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Review of N.D. Decisions

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REVIEW OF N. D. DECISIONS

State ex rel Olsness v. McCarthy, County Auditor. This is a proceeding in mandamus. The questions presented are: 1. Must a county auditor, at the time of the annual tax sale held in December of each year, include hail indemnity taxes in the amount of delinquent taxes listed against each tract of land and sell each tract for one sum, including both the general real estate taxes and the hail indemnity taxes and issue only one certificate in evidence of the sale? 2. Is the county auditor inhibited from entering transfer of a deed, patent or final decree of distribution unless all delinquent hail indemnity taxes are paid? **HELD:** 1. The county auditor must include in the notice of tax sale all delinquent hail indemnity taxes and must sell any lands advertised for the aggregate amount of general real estate taxes and hail indemnity taxes in one sum, and issue one certificate of sale. This does not, however, transform the hail indemnity tax into a tax within the legal meaning of that term, nor give to the certificate of sale, insofar as it represents hail indemnity taxes, any greater effect than if issued upon a sale for hail indemnity taxes alone. Insofar as the certificate represents hail indemnity taxes it confers upon the holder only such rights as he would have if the lien of the hail indemnity tax were foreclosed. 2. A county auditor may enter the transfer of a deed, patent or final decree of distribution without regard to delinquent hail indemnity taxes.

Jarski v. Farmers' & Merchants' Bank. This is a suit to recover the purchase price of certain land in South Dakota which plaintiff claims he sold to the defendant. Though the purchase is denied, it appears if it was made that it does not tend to attain and accomplish the objects and purposes for which the defendant was organized as a banking corporation, but for speculative purposes. **HELD:** The transaction falls within the inhibitions of Sections 5151, 5152 and 5187, as amended by Chapter 54 Session Laws of 1915, and therefore is unlawful and void. For this reason the court will not lend its aid to compel performance.

Kuiper v. Miller. This is an action in conversion in which it is alleged in the complaint that the owner of land executed a mortgage to the plaintiff on March 1st, 1919; that the mortgage was foreclosed and a sheriff's certificate issued on January 23, 1925; that the mortgagor rented the land for the year 1924 under an agreement whereby he was to receive one-third of all grains sown, grown and raised upon the land during said season; and that the lessee delivered the grain to the defendant, a dealer in grain. The defendant demurred to the complaint and this appeal is from an order overruling the demurrer. **HELD:** Rent is compensation for the use of land. It is yearly profit issued out of land and may consist of money, provisions, chattels or labor, and is not

the equivalent of the value of the use and occupation of the land. Under Section 7762, Compiled Laws 1913, the holder of a sheriff's certificate of sale is entitled to receive from the tenant in possession the rents of the property sold, or the value of the use and occupation thereof during the period of redemption and may maintain an action in conversion against the purchaser of that portion of the crop raised during the year of redemption which the mortgagor and the renter agreed should be delivered as rent. If he seeks to recover a portion of the crop raised during such period, or its value in a conversion action, he must show that the crop was rent of the premises within the meaning of Section 7762. When the sheriff's certificate has been recorded, a third party dealing with the lessee of the mortgagor of premises sold under foreclosure is charged with notice of the foreclosure proceedings, and the rights of such holder of the certificate, under Section 7762.

Hanson v. Blum. Plaintiff made a loan which was secured by a mortgage on a threshing outfit. The mortgagors also became indebted to a bank and gave a mortgage on the same threshing outfit. Though plaintiff's debt was not paid, he failed to renew his mortgage at the end of three years from the date of filing, as required by Section 6772, Compiled Laws 1913. Thereafter defendant took a mortgage on the same property covering the debt of the mortgagors to the bank, all of which was incurred within three years after the mortgage to plaintiff was filed, and in addition a further indebtedness incurred subsequent to the three year period. On default, the defendant declared his debt due, seized the property and purchased the same at foreclosure sale. Thereafter plaintiff asserted a right thereto under his mortgage and demanded the property. Upon defendant's refusal to deliver it, this action in replevin was commenced. HELD: Section 6762, Compiled Laws 1913, was supplementary to Section 6758. The purpose of the latter is to give notice of the existence of mortgage liens and of the former to clear the record by raising the presumption of payment where there is no renewal within three years from the date of filing on which those dealing with the mortgagors, without notice to the contrary, may rely. A creditor within the meaning of Section 6762 is one who without notice that the debt secured by an unrenewed chattel mortgage is unpaid subsequently extends credit, or alters his position as to his debtor to his detriment as subsequent encumbrancer in good faith, is a creditor taking security for his debt. His character as an encumbrancer is determined by the notice he has when the credit is extended rather than when the security is taken. The defendant was not a subsequent encumbrancer in good faith insofar as his mortgage secured indebtedness incurred within three years after plaintiff's mortgage was filed, and that he is such encumbrancer only as to indebtedness incurred after the expiration of such three year period for credit extended by him to his detriment prior to the time that he received notice that plaintiff's mortgage was still unpaid.