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Review of North Dakota Decisions

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REVIEW OF NORTH DAKOTA DECISIONS

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Burns v. Columbia Elevator Co.: B., owner of land, entered into contract with P. whereby P. agreed to farm it and the crops were to be divided but title was to remain in B. until division was had. P. sold the grain to C. who paid full value therefor. B. sued C. for conversion. C. claims ostensible agency on the part of P. to sell the grain. HELD: Equitable interest of P. in the grain passed to C., the purchaser, and B. is not entitled to recover full value of the grain but only the amount of his ultimate interest therein under the contract.

Application of Matt Brilz for Writ of Habeas Corpus: The application shows that an information was filed showing that defendant maintained a common nuisance as a second offense, and was sentenced to one year in the penitentiary, where he is now in custody. Petitioner claims that the 1913 law which made a second offense a felony was superseded by the 1921 and 1923 laws, and that these laws made it a misdemeanor, and therefore that the Court exceeded his jurisdiction in sentencing defendant to the penitentiary. HELD: Writ denied. Original act making the second offense of maintaining a common nuisance a felony, has not been repealed or modified.

Finch, Van Slyck & McConville, a corporation, Biewer as Receiver of 1st National Bank of Hannaford v. Jackson et al: In 1923 the plaintiff corporation sued the defendants in Cass county, obtained a judgment on default, which was entered and a transcript filed in Griggs county. Execution was issued and the sheriff levied on and sold certain property to satisfy the judgment. Certificate of sale was assigned to plaintiff bank and sheriff's deed on execution was issued to the bank. The bank failed. In 1927, defendant served notice of hearing on motion to vacate execution, levy and sale on the ground that the sale was void. Defendant raised the points that the land was sold in one parcel, publication of notice made on legal holidays, purchaser a foreign corporation, and sale was not confirmed. Lower court denied the motion and the case comes up on appeal. HELD: Affirmed. Sale of land in one parcel not void but voidable on showing on injury within a reasonable time. The fact that publication was made on legal holidays, that purchaser was a foreign corporation, and that the sale was not confirmed does not invalidate the sale.

Glen Ullin Trust v. Hercules Power Co. et al: Spring Valley Co., a corporation, executed a trust mortgage on its coal mine property to secure 250 notes aggregating $50,000 and agreed to pay existing mortgages and thus make the trust mortgage a first lien on the property. Sufficient funds were not realized from sale of the notes to pay off all mortgages and liens. An execution was issued on a prior judgment against the company held by the Hercules Powder Co. and mortgaged property was sold to the judgment creditor and sheriff's certificate issued. No redemption was made. After the redemption period had expired, a stockholder of the defunct company purchased and secured an assignment of the sheriff's certificate and got sheriff's deed to the

property. Said stockholder then formed the Glen Ullin Trust and conveyed the property to said Trust Co., which agreed to manage it for him. Plaintiffs, as stockholders and directors of the Glen Ullin Trust, brought action to quiet title. HELD: for plaintiff. An individual who is a stockholder but not a director of a corporation, in absence of fraud may purchase property lost by the company's failure to redeem at execution sale. Such individual is under no fiduciary relation with the creditors of the company and no constructive trust arises in favor of the creditors of the company.

L. R. Baird, Receiver for Citizens Bank v. Northern Savings Bank and American National Bank. T, the owner of land, simultaneously gave three mortgages, the first of which was assigned to defendant Northern Savings bank. T later gave a fourth mortgage to plaintiff bank, and delivered to said bank a warranty deed for said land. Plaintiff bank gave T a contract to reconvey on certain conditions, among which T was to pay taxes subsequent to 1919. Plaintiff bank paid the 1920 and 21 taxes and recorded the deed. The contract was not recorded, and defendants had no knowledge of it until this trial. Defendant Northern Savings bank foreclosed its first mortgage, bid the property in for the full amount of indebtedness, and sheriff's certificate was issued to it. It paid plaintiff bank for 1920 and 21 taxes but 22 taxes appeared of record as paid by owner. Sheriff's certificate was assigned to defendant American bank and sheriff's deed issued. Plaintiff bank closed in 1924 and receiver demanded from defendants reimbursement for the payment of 1922 taxes. Defendant refused. Plaintiff as receiver brought this action in equity to have the warranty deed given to Citizens bank declared a mortgage and to decree the taxes paid by grantee a lien on the land. From judgment for plaintiff receiver, defendant appealed. HELD: Reversed. A mortgagee who purchased mortgaged property in good faith on a foreclosure sale without paying any money except costs of foreclosure but crediting the amount of the bid on mortgagor's debt is a subsequent purchaser for value, and as to him a deed, absolute in form, cannot be proved to be a mortgage.

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WORKMEN'S COMPENSATION

A workman, employed as a night watchman, was found in a tool house, dead. The evidence disclosed that he had voluntarily gone into such tool house to sleep, and that the closing of the doors of such tool house had caused the exhaust from a gasoline engine to accumulate, death resulting from carbon monoxide gas. The facts presented showed him in a sleeping position, his hat hanging on the wall, and his raincoat pulled over him. HELD: There was nothing to indicate that the deceased went into the tool house for the purpose of performing any service for his employer; that he was evidently seeking shelter from the discomforts of the weather; that the voluntary exposure to the poisonous gas for purely personal purposes was a departure from his line of duty, and dependents are not entitled to compensation.—*Union Indemnity Co. v. Malley, v. S. W. (2nd) 923 (Texas).*