

County Records, Transcribing of on County Division—As to Expired Chattel Mortgages and Attachments. Contractor, Duties Of.

1. In transcribing records of property, chattel mortgages and attachments that have ceased to be incumbrances should be excluded.
2. It is the duty of the party who has contracted to transcribe the records to see that they are correctly transcribed.

Helena, Montana, April 28th, 1906.

Hon. C. H. Rittenour, Chairman, Board of County Commissions, Plains, Montana.

Dear Sir:—I am in receipt of your communication of April 21st, inclosing letter from Messrs. Blaisdell and Gibbs, submitting for the consid-

eration of this office two propositions relative to transcribing the records of property situate in Sanders County, to-wit:

1. "How far back should we go to take chattel mortgages, attachments, etc.?"

2. Whose duty is it to make corrections of errors in the transcribed records?

The only authority upon the subject is the statute itself, which provides in Section 9 of the Act creating Sanders County that the County commissioners are empowered, etc., "to contract * * * for transcribing and indexing of records of property lying and being within the limits of the county of Sanders, and of other public records, which transcripts, when compiled, shall be compared with the original records by the county clerk of Missoula County, and when corrected shall be by him so certified, etc."

This statute is very general in its terms and under it, only general rules can be given.

1. Chattel mortgages that have been satisfied or which have expired by their own terms or on which the statute of limitations have run, and attachments that have been released or otherwise become inoperative, are rather matters of history than records affecting property rights or title to property. The term "records" referred to in the statute, has reference to records that in some manner affect property rights or preserve title to property.

The sole object of filing a chattel mortgage is to give notice to third parties of the lien, and when the time mentioned in the statute which makes this filing a notice, has expired, all purposes of the filing have been fulfilled and the mortgage ceases to be a record which affects property rights. No filing at all is necessary to give validity to the mortgage as between the parties thereto. Therefore, chattel mortgages which have been satisfied or have expired as to third parties, and attachments that have for any reason ceased to be liens need not be transcribed.

2. The statute does not make it the duty of the county clerk to do any of the transcribing, but only to certify to the records when the same are correct. Under this statute, it is clearly the duty of the party who has contracted to transcribe the records to see that they are correctly transcribed. Mere minor corrections undoubtedly will be made by the clerk in comparing without referring it back for correction, but there is no legal obligation resting upon the clerk to do so.

Yours very truly,

ALBERT J. GALEN,

Attorney General.