

Opinion No. 23-3697

April 26, 1923

BY: MILTON J. HELMICK, Attorney General

TO: Requested by: Soledad C. Chacon, Secretary of State, Santa Fe, New Mexico.

"Migratory Chattels" Defined.

Mortgages on Migratory Chattels Executed Since the Passage of Chapter 124 of the Laws of 1923 Must be Recorded With the Secretary of State.

OPINION

{*48} This inquiry arises upon the meaning of the term "migratory chattels" as used in Senate Bill No. 133, which became a law on March 12, 1923. This bill provides in general for the recordation of mortgages upon "livestock, vehicles or other migratory chattels" with the Secretary of State, after they have been filed or recorded with the County Clerk.

The question asked is what chattels are considered migratory and what test may the County Clerk apply in determining whether or not a chattel mortgage should be recorded with the Secretary of State.

As heretofore stated, the law refers to mortgages of "live-stock, vehicles or other migratory chattels." Clearly all mortgages covering stock animals or vehicles are to be recorded with the Secretary of State. The difficulty lies in determining what chattels are included in the term "other migratory chattels." After a most diligent search I have been unable to discover any judicial definition of the term "migratory chattels." However, I think the difficulty can be solved readily by recourse to the rule of **ejusdem generis**, which is a well known maxim applicable to statutory construction and meaning "of the same kind or species" This rule is frequently applied where an enumeration of specific things in a statute is followed by some more general word or phrase with the result that such general word or phrase is held to refer to things of the same kind. In other words, the phrase "other migratory chattels" means chattels of the same kind as livestock and vehicles. I think the term covers stock animals of all kinds such as cattle, horses, sheep, goats, pigs, burros and all kinds of vehicles such as automobiles, trucks, wagons, buggies, motorcycles and bicycles. It would not include chickens, baby buggies or wheelbarrows. I think the statute is to be given a common sense construction in aid of the object of which it was passed, which clearly appears from the contents of the law. Of course, most chattels are movable, but the law refers only to chattels which from their inherent nature are likely to move or be moved beyond the confines of the county of their **situs**. The law is designed to protect the mortgagor, the mortgagee and the public in cases of mortgaged chattels which, from their very nature, are not likely to be located at all times in one county. I think that if the County Clerks will bear in mind the idea of

the law and the rule of construction which I have outlined herein, they will have no difficulty in determining what mortgages should be recorded with the Secretary of State.

I think that all mortgages referred to by the Act filed with the County Clerks since the passage of the Act, must be recorded with the Secretary of State.