UNC SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 10 | Number 4 Article 16

6-1-1932

Registration -- Similarity In Name As Notice

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landlord's agreement to repair. The plaintiff was nonsuited, the court holding that the damages were too remote and not within the contemplation of the parties.

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Registration—Similarity In Name As Notice.

On petition for the recognition of mortgagee's claim as a lien against the funds of the mortgagor's trustee in bankruptcy, *held,* where the mortgagor's creditors knew that it had conducted a flying school under the name of "Greer College of Motoring," a mortgage so recorded was constructive notice of a lien against "Greer College and Airways." And had the creditors not had such information, they would have been presumed to know that flying machines require motors.[1]

Most courts strictly construe the recordation statutes. When the Christian name is wrong,[2] or omitted,[3] the record is said not to be notice. On the other hand, omission of the first name and substitution of the middle name is held fatal by some courts[4] and immaterial by others.[5] In the case of common diminutives and corruptions of proper names, the almost universal view is that the searcher is given sufficient notice.[6] It is also held in the use of the proper initial for

[1] *In re* Greer College and Airways, 53 F. (2d) 585 (C. C. A. 7th, 1931). The other ground for the decision was that under an existing Illinois statute which required several steps in the process of change of corporate name, the name had not in fact been changed until the final step.

[2] Zimmerman v. Briggans, 5 Watts 186 (Pa. 1836); Stark v. Weisner, 214 N. Y. Supp. 292 (1926); Bankers' Loan and Investment Co. v. Blair, 99 Va. 606, 39 S. E. 213 (1901); Zimmer v. Dunlap, 99 N. J. Eq. 610, 133 Atl. 514 (1926); Bernstein v. Schoenfeld, 81 N. Y. Supp. 11 (1902). *Contra:* Ouimert v. Sirous, 124 Mass. 162 (1877) (Joseph Cyr, sufficient notice to one searching for Germain Sirous: decision due to Massachusetts doctrine that things good between parties are good as to third persons).

[3] Ridgway's Appeal, 15 Pa. 177 (1850); Richardson v. Gardner, 128 Va. 676, 105 S. E. 225 (1920).

[4] Johnson v. Hess, 126 Ind. 298, 25 N. E. 445 (1890) (William not notice to one looking for Henry W.); Haring v. Murphy, 113 N. Y. Supp. 452 (1908).

[5] Loser v. Plainfield, 149 Iowa 672, 128 N. W. 1101 (1910); Jenny v. Zehnder, 101 Pa. 296 (1882) (F. Zehnter, notice of John Jacob Frederick Zehnder).

[6] H. R. & Co. v. Smith, 208 N. Y. Supp. 396, 151 N. E. 448 (1926) (Bess and Elizabeth); Burns v. Ross, 215 Pa. 293, 64 Atl. 526 (1910) (Frank and Francis); Goodell v. Hall, 112 Ga. 435, 37 S. E. 725 (1900) (Elizabeth and Eliza); Styles v. Theo. P. Scotland and Co., 22 N. D. 469, 134 S. W. 708 (1912) (Charles and Charlie); Fallon v. Kehoe, 38 Cal. 44 (1869) (Darby and Jeremiah). *Contra:* Thomas v. Desney, 57 Iowa 58, 10 N. W. 315 (1881) (Helen and Ellen); Zimmerman v. Briggans, *supra* note 2 (John and Jacob); Thornily v. Prentice, 121 Iowa 89, 96 N. W. 728 (1903) (Willis and Wiliam).

the Christian name,[7] or where the first and middle names are transposed,[8] that a person should be put on inquiry. But where the initial is wrong[9] the variance destroys the effect of the record as notice; although some courts have gone to the extreme of holding two wrong initials immaterial.[10]

Due to increased modern usage, the weight of authority now holds a mistake in the middle initial,[11] or its omission,[12] to defeat the record. A cursory glance at the city directory will convince one of the wisdom of such change. However, other courts still cling to the common law doctrine that the law recognizes but one Christian name.[13] Then again, a superfluous initial,[14] or the first and second[15] or second and third transposed,[16] prevents the creation of a lien.

As a rule an erroneous or faulty surname will not be countenanced[17] save where the doctrine of *idem sonans* is applied.[18] Other

[7] Stark v. Lamberton, 282 Pa. 219, 127 Atl. 631 (1925); Jones' Estate, 27 Pa. 336 (1856); Green v. Meyer, 98 Mo. App. 438, 72 S. W. 128 (1903); Stephenson v. Cone, 24 S. D. 460, 124 N. W. 439 (1910); Pinney v. Russell & Co., 52 Minn. 443, 54 N. W. 484 (1893).

[8] Huston v. Seeley, 27 Iowa 190 (1869); Hauser v. Calloway, 36 F. (2d) 667 (C. C. A. 8th, 1929).

[9] Johnson v. Wilson & Co., 37 Ala. 468, 34 So. 392 (1903); Prouty v. Marshall, 225 Pa. 570, 74 Atl. 550 (1909); Lemm v. Kramer, 224 S. W. 560 (Tex. Civ. App. 1920); Aultman v. Ward, 50 Neb. 442, 69 N. W. 935 (1897).

[10] Brayton v. Beall, 73 S. C. 308, 53 S. E. 641 (1906). *Contra:* Lemm v. Kramer, *supra* note 9; Windle v. Citizen's National Bank, 280 Mo. 268, 216 S. W. 1020 (1919).

[11] Dutton v. Simmons, 65 Me. 583 (1873); Allen West Commission Co. v. Millstead, 92 Miss. 837, 46 So. 256 (1908); Delaney v. Becker, 14 Pa. Super. Ct. 392 (1900); Turk v. Benson, 30 N. D. 200, 152 N. W. 354 (1915).

[12] Crouse v. Murphey, 140 Pa. 335, 21 Atl. 358 (1891); Woods v. Reynolds, 7 W. & S. 406 (Pa. 1844); Insurance Co. v. Halpern, 263 Pa. 155, 117 Atl. 197 (1922); Davis v. Steeps, 87 Wis. 472, 58 N. W. 769 (1894).

[13] Fincher v. Hanegan, 59 Ark. 151, 26 S. W. 821 (1894); Jones v. Berkshire, 15 Iowa 248 (1863); Butts v. Cruttenden, 14 Pa. Super. Ct. 449 (1900); Gillespie v. Rogers, 146 Mass. 612, 16 N. E. 711 (1888).

[14] Stone v. Threefoot Bros. & Co., 99 Miss. 15, 54 So. 595 (1911).

[15] Windle v. Citizen's National Bank, *supra* note 10. *Contra:* Huston v. Seeley, *supra* note 8 (J. A. is notice to one looking for Almira J.); Hauser v. Calloway, *supra* note 8 (Chester C. Calloway notice of lien against Charles Chester Calloway).

[16] Wicker v. Jenkins, 49 Tex. Civ. App. 366, 108 S. W. 188 (1900) (variance between W. F. B. Wicker and W. B. F. Wicker is fatal).

[17] Buchan v. Sumner, 2 Barb. Ch. 165 (N. Y. 1847) (judgment docketed as Sumner Palmer was not notice of Palmer Sumner); Lembeck & Betz Brewing Co. v. Barbi, 90 N. J. Eq. 373, 106 Atl. 552 (1919) (Barbi was not notice of Borbely, although signature on mortgage was Barbily and Bourbi); Mackey v. Cole, 79 Wis. 426, 48 N. W. 520 (1891); Howe v. Thayer, 49 Iowa 154 (1878) (Wm. H. Freeman does not create lien on Wm. H. Furman). *Contra:* Ouimert V. Sirous, *supra* note 2.

[18] Green v. Myers, *supra* note 7 (Seibert same as Sibert. "It is common knowledge that names are spelled a variety of ways and everyone is presumed to have such knowledge"). Myer v. Fegaly, 39 Pa. 429 (1861) (Bubb

courts, taking the more rational view, refuse to apply the rule[19] and hold that the record is notice to the eye and not to the ear. But where two names, though *idem sonans,* begin with different letters the inaccuracy is held by both sides to be material.[20]

Admittedly the majority of the courts, in the case of mortgages, permit some variance, but a variance on a judgment docket is generally fatal. Even in the case of mortgages the variance permitted is slight and often excused on the ground that the person is well known by both names,[21] or both are similar in a particular dialect.[22] Usually, however, the record is not to be construed in the light of extraneous matter.[23]

One is impressed by the almost total lack of cases dealing with corporate names imprecisely recorded. But in those found, the view taken is diametrically opposed to that of the principal case.[24]

In North Carolina, the court has taken a liberal attitude where the question of variance has arisen. When a variance occurs in the index,

and Bobb); Muehlenger v. Schilling, 3 N. Y. Supp. 705 (1888) (Schelleng and Schilling); Miltonvale State Bank v. Kuhnle, 50 Kan. 420, 31 Pac. 1057 (1893) (Johnston and Johnson); Howard v. Turbell, 179 Ind. 67, 100 N. E. 372 (1913) (Blunt and Blount); Bergman's Appeal, 88 Pa. 120 (1878) (Heckman and Hackman; eye is naturally directed to names slightly different); Bates v. State Bank, 7 Ark. 394 (1847) (Asher and Ashley).

[19] Berkowitz v. Dam, 202 N. Y. Supp. 584 (1923) (Sorcher and Soicher); Stark v. Weisner, *supra* note 2 (Weisner v. Wiesner); Aetna Life Insurance Co. v. Hesser, 77 Iowa 381, 42 N. W. 325 (1889) (Hesser and Hesse).

[20] Boyd v. Boyd, 128 Iowa 699, 104 N. W. 798 (1905) (Sheffey and Cheffey); Heil's Appeal, 40 Pa. 453 (1861) (Yoest and Joest); Clary v. O'Shea, 72 Minn. 105, 75 N. W. 115 (1898) (John O'Shea and John O. Shea). *Contra:* Fallon v. Kehoe, 38 Cal. 44 (1869) (Jeremiah Fallon and Darby O'Fallon).

[21] Brayton v. Beall, *supra* note 10; Ouimert v. Sirous, *supra* note 2; Fallon v. Kehoe, *supra* note 6; Jenny v. Zehnder, *supra* note 5; Huston v. Seeley, *supra* note 8; Hauser v. Calloway, *supra* note 8.

[22] Muehlenger v. Schilling, *supra* note 18 (both names have the same sound in German); Meyer v. Fegaly, *supra* note 18 (same sound in German; criterion is that the notice to be sufficient must advise a person of ordinary intelligence). *Contra:* Zimmer v. Dunlap, *supra* note 2 (Guiseppe, Italian for Joseph); Heil's Appeal, *supra* note 20 ("Law does not impose duty on the searcher to inquire whether other letters, in another language, may not spell the same name.").

[23] Grundies v. Reid, 107 Ill. 304 (1883) ("Constructive notice flowing exclusively from matters of record can never be construed to be more extensive or broader than the facts stated in the record."); Zimmerman v. Briggans, *supra* note 2 ("Subsequent creditors are not bound to go beyond the judgment docket."); Prouty v. Marshall, *supra* note 9; Thomas v. Desney, *supra* note 6; Boyd v. Boyd, *supra* note 20.

[24] McLarry v. Studebaker Bros. Co. of Texas, 146 S. W. 676 (Tex. Civ. App. 1912) (record of Studebaker Bros. of Texas is not notice of lien against Studebaker Bros.); Congregational Free Church Bldg. Society v. Scandinavian Free Church of Tacoma, 24 Wash. 433, 64 Pac. 750 (1901). (Scandinavian Congregational Church is not notice of Scandinavian Free Church); Spreyne v. Garfield Lodge No. 1, 117 Ill. App. 253 (1904).

a searcher is affected with all the knowledge that inquiry into the record would have revealed.[25]

The principal case seems to have gone too far. It proposes to reward the searcher in proportion to his ability to imply. And strangely enough, there is good authority in Illinois to the contrary.[26] In addition, the purpose of the recording statutes is to give constructive notice of a lien and not *prima facie* evidence of one. The likelihood of fraud and the insecurity which would arise under too liberal a view, is exactly what the statutes were passed to prevent. On its facts, it is believed that the instant case was correctly decided. Actually, no rights of a third party had intervened.

CECILE L. PILTZ.

Usury—Deduction of Expenses Incidental to the Loan.

In addition to the maximum legal rate of interest plaintiff building and loan association deducted two per cent from the loan to cover cost of investigating the borrower's credit. *Held,* not a scheme to evade the usury statutes, since there was no evidence to contradict the contention that the amount charged was actually expended in a bona fide way as compensation for the services rendered.[1]

It is generally conceded that deduction by the lender for expenses and services incidental to the loan does not render the transaction usurious even though the total amount received exceeds the legal interest rate.[2] This is true whether the expenses are already in-

[25] Royster v. Lane, 118 N. C. 156, 245 S. E. 796 (1896); Valentine v. Harrison, 193 N. C. 825, 138 S. E. 308 (1927); West v. Jackson, 198 N. C. 693, 153 S. E. 257 (1930) (the question is whether a careful searcher would be put upon inquiry).

[26] Grundies v. Reid, *supra* note 23; Kennedy v. Merriam, 70 Ill. 228 (1873); Garrison v. People, 21 Ill. 535 (1859); Spreyne v. Garfield Lodge No. 1, *supra* note 24 (charter granted to United Slavonian Benevolent Society does not tend to prove the corporate existence of Garfield Lodge No. 1 of United Slavonian Benevolent Society).

[1] Taylor v. Consolidated Loan and Savings Co., 162 S. E. 391 (Ga. App. 1932).

[2] Iowa Savings and Loan Association v. Heidt, 107 Iowa 297, 77 N. W. 1050, 70 Am. St. Rep. 197, 43 L. R. A. 689 (1899) (expenses incurred by lender in recording the mortgage, procuring the abstract, and examining the title); Ashland National Bank v. Conley, 231 Ky. 844, 22 S. W. (2d) 270 (1929) (examining title, procuring insurance, and appraising property). Note (1921) 21 A. L. R. 797; Note (1927) 53 A. L. R. 743; Note (1928) 63 A. L. R. 823. Deduction of expenses incidental to the loan has statutory recognition in North Carolina as to building and loan associations and land and loan associations. Building and loan: N. C. CODE ANN. (Michie, 1931) §5183; land and loan: N. C. CODE ANN. (Michie, 1931) §5207 (h). There seems to be no such provision for savings and loan associations.