Seed Grain Liens—Action in Conversion Against Banks and Elevators.

An elevator company buying grain upon which the county holds a seed grain lien duly recorded and paying the money to a bank, and the bank to whom it is paid, are both liable in an action in conversion, particularly if they have actual knowledge of the lien of the county.

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My dear Mr. Parcells:

You have requested my opinion as to whether an action in conversion will lie against elevators buying, and banks receiving, the payment for grain against which the county held seed grain liens under the provisions of Chapter 19, 15th Extraordinary Session Laws.

Section 22 of said Chapter 19 provides that the applicant for seed grain must sign and acknowledge a contract, which shall have the same effect as a promissory note, the amount of which, with the interest thereon, shall be a lien upon all property, both real and personal, owned by the applicant, if he be the owner of any real property, which property must be particularly described in the application, and shall also be a lien upon all crops grown from such seed grain. It provides further, that if the applicant be a rentee or tenant, the amount shall be a lien upon the land upon which said seed is grown, unless the County Commissioners waive such lien by indorsement on the contract. This section further provides that, if the amount due be not paid by October 20th following the harvesting of the crop grown from said seed grain, it shall be levied as a tax against the property, real or personal, and collected in the same manner and at the same time as other taxes are collected.

Section 23 provides for the filing of this contract, which thereupon becomes a just and valid lien upon all the property above mentioned, and prior to all liens and encumbrances against or upon said property, except liens or encumbrances filed or recorded prior to the filing of the said contract, and except thresher and labor liens for the threshing, harvesting or planting of the crop, and makes the filing of the contract full and sufficient notice to all persons of the existence and extent of the liens created thereby.

Section 28 makes it a misdemeanor to sell, transfer, take or carry away or dispose of the crop grown from such seed grain, without paying off the lien, punishable by fine or imprisonment, or both, and places the *right of possession and title* to the growing crop, and the grain grown from such seed grain, in the county until the amount specified in the contract, and the interest thereon, shall be fully paid, and provides that any seizure thereof, or interference therewith, shall be deemed a conversion thereof, and the county may recover treble damages against the person or persons converting the same.

My understanding is that the banks in question signed waivers to the county of their prior liens, under crop mortgage, to the amount necessary to satisfy the seed grain lien, in order that the applicant might obtain such seed grain. They then gave notice to the elevators, and when the grain was delivered to the elevators, the elevators paid over to the banks the full amount of the money for such grain, without paying to the county the amount of the lien.

In the first place, both the bank and the elevator are bound to know that the county lien attached to said grain under Section 23, supra, and that title to grain raised from the seed was in the county (Sec. 28 of Chapter 19, supra). The contract between the farmer and the county is filed for that purpose, and the law expressly provides that the filing of the contract shall be such notice. In the cases where the bank executed a waiver of its mortgage lien, which waiver is indorsed on the contract between the farmer and the county, such bank has not only constructive but actual notice of the existence of the lien. It is the duty of both the elevator and the bank having notice, to see that this lien is satisfied before dealing with or paying for the grain or applying the money received therefrom to the settlement of other debts of the farmer, as the case might be; and if either, or both, violate this duty, they are guilty of conversion, as provided in Section 28, supra. At the same time the farmer selling the grain without paying off the lien is guilty of a misdemeanor under this section.

While the case is less clear as to the elevators, the constructive notice given by the filing of the contracts, especially if supported by other facts showing that they dealt with the grain and paid out the money therefor to the banks with knowledge of the rights of the county, would seem to render them also liable in conversion.

The case of Brande v. Babcock Hardware Co., 35 Mont. 256, was decided under a statute (Sec. 3876, Revised Codes of 1907) then in effect as to liens of chattel mortgages, and upon an estoppel to claim priority on the part of the persons asserting same. Chapter 19, supra, is a new statute, supplanting Section 3876, and all lien laws as far as the lien for seed grain is concerned, and the Brande v. Babock Hardware Co. Case would, therefore, have no application.

A case, the facts of which were almost identical with the facts here presented, and strongly supporting an action against the elevators, is Gaertner v. Western Elevator Co. (Minn.) 116 N. W. 945, wherein an elevator company was held liable in conversion for paying part of the proceeds of a sale of grain to the International Harvester Co., a chattel mortgagee, the elevator company having notice of the prior claim of the plaintiff in that action at the time it dealt with the grain and paid over the money.

The recent cases of Foorman v. Boland et al., 59 Mont. 185, 196 Pac. 147, decided by the Montana Supreme Court February 14, 1921, and Chester State Bank v. Great Northern Railway et al., 58 Mont. 44, 190 Pac. 136, are valuable authority to the effect that the filing of a chattel mortgage is notice to persons subsequently dealing with the property.

It is, therefore, my opinion that both in the case of the banks which signed waivers of their priorities and served notice of claim upon elevators, and then collected the money from the sale of the grain, and in the case of the elevators dealing with the same and paying out the money, an action in conversion will lie under the above provisions.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.