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REVIEW OF IMPORTANT DECISIONS

By C. L. YOUNG

Farmers State Bank of Richardton v. Brown, as Sheriff, et al.

The president of a failing corporation, in sole charge of corporate affairs, executed a chattel mortgage on corporate property without affixing the corporate seal, to secure a pre-existing debt evidenced by notes renewed from time to time. The sheriff levied on the same property under an execution after the failure of the corporation to file its annual report with the secretary of state, and after a certificate of cancellation of its charter had been made by the secretary of state. This certificate was offered in evidence in defense of the levy. **HELD:** That the chattel mortgage was executed by an officer having proper authority, and that it was valid, though the corporate seal was not attached, and though it constituted a preference. Held further that the burden of establishing the non-existence of the corporation was on the defendant, and that the ex parte certificate of the secretary of state as to the cancellation of the corporate charter is not competent evidence of the facts therein stated. Whether cancellation of a corporation charter for failure to file an annual report terminates the corporate existence without a judicial proceeding is not decided.

Brown, vs. Leeak, et al.

There was involved an issue of fact as to whether an existing incumbrance was assumed by the grantee under a conveyance and it was **HELD:** A contract by which a grantee assumes the payment of existing incumbrances is distinct from the conveyance, and may be embodied in the deed, or in another instrument, or may rest in parol. It may appear without a formal promise or be implied from all the facts. When equities are exchanged subject to existing mortgages no presumption arises that the grantee agrees to pay the debt. A promise subsequent to the transfer must be supported by a new consideration.

Fyten v. Cummins et al.

The purchaser under a land contract while in possession became indebted to the seller in a considerable amount and committed various breaches of the contract and thereafter abandoned it and relinquished possession of the land. The contract did not contain the usual forfeiture clause fixing the amount of payments made as liquidated damages. In an action brought by the vendor, who had resumed possession of the land sold, to have the contract cancelled as a cloud upon the title, **HELD:** Where a contract for the sale of land contains no provision purporting to fix as liquidated damages the amount of payments made or owing upon a purchase contract at the time of cancellation for breach, and where there is no finding of the value of the purchaser's equity at the time

of cancellation, the findings will not support a personal judgment for the amount owing, in addition to a judgment quieting title.

Golden Valley County v. Lundin et al.

A bank was designated as a depository by the county and a depository bond for \$1,000.00 was given and filed in the office of the county auditor and accepted, under Chapter 56, Laws of 1921. A new designation of the same depository was made by the county commissioners in July, 1923. The bank remained a depository until February, 1924, when it failed. A large amount was then on deposit and this action was brought on the depository bond. In defense it was claimed that Chapter 56, Laws of 1921 was repealed by Chapter 199, Laws of 1923. HELD: A clause in a statute purporting to repeal other statutes is not in all cases conclusive evidence of the legislative intention. The statute must be construed as a whole and the legislative intent given effect, though contrary to the terms of the repeal clause. Where a repealing statute contains provisions identical, or practically so, with some provisions of the statute declared to be repealed, such provisions remain in force without interruption. The judgment against the sureties was upheld.

EMERGENCY LEGISLATION

Laws passed by the 1925 Legislature as Emergency Measures. All are now in effect.

HOUSE BILLS

24. Appropriation \$28,000.00 to cover deficit of State Training School at Mandan.
26. Appropriation \$30,000.00 to cover deficit in Wolf Bounty Fund.
42. Appropriation \$16,200.00 to pay loan made to Dickinson Normal School.
47. Appropriation \$75,000.00 from State Highway Fund for construction of Red River Bridge at Fargo.
55. Appropriation \$200,000.00 from State Highway Fund for construction of Missouri River Bridge at Williston.
57. Appropriation \$100,000.00 from State Highway Fund for construction of Missouri River Bridge at Sanish.
61. Authorizes reduced rate of interest 6%—upon redemption of real estate sold to the county of 1923 or any prior year and still held by the county, if said redemption is made on or before Nov. 1st, 1925.
63. Relieves assessors from duty of making military enrollment.
65. Declaration of dividends and creation of indebtedness by directors of corporations and increasing or diminishing of the Capital Stock and issuing of bonds by corporations.
67. Commission of crime while armed.
69. Foreclosure of mortgages by agent or attorney and legalizing and validating prior sales where power of attorney has been filed for record at or prior to the time of sale.