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## Review of Important Decisions

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## REVIEW OF IMPORTANT DECISIONS

By C. L. YOUNG

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### **State ex rel Herbranson v. Vesperman et al.**

The municipal auditorium of the City of Bismarck was paid for out of public funds and has been commonly used for public meetings upon payment of the rentals prescribed by the board of city commissioners. Relator, a resident and taxpayer of the city, tendered the proper rental charge and demanded the use of the building for a public lecture. Such use was refused because the commissioners were informed that the meeting was calculated to create and arouse religious and racial prejudice, ill will and strife, and would prove inimical to the good will, harmony and good order existing in the city. Relator sought by mandamus to compel the rental on the theory that the auditorium is a public utility. **HELD:** That the city commissioners have a discretion as to whether and on what terms and for what purposes the building shall be rented, which will not be controlled by mandamus, and that the building is not a public utility.

### **State ex rel Solberg v. Spicher, As Sheriff, et al.**

The district court, sitting as a juvenile court, found a minor delinquent and committed her to the State Training School. There was no finding that the parents are unfit or improper guardians or are unable or unwilling to care for, protect, educate or discipline the child or that it is for the best interests of the child that it be taken from the custody of its parents. On application for a writ of habeas corpus it appeared that the notice of final hearing was not served upon either of the parents, and upon such hearing only the child and mother appeared. **HELD:** That the law contemplates notice to both parents and an opportunity to be heard before the juvenile commissioner and also before the district court upon the report and recommendations of the commissioner. **HELD** further that before a juvenile court may commit a child to the state training school it must be found that the child is delinquent, and that the parents, guardian or custodian are unfit or improper guardians, or are unwilling to care for, protect, educate or discipline the child, and that it is for the interest of the child and the people of the state that the child be taken from the custody of its parents, custodian or guardian.

### **Farmers State Bank v. Bowles, et al.**

This is a case of first impression. One of the defendants executed a chattel mortgage upon horses, cattle and machinery therein described, with a covenant that he was in possession of such property. After maturity of the debt secured, possession of the property was demanded and refused. This action is in conversion. There was no evidence showing that the defendant ever possessed the property described in the mortgage, or that the property ever existed. Plaintiff's case was rested on

the proposition that the defendant is estopped to deny either the existence or ownership of the property. HELD: That whatever may be the rule in an action to enforce the mortgage in an action for conversion, the question of the existence of the property claimed to have been converted is not concluded by the covenants of ownership and warranty as to existing property. There is no property to which ownership can attach, hence it cannot be converted.

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#### A South Dakota Case

##### Hughes County et al. v. State Rural Credit Board.

This is a case of undoubted interest to the taxpayers of this state. South Dakota has a rural credits law under which farm loans are made. In its operation the law is the same as the law of this state whereunder the Bank of North Dakota is making farm loans. The practice of the Rural Credit Board of that state which administers the law has been to pay none of the taxes upon the lands upon which loans are taken. Taxes on such lands are unpaid in a large number of counties of that state to such extent that the counties are seriously crippled financially. The administering officials have taken the position that no duty rested upon them to pay the taxes, and that the lien for taxes is inferior to the lien of a rural credit mortgage, under statutes substantially like statutes in force in North Dakota. A mandamus proceeding was instituted to compel payment of the taxes in such cases by the Rural Credit Board. HELD: That the lien of a rural credit mortgage is not superior to the lien for taxes, and that it is the duty of the Rural Credit Board to pay taxes on lands covered by its mortgage loans when they become delinquent, out of any funds which it can use in making loans, as the payment of taxes is an incident to the making of loans.

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#### REPORTS OF COMMITTEES

An effort was made last year to have the standing committees of the Association file their annual reports with the Secretary some time prior to the annual meeting, without much success. The matter is again urged this year, and sufficiently early to permit of compliance. With the establishment of this publication, there should be afforded full opportunity for the practicing attorneys to know what matters are to be discussed and acted upon at the annual meeting. If the various committees will co-operate to the extent of presenting their reports and recommendations, in writing, to the Secretary, by the 5th of August, the August number of Bar Briefs can carry a summarization that will advise the membership sufficiently to enable them to formulate their opinions and prepare for a proper expression of them at the meeting. Full and free discussion alone may be expected to result in action that may be said to be representative of the composite opinion of the Bar membership. Free discussion may be obtained if the membership is confronted only with a program, that is, it will be free discussion among those who