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Chain Store Licensing

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NORTH DAKOTA DECISIONS

Ruble vs. Nyseth: Over a period of years one O. loaned various sums of money to defendant. Settlement was finally made and note and mortgage given. O. and other mortgagees agreed to a sale of the property, the understanding being that the proceeds should go to the mortgagees. Such disposition was made, partly, but there was about $757.29 in the hands of the auctioneer when garnishment was served upon him. O. claimed this amount, it being less than his account on the note and mortgage. HELD: That O. had a valid and subsisting mortgage lien upon the property and the proceeds of the sale; that same was superior to the lien of the plaintiff on his garnishment proceeding.

Kittleson vs. Collette: Plaintiff, an auto dealer, and defendant, a farmer, made a deal whereby defendant turned over to plaintiff a house as part of the purchase price of a car. Shortly thereafter, defendant sold the lot on which the house stood, giving a warranty deed. The tenant in the house had, in the meantime, been requested to vacate, and did so. At time of sale of the lot, mention of sale of the house was made, but no reference thereto was placed in the deed. Plaintiff rented the house to another without defendant's knowledge. The lot was then sold to C., with instruction that the house had been sold to plaintiff, but no mention was made in that deed. Plaintiff told various people he owned the house, tried to sell it, and made arrangements for moving it. Plaintiff's tenant then moved out of the house, but the last owner of the lot moved in, without the knowledge or consent of plaintiff or defendant. C. sold the lot to P., who, in turn, sold it back to C. This action is for the value of the house. HELD: The parole evidence rule applies only to parties and privies. "Where a controversy arises between a party to written contract and one who is neither a party to it nor privy to one who is the rule excluding parol evidence to explain, modify, or contradict the writing does not apply." Since, however, there was no time fixed for removal of the house, the law gave the plaintiff a reasonable time to do so. The matter of reasonable time is a question for the jury. Hence, a new trial is ordered.

CHAIN STORE LICENSING

Under this heading we quoted extracts from the U. S. Supreme Court decision in *Indiana vs. Jackson, 51 Sup. Ct. Rep. 540* (September

1931 Bar Briefs). Since that decision questions have arisen in various parts of the country as to whether such decision would apply merely to mercantile establishments, as such, or whether the term included such places as tire and accessory establishments and gasoline service stations. By way of information, therefore, we cite some cases that may have a bearing upon the subject:

Maxwell vs. Tea Co., 51 Sup. Ct. Rep.
Liggett vs. Baldridge, 278 U. S. 105
Atkins vs. Children's Hospital, 261 U. S. 525
Frost vs. Corporation, 278 U. S. 515
Smith vs. Cahoon, 51 Sup. Ct. Rep. 582
State vs. Ashbrook, 154 Mo. 375
Chicago vs. Netcher, 183 Ill. 104
Bailey vs. Furniture Co., 259 U. S. 20
Trusler vs. Crooks, 269 U. S. 475
Bank vs. Fenno, 8 Wall. 533
American Sugar Co. vs. Louisiana, 179 U. S. 89
Flint vs. Stone Tracy Co., 220 U. S. 107
Maxwell vs. Bugbee, 250 U. S. 525
Magoun vs. Trust & Sav. Bank, 170 U. S. 283
Cargill vs. Minnesota, 180 U. S. 452
Wing vs. Kirkendall, 223 U. S. 59
Bradley vs. Richmond, 227 U. S. 477
Theatre Co. vs. Chicago, 228 U. S. 61
Tea Co. vs. Doughton, 196 N. C. 145
Woolworth Co. vs. Harrison, 156 S. E. 904
Meyer vs. Nebraska, 262 U. S. 390
Traux vs. Corrigan, 257 U. S. 312
Lockner vs. New York, 198 U. S. 45

JUDICIAL COUNCIL

The first proposal for a judicial council was presented by Judge Burr at the 1924 annual meeting of this Association (page 38 proceedings 1924). His view was that it would be charged "with the duty of ascertaining the state of judicial business; gathering statistical information regarding the work of the courts; examining the rules of procedure; suggesting the necessary changes so the administration of justice could be kept abreast of the needs; could also study the work of the state's attorneys, sheriffs and other officials; make suggestions for the expedition of business" etc. It could consist of "the Chief Justice as chairman, one district judge from each district, and the President and Secretary of the Bar Association."

This is quoted at this time, to indicate that the original plan contemplated a rather limited membership. We are convinced that a more limited membership would add to the effectiveness of the Council. We are equally convinced that the present method of selecting representation from the Bar Association is preferable to one that would designate those officially connected with the Association.

COLLECTION RULE

The Lake Region Bar Association has adopted a rule that a filing fee of $1.00 for each claim placed with a member of the Association for collection shall be paid by the party filing the claim at the time of the filing of the claim and that such fee shall neither be contingent nor a part of the collection fee to be charged if the claim is collected.