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## Review Of Court Decisions

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## REVIEW OF COURT DECISIONS

BY C. L. YOUNG

**Stevens v. Fraser, as Adjutant General:**

The petitioner for a writ of mandamus, to compel payment of a claim under the Soldiers' Bonus Law, came to North Dakota in 1915, at the age of seventeen, his parents at all times residing in Minnesota. He worked in North Dakota until April, 1917, and then enlisted in the United States Army. He served during the war and was honorably discharged in March, 1919, and filed a claim for a bonus under Chapter 206, Laws of 1919. This was disallowed on the ground that claimant was not a resident of the state when he enlisted. HELD: That under the facts, the petitioner was not a citizen or resident of the state, within the meaning of the act, at the time of his enlistment or induction into the military service.

**Brewer v. Forsberg:**

Default was made in the payment of certain installments of a mortgage debt, the mortgage being dated January 17th, 1920. The mortgagee taking advantage of the acceleration clause in the mortgage declared the entire debt due, and on June 2, 1923, gave notice of intention to foreclose. On June 27th, 1923, this notice with proof of service was recorded in the office of the register of deeds. The sale was held August 16th, 1923, and the sheriff's certificate was recorded August 20th, 1923. There being no redemption, the sheriff's deed was issued and thereafter this suit was brought to recover possession of the property under the deed. HELD: That the provisions of Chapter 131, Session Laws of 1919, relating to the filing and recording of the notice of intention to foreclose, with proof of service, is satisfied where such notice and proof are filed and recorded prior to the record of the sheriff's certificate of sale, and that this act does not negative the ordinary legal effect of an acceleration clause in a mortgage.

**Baird, Receiver v. McMillan, Executor:**

A shareholder in a bank died in March, 1922. Probate proceedings were had upon his will and the time for filing claims against the estate expired in March, 1923. The bank in which the deceased had been a stockholder closed January 30th, 1924, prior to the distribution of the estate of the deceased. In February, 1924, the district court entered an order assessing the full amount of the super-added liability of the shareholder imposed by Section 5168, Compiled Laws 1913, against the executor. It was urged that this added liability is barred under Section 8736, Compiled Laws of 1913. HELD: That the claim was not barred, though not presented within the time specified for filing claims against the estate.

**State ex rel Atkins as Administrator v. Lawler et. al:**

Taxes upon real property became delinquent and the property was offered for sale at the annual tax sale. There being no bidders, it was struck off to the county upon the bid of the county treasurer at the maximum interest rate of twelve per cent and tax sale certificates were

executed by the county auditor. Taxes for subsequent years remained unpaid. The administrator of the estate of the deceased land owner tendered to the county treasurer the total amount of such tax certificates and all subsequent taxes, together with interest in the amount of the tax sale certificates, at the rate of six per cent per annum, from the date of sale, and on subsequent taxes at the rate of six per cent per annum, from the date on which the taxes became due. The county treasurer refused to accept the amount tendered and to issue redemption receipts on the ground that Chapter 210, Laws of 1925, making provision for redemption upon the payment of interest in the amount offered is unconstitutional and void. HELD: That a county may not enter into competitive bidding with private bidders at a tax sale; that the statutory provisions relating to penalty and interest upon tax sale certificates are applicable to certificates of sale issued to a county as well as those issued to a private bidder and that Chapter 210, Laws of 1925, does not contravene Sections 16, 20, 69 and 70, of the constitution of this state, and that redemption should have been permitted.

State, For the Benefit of Brontrager v. Mundy et. al:

An action was brought on a warehouseman's bond, given under Chapter 138 of the Session Laws of 1919. This entire act was declared unconstitutional by the supreme court of the United States. The bond was approved by the state inspector of grades, weights and measures. The unconstitutional act purported to repeal Section 3111, Compiled Laws 1913. Under such section the warehouseman could not engage in the business of warehouseman without furnishing a bond. Through giving the bond he obtained advantages he could not otherwise have enjoyed without subjecting himself to the burdens incident to compliance with Section 3111. It was urged that if the bond is deemed a statutory bond it cannot be enforced because the statute is unconstitutional; that if it is a common law bond, the state has no power to enforce it; and that whatever may be the determination as to these points, the sureties are not liable for the acts of the principal except such as were performed by him as a public warehouseman, and are not liable for grain received prior to his becoming a public warehouseman. HELD: Where an unconstitutional act of the legislature embodies an express repeal of a specific pre-existing statute, the unconstitutional act being void in toto does not effect a repeal; that where upon compliance with the unconstitutional act, the warehouseman was permitted to engage upon and continue in the business, the bond is supported by a consideration independent of the unconstitutional statute and is enforceable; that the warehouseman voluntarily entered into the engagement purported to be required by the unconstitutional law for the purpose of enjoying the benefit and advantages to be derived therefrom, and such benefits and advantages accrued to him, and that he and his sureties are precluded for these reasons from denying the validity of the undertaking.

First National Bank of Sleepy Eye v. Mohall State Bank:

Land was sold at tax sale. At the proper time, notice of expiration of the time for redemption was given to the person in whose name the

land was assessed, and to the persons in possession of the land. The one in whose name the land was assessed was a resident of the state. The holder of a mortgage on the land sought in this action to foreclose it. A first mortgage had been foreclosed and the period of redemption had expired, but a sheriff's deed had not issued. Notice of expiration of the time for redemption was not given to the mortgagees and the notice was not published, and it was contended that the tax deed was invalid. HELD: That where one in whose name land is assessed resides in the state, personal service of notice of the expiration of the time for redemption from a tax sale is sufficient and service by publication or by mail, or upon the person or persons occupying the land, when other than the one in whose name it is assessed, need not be made. Held further that under Chapter 62, Laws of the Special Session of 1919, notice need be given only to such mortgagees or assignees as have filed a statement with the auditor asking or demanding that such notice be given.

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#### REVIEW OF U. S. SUPREME COURT DECISIONS

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Government subsidies paid to induce railroads to extend their lines and in consideration for such extensions and reductions of rates on government traffic are held not to be gains or profits from use or operation and are, therefore, not taxable income under the 16th amendment.—*Edwards vs. Cuba R. R. Co.*, 45 Sup. Ct. Rep. 614.

By a five to four decision the increased value of stock issued by a new corporation in exchange for a different kind of stock of a prior corporation, the assets of which are taken over by the new corporation, is held to be subject to taxation as income to the holder. Some rather fine distinctions are being made to justify the double line of precedent that is growing up in these cases.—*Marr vs. U. S.*, 45 Sup. Ct. Rep. 575.

Under the revenue act of 1919, a taxpayer who bought stock prior to March 1st, 1923, for \$95,000, which stock had a market value of \$116,000 on March 1st, 1913, and which was sold by him in 1919 for more than the original purchase price but less than the market value of March 1st, 1913, is not entitled to deduct the difference between such market value and the sale price in computing income tax.—*U. S. vs. Flannery*, 45 Sup. Ct. Rep. 420.

The proceeds of insurance policies taken out by the insured on his own life are not subject to the estate tax where the right to such proceeds has vested in others before the passage of the revenue act.—*Lewellyn vs. Frick*, 45 Sup. Ct. Rep. 487.

A person required to turn over to the government tax received on admission fees is a debtor and can not be held for embezzlement in case of failure to turn over the tax.—*U. S. vs. Johnston*, 45 Sup. Ct. Rep. 496.