DESCRIPTION OF THE PROPERTY IN A MISSOURI CHATTEL MORTGAGE

INTRODUCTION

This note deals with the Missouri law on the sufficiency of the description of the property in a chattel mortgage. The importance of this particular problem lies in the fact that a recorded chattel mortgage will not give constructive notice to third persons unless the property mortgaged is adequately described. Hence, this discussion will center primarily, though not exclusively, upon the adequacy of the recital of descriptive facts when a third party is involved.

The four principal methods employed in describing a chattel, other than a description of unique physical characteristics, are recitals of quantity, ownership, possession and location. The significance of each of these factors will be discussed subsequently under separate topic headings. Various other factors of primary importance in isolated cases will be dealt with in connection with the four basic means of identification.

The discussion of this subject will conclude with a brief coverage of the problems of misdescription of the property, aiding and curing defects of description, and the procedural methods of applying the substantive law.

TESTS FOR DETERMINING SUFFICIENCY

As between the Parties

No definite test has been developed by the Missouri cases for determining the sufficiency of the description as between the parties. Vague and general words of description have often been upheld,[1] and the rule appears to be that such a description will cover any property of the mortgagor which could reasonably be held to come within the general terms employed.[2] The burden of proving that such property was not intended as security would thus be cast upon the mortgagor.[3] The rule in other

1. Webb City Furniture Co. v. Herrod, 14 S.W.2d 668 (Mo. App. 1929); Dodson v. Dedman, 61 Mo. App. 209 (1895); Houser v. Andersch, 61 Mo. App. 15 (1895).
2. First National Bank of Mexico v. Ragsdale, 158 Mo. 668, 59 S.W. 987 (1900).
3. *Ibid.*

jurisdictions is that the mortgagee must be able to point out the property which is the subject matter of his mortgage.[4] Regardless of which test is used, however, it should not be assumed that a general description will always be sufficient to create a valid security as between the parties. A chattel mortgage upon crops to be subsequently planted, for instance, will have no validity unless the year in which the crop is to be grown is stated in the instrument.[5] But, as a general rule, the courts will attempt to ascertain and enforce the intent of the parties,[6] when the rights of third persons have not intervened.

As against Third Parties

When the rights of innocent third parties are involved, the unexpressed intention of the parties to the original security transaction is of little consequence. The test then applied is that the description of the property must be such that a third person, aided by the reasonable inquiries which the mortgage itself suggests, could identify the property.[7] It is therefore evident that what may be an adequate description of the property as between the parties is often a very precarious security device against rights acquired by third persons.[8] To protect the mortgagee against such adverse intervening rights, an absolutely complete description of the property subject to the mortgage should be given. A description of the physical characteristics of the particular chattel is not of itself adequate. Some reference should also be made to the quantity, ownership, possession and location of the property involved.

THE STATEMENT OF QUANTITY

It is evident that a statement of the quantity of the property mortgaged is a primary requisite to an adequate description. Such a statement need not be made numerically but may take the form of a blanket mortgage covering all of the property of a particular class owned by the mortgagor.[9] However, if a mort-

4. 14 C.J.S., *Chattel Mortgages*, § 57, p. 659 (1939).
5. Barnard State Bank v. Lankford, 11 S.W.2d 1084 (Mo. App. 1928).
6. Bank of Mendon v. Mell, 185 Mo. App. 510, 172 S.W. 484 (1915).
7. Stonebraker v. Ford, 81 Mo. 532 (1884); Campbell v. Allen, 38 Mo. App. 27 (1889).
8. Dierling v. Pettit, 140 Mo. App. 88, 119 S.W. 524 (1909).
9. State *ex rel.* Cochran v. Cooper, 79 Mo. 464 (1883); Schell v. Ransom Coal & Grain Co., 79 S.W.2d 543 (Mo. App. 1935); Strop v. Hughes, 123 Mo. App. 547, 101 S.W. 146 (1907).

gage purports to cover all the personal property of the mortgagor and then proceeds to name specific items of such property the *ejusdem generis* rule will probably be applied.[10] That is to say, the general words of description will be held applicable to only property of the same general nature as that more particularly described.[11]

In cases where a mortgage is given to cover a certain number of a particular class of goods it is prima facie valid,[12] but if it should subsequently appear that the mortgagor then owned more of that class of goods than named in the mortgage, the courts generally hold that no lien has been created on any of such property as against third persons.[13] However, the discovery of a greater quantity than named in the mortgage of the same kind of property does not always vitiate the mortgage. For example, it has been decided in other jurisdictions that where the class of property mortgaged is fungible and the quantity mortgaged is to be determined by weighing or measuring, the description in such a case is not defective;[14] and in Missouri it has been held that the mortgagee may offer proof of extrinsic facts which would enable a third person to separate the mortgaged property from similar property retained by the mortgagor and thus validate the description.[15] It must be remembered, however, that although a statement of the quantity of property mortgaged is necessary and proper, it is but one of several factors to consider in passing on the sufficiency of the description.

THE STATEMENT OF OWNERSHIP

A recital in a chattel mortgage that the property mortgaged is owned by the mortgagor would probably seem to the layman to be useless verbiage. Some courts, however, hold that no presumption of the mortgagor's ownership of the property mortgaged will arise from the mere execution of the mortgage.[16] The

10. Steinecke v. Uetz, 19 Mo. App. 145 (1885).
11. 1 JONES, CHATTEL MORTGAGES AND CONDITIONAL SALES § 77, p. 146 (6th ed. 1933).
12. Lafayette County Bank v. Metcalf, 29 Mo. App. 384 (1888).
13. Stonebraker v. Ford, 81 Mo. 532 (1884); Kibble v. Ragland, 263 S.W. 507 (Mo. App. 1924); Klebba v. Missouri Meerschaum Co., 25 S.W. 174 (Mo. App. 1923).
14. 14 C.J.S., *Chattel Mortgages* § 61, p. 670 (1939).
15. White v. Meiderhoff, 220 Mo. App. 171, 281 S.W. 101 (1926).
16. First National Bank v. Maxwell, 198 Iowa 813, 200 N.W. 401 (1924).

result of such holdings is that since a description lacking any specification of ownership applies with equal force to any property coming within the terms of that description, whether owned by the mortgagor or not,[17] the mortgage will be held too vague and indefinite to give notice to third parties. Most jurisdictions, however, allow an inference of ownership by the mortgagor to be drawn from various recitals in the mortgage. Thus the otherwise fatal defect of having the mortgage encompass too much is avoided by permitting a finding that the mortgage does in fact indicate that only the property owned by the mortgagor is the subject thereof.

The intermediate appellate cases in Missouri are in conflict on whether the essential inference can be drawn, and the Supreme Court of Missouri has never had the issue before it. The case of *Bozeman v. Fields*,[18] which held the recital "two iron gray mares, three and four years old respectively," without a reference to their ownership being made, too indefinite, has received contrary interpretations by the appellate courts. In *Estes v. Springer*[19] the Kansas City Court of Appeals decided that the holding in the *Bozeman* case was not inconsistent with drawing an inference of ownership of the property by the mortgagor from other recitals in the mortgage. Twenty years later the St. Louis Court of Appeals in *Dierling v. Pettit*[20] held that the precedent established in the *Bozeman* case was controlling and precluded the drawing of such an inference although admitting that it would be logically sound to do so. It is difficult to say just what the rule is in Missouri in the light of a recent decision by the St. Louis Court of Appeals.[21] It was there said, by way of dictum, that the rule that such an inference could be drawn was recognized in *Dierling v. Pettit* (where in fact it was recognized as being the law in other jurisdictions but nevertheless repudiated), and that such an inference was permissible.

An argument often advanced in favor of the presumption of ownership of the property by the mortgagor is that since the vendor of a chattel impliedly warrants his ownership, the mort-

17. 1 JONES, CHATTEL MORTGAGES AND CONDITIONAL SALES § 54d, p. 103 (6th ed. 1933).
18. 44 Mo. App. 432 (1891).
19. 47 Mo. App. 99 (1891).
20. 140 Mo. App. 88, 119 S.W. 524 (1909).
21. Local Finance Co. v. Yantis, 152 S.W.2d 989 (Mo. App. 1941).

gagor should be presumed to be the owner of the property mortgaged. This is not only a false analogy but also a *non-sequitur*. The analogy is false because in the case of a vendor of a chattel the warranty is implied to give to the vendee a right against the vendor, whereas in the mortgage situation the presumption would operate to protect the mortgagee against rights asserted by third persons. And the analogy is a *non-sequitur* in that the very fact that the law implies a warranty of title in a vendor is in a sense opposed to the presumption that he is the owner of the chattel.

The argument that the conflict should be resolved in favor of the presumption of ownership by the mortgagor is more logically supported by the general policy of the law to presume that acts are done with lawful authority. If this policy were recognized and given effect in this situation it should be enough to validate the presumption.

Another aspect of the general problem of the statement of ownership arises in the case of a mortgage of crops. Particular attention should be given to the correct designation of the mortgagor's interest in the land upon which the crops are to be grown. A general statement that a crop is to be grown on land owned by the mortgagor, which is in fact only leased by him, may be held misleading and therefore invalid as to third parties.[22]

STATEMENT OF POSSESSION

A description of the quantity of property mortgaged, aided by the presumption of ownership of such property by the mortgagor, may still be so general as not to be binding upon third persons.[23] As a general rule it is necessary to ascribe a situs to the mortgaged property before the description will be held sufficient.[24] A statement in the mortgage as to who has possession of the mortgaged property is one method of doing this. A direct statement as to who has the possession of the property is seldom made, however; it more often being left to inference from other recitals in the mortgage. For example, a provision in the instrument that the mortgagor is to retain possession of the property until default is generally taken as a recital of possession by the

22. Mayor v. Keith, 55 Mo. App. 157 (1893).
23. Dierling v. Pettit, 140 Mo. App. 88, 119 S.W. 524 (1909).
24. *Ibid.*

mortgagor.[25] It is also sometimes said that since the mortgagor's residence is given in the mortgage and the mortgage further states that the mortgagor is to retain possession of the property until default, that the locus of the property has been adequately described.[26] That these provisions adequately serve their primary purpose of enabling the mortgagor to retain the possession and use of the mortgaged property until default is not denied, but it is at best a doubtful and indecisive manner of ascribing a situs to the mortgaged property. It may be argued that such provisions in the mortgage are made only in reference to a right retained by the mortgagor rather than to the actual fact of possession of the property by him. But even if it is admitted that the inference should be drawn that the property was in the possession of the mortgagor at the time of the execution of the mortgage, it is piling inference upon inference to say that the property has been located by the terms of the mortgage. The most that can be said is that the mortgage suggests a source of inquiry as to the location of the property, such source being the mortgagor. Thus it might well become a matter of controversy as to whether a reasonable inquiry would disclose the location of the property,[27] a question of fact upon which juries could well differ. It would seem that a direct statement as to who had possession of the property at the time the mortgage is executed would be the minimum precaution taken by the careful draftsman, even though the courts will frequently require less. And this procedure is not so much for the purpose of ascribing a situs to the property as it is to furnish a source of inquiry to which a third party in search of the property would be directed.

Statement of the Location

The single most important factor, in the majority of the cases which have raised the issue of the sufficiency of the description, has been the statement of the location of the mortgaged property. Only one Missouri case has been found which upheld a description where neither the possession nor the location was stated, and that was a case involving the description of an automobile by motor and serial number.[28] Such a holding aptly illustrates

25. Shanks v. Tinder, 216 Mo. App. 173, 257 S.W. 188 (1924).
26. Estes v. Springer, 47 Mo. App. 99 (1891).
27. Young v. Bank of Princeton, 97 Mo. App. 576, 71 S.W. 713 (1903).
28. Local Finance Co. v. Yantis, 152 S.W.2d 989 (Mo. App. 1941).

that, important as the element of the location of the property is, it is merely a factor to be taken into consideration along with other circumstances in determining the adequacy of the description. As a general rule, however, it may safely be said that a complete failure to give the location of the property gives the mortgagee no protection against rights acquired by innocent third parties.[29]

It may be stated as a general proposition that the more vague the other elements of description become, the more precisely the location of the property must be set forth.[30] Thus where the class of property is described in general terms not only must the general location of the property be given, but it must be sufficiently limited in area so as to furnish reference points for distinguishing the mortgaged property from other property of that class in the same general area.[31] As a corollary principle, it may be stated that if the location of the property is definitely and precisely established by the terms of a mortgage, such fact may validate a description where other usual means of identification are conspicuously absent.[32]

When the location of the mortgaged property is not directly stated in the mortgage the problem of drawing an inference of the location from other recitals in the mortgage arises. Unlike the similar problems involved where ownership of the property is not stated, the Missouri Courts have consistently held that the location of the property may be inferred from other recitals in the mortgage.[33] The most common of such recitals is that providing for a default if the property is removed from a named county. A dictum in one case goes so far as to say that the location of the property within a certain county may be inferred from the fact that the mortgage was recorded in that county and the debt payable there.[34] It should be noted that even with the aid of such an inference the issue remains as to whether locating the property within a certain county is definite enough to pro-

29. Cummins v. King, 217 Mo. App. 371, 266 S.W. 748 (1924); Hughes v. Menefee, 29 Mo. App. 192 (1888).
30. Bozeman v. Fields, 44 Mo. App. 432 (1891).
31. Young v. Bank of Princeton, 97 Mo. App. 576, 71 S.W. 713 (1903).
32. Evans-Snyder-Buell Co. v. Turner, 143 Mo. 638, 45 S.W. 654 (1898).
33. Shanks v. Tinder, 216 Mo. App. 173, 257 S.W. 188 (1924); Estes v. Springer, 47 Mo. App. 99 (1891); Jennings v. Sparkman, 39 Mo. App. 663 (1890).
34. Johnson v. Hutchinson, 81 Mo. App. 299 (1899).

vide third persons with reasonable means for locating the property. Leaving such an issue to the vagaries of a jury is the price to be paid for careless draftsmanship.[35]

An interesting problem arises when the parties to the transaction contemplate the transfer of the mortgaged property subsequent to the execution of the mortgage. In such a situation it is often thought better to locate the property at the place to which it is to be removed. This procedure can be a fatal mistake if the rights of third persons intervene before the transfer is made.[36] Generally, if only one location is to be given, it should be the one where the property is the moment the mortgage is executed. As a practical matter, however, it would probably be a better practice to give both of the locations together with an explanation of what is contemplated.[37] If the only location given is that to which the property is to be removed, the mortgagee will not be protected against intervening rights until the process of transfer has begun.[38]

Misdescription of the Property

Whether a misdescription of the property will invalidate the mortgage depends upon the tendency of the error to deceive and mislead third persons.[39] The more reliance which would naturally be placed upon the particular misdescription the more likelihood that such a mistake will be fatal. Thus a mortgage describing cattle as branded with a "—" and a "Z" will not cover cattle branded with either a "—" or a "Z" and not both.[40] Likewise, in the case of automobiles, the correct description of the motor and serial numbers is the controlling factor.[41] But where there are no serial numbers or similar indicia of a unique char-

35. Dierling v. Pettit, 140 Mo. App. 88, 119 S.W. 524 (1909); Young v. Bank of Princeton, 97 Mo. App. 576, 71 S.W. 713 (1903).

36. J. H. North Furniture Co. v. Davis, 76 Mo. App. 512 (1898); Mackey v. Jenkins, 62 Mo. App. 618 (1895).

37. State *ex rel.* Pope Bros. Moulding Co. v. Althaus, 60 Mo. App. 122 (1894).

38. *Ibid. Cf.* Trower Bros. Co. v. Hamilton, 179 Mo. 205, 77 S.W. 1081 (1904).

39. Tootle v. Buckingham, 190 Mo. 183, 88 S.W. 619 (1905); Cook v. Wheeler, 218 S.W. 929 (Mo. App. 1920); City National Bank v. Goodloe-McClelland Commission Co., 93 Mo. App. 123 (1902); Jones Bros. Livestock Commission Co. v. Long, 90 Mo. App. 8 (1901).

40. New Hampshire Cattle Co. v. Bilby, 37 Mo. App. 43 (1889).

41. First National Bank of Brookfield v. Gardner, 5 S.W.2d 1115 (Mo. App. 1928).

acter involved, and other elements of the description adequately describe the property subject to the mortgage, the mere fact that there is some error in a part of the description will not impair its validity. So the mis-statement of the age of cattle otherwise adequately described will not vitiate the mortgage.[42] And in exceptional cases where the other elements of the description are accurately and precisely set forth they may be of sufficient weight to overcome the misleading effect of an erroneous statement of the location of the property.[43]

Following the same principle it has been held that an erroneous use of technical legal terms is not necessarily fatal to the description. The use of the term "fixtures," for instance, did not prevent a mortgage from covering the personal property intended by the parties to be the security.[44]

Curing Defects in the Description

The Missouri cases are all in accord that parol evidence may be used to aid and explain the general language employed in a description, but not to add terms not found therein.[45] Just how much parol evidence can be used in aid of the description is thus likely to depend in part upon the breadth of the language employed. Nevertheless, little advantage can be gained from proving by parol what could be adequately described in writing and, therefore, the more particular description would seem to be the most desirable.

Of course, where the mortgagee secures and retains possession of the mortgaged goods, an effective common law pledge is created, obviating any necessity for a mortgage.[46]

Procedural Methods of Applying the Substantive Law

Whether the description given in a mortgage is such that a third person, aided by the reasonable inquiries which the mortgage itself sugests, could identify the property, is both a ques-

42. Swinney v. Merchant's Bank, 95 Mo. App. 135, 68 S. W. 960 (1902).
43. Cook v. Wheeler, 218 S.W. 929 (Mo. App. 1920); City National Bank v. Goodloe-McClelland Commission Co., 93 Mo. App. 123 (1902).
44. State to use of Von Der Ahe v. Cabanne, 14 Mo. App. 455 (1883).
45. Bruce v. Karp, 1 S.W.2d 214 (Mo. App. 1928); Bank of Atchison County v. Schachleford, 67 Mo. App. 475 (1896); Chandler v. West, 37 Mo. App. 631 (1889); Campbell v. Allen, 38 Mo. App. 27 (1889); Bank of Odessa v. Jenningsk, 18 Mo. App. 651 (1885).
46. Dawson v. Cross, 88 Mo. App. 292 (1901); Finke v. Pike, 50 Mo. App. 564 (1892). *Cf.* Humphrey's Savings Bank v. Carpenter, 213 Mo. App. 390, 250 S.W. 618 (1923).

tion of law and a question of fact. Thus the proper method of raising an objection to the sufficiency of the description, in the first instance, would be to object to its being introduced in evidence.[47] If the court is of the opinion that reasonable men could differ as to the adequacy of the description under the above test, then it becomes a question of fact for the jury.[48] If the court should be of the opinion that the description is valid only in part, the mortgage will be allowed in evidence to prove the identity of that portion properly described.[49]

No definite line of authority has developed as to whether opinion evidence is admissible on the issue of whether a third person could identify the property from the description given in the mortgage. One case has held that such evidence is proper,[50] whereas another has decided that such a procedure is of doubtful propriety.[51] It would seem that the latter ruling is preferable since such opinion testimony does not purport to be that of an expert and is therefore a direct invasion of the province of the jury.

CONCLUSION

The careful draftsman with the correct facts at hand should have little difficulty in drafting an adequate description of the property covered by a chattel mortgage. In general it may be said that the Missouri courts have not insisted on superficial technicalities in the description of the property. The cases generally indicate that the courts have been rather liberal in construing the description of the property in favor of upholding the validity of the mortgage. Thus it would seem that a description of the unique physical characteristics of the particular chattel involved, together with a direct statement as to the quantity, ownership, possession and location of the property, would constitute an adequate description in almost every case.

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47. Hart v. Farmers Bank of Bates County, 28 S.W.2d 121 (Mo. App. 1930).
48. Williamson v. Bank of Curryville, 69 Mo. App. 368 (1897); Ronney v. Meisenheimer, 61 Mo. App. 434 (1895).
49. Kelvinator St. Louis, Inc. v. Schader, 225 Mo. App. 479, 39 S.W.2d 385 (1931); Meyer Bros. Drug Co. v. Self, 77 Mo. App. 284 (1898).
50. Bruce v. Karp, 1 S.W.2d 214 (Mo. App. 1928).
51. White v. Meiderhoff, 220 Mo. App. 171, 281 S.W. 101 (1926).