

PRICE *v.* SKILLERN.

Opinion delivered January 5, 1895.

Chattel mortgage—Filing—Sufficiency of indorsement.

The indorsement on a chattel mortgage of the words, "This is to be filed," is a sufficient compliance with Sand. & H. Dig. sec. 5102, providing that where a chattel mortgage has indorsed thereon, "This instrument is to be filed but not recorded," it shall be a lien on the property from the time of filing.

Appeal from White Circuit Court.

GRANT GREEN, JR., Judge.

J. W. House for appellant.

The indorsement is a substantial compliance with the statute. Mansf. Dig. sec. 4750; Acts 1893, p. 156; 49 Ark. 431, 433. It is not necessary that the precise language of the statute be used. 52 Ark. 164.

J. N. Cypert for appellee.

The indorsement was not a substantial compliance with the statute. Sand. & H. Dig. secs. 5102, 5107.

BATTLE, J. A statute of this State provides that "whenever any mortgage or conveyance intended to operate as a mortgage of personal property, or any deed of trust upon personal property, shall be filed with any recorder in this State, upon which is indorsed the follow-

ing words: 'This instrument is to be filed, but not recorded,' and which indorsement is signed by the mortgagee, his agent or attorney, the said instrument when so received shall be marked 'Filed' by the recorder, with the time of filing upon the back of said instrument; and he shall file the same in his office, and it shall be a lien upon the property therein described from the time of filing, and the same shall be kept there for the inspection of all persons interested." Sand. & H. Dig. sec. 5102.

The instrument in question was a deed executed by G. L. Jones, in which he conveyed certain personal property to J. F. Price, in trust to secure an indebtedness to Pruitt Bros., amounting to the sum of \$81.67. It was duly acknowledged, and filed with the recorder of White county, in his office, with the following indorsement made thereon by Pruitt Bros.: "This is to be filed. Pruitt Bros." The recorder indorsed it as follows: "This instrument was filed on the 31st day of August, A. D. 1892. J. M. Reynolds, Clerk." The sufficiency of the indorsement made by Pruitt Bros. is questioned.

The object of the indorsement required by the statute is to direct the recorder to file, but to not record at length. To accomplish this object, it would be unreasonable to suppose that the legislature intended that the use of no words except those prescribed by the statute should be sufficient. In *State v. Smith*, 40 Ark. 431, an indorsement in the words, "To be filed but not recorded," was held to be a sufficient compliance with the statute. The effect of this decision, if followed, is to make any indorsement of the import of that required by the statute sufficient; for the statutory formula cannot be essential when an indorsement in different words, but to the same effect, accomplishes the purpose of the statute.

An indorsement of the words, "To be filed," made by a mortgagee on a mortgage or deed of trust, and signed by him, at the time he files it with the recorder,

is, under the statutes of this State, reasonably susceptible only of one construction. A mortgage can be filed for only two purposes: for record, and to be "kept" without record "for the inspection of all persons interested." When filed for record, no indorsement by the mortgagee is required or necessary. In the absence of express directions, the inference and presumption are, it was filed for record. But it can be legally filed for the other purpose only when an indorsement in substantial compliance with the statute is made. An indorsement, therefore, of the words, "To be filed," made and signed by the mortgagee, read in the light of the statute, can have but one meaning, and that is, the mortgage shall be kept by the recorder, without record, for the inspection of all parties concerned. It, obviously, could not have been made for any other purpose. The recorder in this case so understood it, and acted accordingly. The indorsement was a sufficient compliance with the statute.

Reversed and remanded for a new trial.

Hughes and Riddick, JJ., did not sit in this case.
