work grave injustice upon any subsequent purchaser in the state to which the property has been removed.

Many jurisdictions are in accord with the rule announced in the principal case. *Finance Corp. v. Kelly* (Mo. 1921) 235 S. W. 146; *In re Shanahan & Wrightson Hardware Co.* (1922) 2 W. W. Harr. (Del.) 37, 118 Atl. 599; *National Bank v. Ripley* (1927) 204 Iowa 590, 215 N. W. 647. Contra are decisions in Pennsylvania, Texas, Michigan and Louisiana which refuse to recognize chattel mortgages filed in another state. *Devant v. Decan* (La. 1930) 128 So. 700; *Sherman State Bank v. Carr* (1900) 15 Pa. Super. 346; *Farmer v. Evans* (1921) 111 Tex. Civ. App. 283, 233 S. W. 101; *Allison v. Teeters* (1913) 176 Mich. 216, 142 N. W. 340. The former rule would allow the mortgagors of property to remove it from the state, even with the consent of the mortgagee, and in another state defraud an innocent third party who would be subject to the original mortgagee's priority. The latter would impose an undue burden on the original mortgagee and would place his rights in jeopardy. A more just rule is one which requires the consenting mortgagee or the mortgagee with knowledge of the mortgagor's removal of the property to file his lien in the state into which the property is taken. *Moore v. Keystone Driller Co.* (1917) 30 Idaho 220, 163 Pac. 1114; *Cable Piano Co. v. Lewis* (1922) 195 Ky. 666, 243 S. W. 924; *Adamson v. Fogelstrom* (1927) 221 Mo. App. 1243, 300 S. W. 841. Under this rule a mortgagee without knowledge of the removal of the property maintains his priority without so recording the mortgage. *Cable Piano Co. v. Lewis*, above; *Walters v. Skinner* (C. C. A. 7, 1915) 272 F. 435. J. G. G., '32.

CONSTITUTIONAL LAW—POLICE POWER—REQUIREMENT OF BOND FOR MILK-GATHERING STATIONS.—A statute required parties desiring to operate