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Review of Important Decisions

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REVIEW OF IMPORTANT DECISIONS

By C. L. Young

Reimers, as receiver vs. Larson.

The receiver of an insolvent bank brought suit to enforce the super-added statutory liability of stockholders of the bank under Section 5168, Compiled Laws of 1913, and Chapter 53, Session Laws of 1919. The defense was that as the bank at the time it was closed was indebted to the stockholder in a considerable amount, this indebtedness should be offset against the superadded liability. HELD: that since the statutory liability imposed is a liability to contribute to a fund out of which creditors are to be satisfied ratably, the stockholder may not offset the indebtedness owing to him by the bank as this would in effect constitute him a preferred creditor.

Schatz Bros. vs. Kintyre Farmers Co-Operative Elevator Company.

The action is for conversion of grain upon which plaintiff claims a thresher's lien. The grain was threshed by plaintiffs for one Kauko. Liens were filed in two counties, and in both cases the name was spelled "Cauko," and were therefore indexed under the letter "C." The defendant inquired of the register of deeds of both counties for liens upon the crops of "Kauko," and was informed that there were none. HELD: That in preparing a thresher's lien, it is the duty of the person entitled thereto to include in the statement to be filed the name of the person for whom the threshing was done, spelled correctly, so that the lien can be filed and indexed alphabetically under the first letter of such person's surname as he spells it, and that the doctrine of idem sonans does not apply.

Davis, Receiver, Plaintiff and Appellant v. McLean County, Defendant and Respondent.

Plaintiff acquired the property involved under foreclosure of a mortgage given in 1915, the sheriff's deed issuing in 1922. Portions of the premises were cropped in 1920 and subsequent years, the crops each year being insured against loss by hail in the State Hail Insurance Department, and an indemnity hail tax being assessed against the premises each year on account of such insurance. The taxes on the property, including the indemnity hail tax, were not paid and the land was sold at tax sales to McLean County. The action is to foreclose a real estate mortgage and the county claims the indemnity hail tax to be a prior lien along with other taxes. HELD: The indemnity hail tax provided by Chapter 77, Laws of 1921, is not a tax within the purview of the constitution of this state, and such tax does not create a lien paramount to an antecedent real estate mortgage.

Julia Madden, Plaintiff and Respondent v. Harry Dunbar, and State of North Dakota, doing business as State Bonding Fund et al, Defendants and Appellants.

This suit is brought against the defendant Dunbar and against the State Bonding Fund upon the bond of the defendant Dunbar as State Inspector, for the conversion by Dunbar as State Inspector, of an auto-

mobile belonging to plaintiff. The term of office of Dunbar, as state inspector, expired in December, 1921, and the claim was filed with the commissioner of insurance on July 30, 1923. The complaint did not state the date of the default, nor the date when the default was discovered by the plaintiff, nor did it appear therefrom that the claim was filed within sixty days after the discovery of the default. The State Bonding Fund demurred to the complaint. HELD: Sections 7 and 9, Chapter 158, Laws of 1919, require a complainant who intends to hold the state bonding fund liable for any default or wrongful act of a public employee, to present the claim to the insurance commissioner within sixty days after the discovery by the claimant of the default, or wrongful act. The provisions of these sections are mandatory. A complaint which fails to allege the presentation of a claim within sixty days after the discovery by the claimant of the default does not state a cause of action.

ITEMS HERE AND THERE

The new Judicial Council of the State of Massachusetts was organized in November, 1924.

The Chicago Bar Association is recommending to the Courts that a rule be adopted prohibiting the taking of photographs in Court.

Judge Everett P. Wheeler, of New York, member of the American Bar Association since its organization, died last month at the ripe age of 85.

The Supreme Court of Washington has disbarred Elmer Smith, noted I. W. W. lawyer. The charge sustained was that Smith had advocated the overthrow of the U. S. government by unlawful means.

W. Thomas Kemp, of Baltimore, Assistant Secretary of the American Bar Association 1910-1919, and Secretary 1920-1924, answered the last call in February. He was 48 years of age at the time of his death.

Missouri attorneys recently presented to the Legislature of that State a bill providing that the omission of non-essential words from an indictment shall not constitute grounds for reversal, and prohibiting reversals or dismissals on purely technical errors.

During the past six months twelve outside State and local Bar Associations have applied to the office of the North Dakota Secretary for information concerning our Bar Association Act. Similar bills were introduced in two Legislatures recently, Minnesota and Oklahoma.

Legal Literature just published: "Income tax Procedure" by Montgomery, published by Ronald Press; "Studies in Murder" by Herbert C. Fooks; "The Drama of the Law" by Edward A. Parry, published by