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New President

North Dakota State Bar Association

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NO. 10.

NEW PRESIDENT

At the commencement of a new year of administration your president, your vice-president and your secretary and treasurer desire to express to you our sincere thanks for your confidence in our selection as your officers.

The coming year may be a fateful one; the clouds of war are thickening over us; as lawyers we are intensely interested in whether or not there will be any let down in the enforcement of our laws, for one of the real tests of democracy is whether it has the capacity to enforce the laws which are made by the people or its representatives. A breakdown at this point would mean a vital default. Recent months have disclosed that the failure of France, a great democratic nation, was not so much a military one as a collapse from within. The people had lost that durable quality of self discipline, and were unable to withstand any real aggression.

It is therefore more incumbent at this time, that we reexamine, and where we can, improve all of the processes of government in our state and nation. Particularly is it important that law enforcement agencies recognize this essential principle of government in this democracy.

Every public official charged with any responsibility of law enforcement, from the chief executive down to the township constable, should give serious
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concern to these days which will test our very national existence. Even the humblest law enforcement officer may feel that the faithful discharge of his duties not only helps to preserve peace, and order in his community, but is a real contribution to the cause of democracy.

The lawyers of this state can furnish leadership in this essential undertaking. In every municipality and county they can encourage cooperation with its officers to the end that we may go forward to a higher degree of law observance and law enforcement, and thus make our contribution toward the advance and preservation of Democracy in North Dakota and in the United States.

SEC'Y.

TAX DEEDS AND LIS PENDENS

In an action to quiet title to land where the defendant was the assignee of a purchaser of a tax lien who had filed a lis pendens, the plaintiff was the purchaser of a subsequent tax deed. In 1926 the assignor of the defendant, purchased the land in question at a tax sale for the delinquent taxes embracing the years 1920 through 1924 and he made a payment for the taxes of 1925 and 1926. In November, 1928, the land was sold for the taxes of 1927, and the plaintiff purchased the tax deeds at this sale. In 1929 Cowels, the assignor of the defendant, filed a lis pendens in regard to this land, and in the same month at a tax foreclosure proceedings he received a first lien on the property, no mention being made about or in regard to plaintiff's tax deed. Cowels then assigned his decree of foreclosure to the defendant. Plaintiff became the owner of the land in 1932 by a sheriff's deed that was subsequently recorded in 1933. Held for the plaintiff, that the purchaser of a tax certificate does not purchase pendente lite. "A sale for taxes is based on grounds which are adverse to all parties to an action involving title, and which are not in any way involved in the action, and hence the filing of a lis pendens does not make the purchaser at a tax sale a purchaser pendente lite." *H. J. Coffin v. Old Line Life Ins. Co.*, 295 N. W. 884 (Neb. 1941).

This rule seems to be generally followed by the courts. Tax liens are paramount to all other liens and the lien of the state for taxes cannot be ousted by pending litigation. *Security Trust Co. v. Root*, 72 Ohio St. 535, 74 N. E. 1077 (1905). "Tax title is not a title of a person failing to pay taxes, but is a new title, in nature of an independent grant from the sovereignty, extinguishing all former titles and liens not expressly excepted." *Warren v. Blackman*, 62 S. D. 26, 250 N. W. 681 (1933). The general weight of authority seems to be that a tax sale is based on grounds adverse to all parties to an action. See note, *Annotated Cases*, 1918C 78.