GOES AFTER ALL MORTGAGES

Tax Commissioner Fleming Issues Notice for Holders to Come to Time.

WILL FOLLOW OUT NEW REVENUE LAW

Estimates that Mortgages Untaxed by City Amount to Two and One-Half Millions of Dollars.

Notices advising some 1,500 persons that mortgages amounting to $2,500,000, heretofore untaxed, will be placed on the assessment rolls for 1904, have been mailed from the office of Tax Commissioner Fleming. Unless the holders of the mortgages can show that the investments have been cancelled they will be included in the personal property lists submitted to the Board of Equalization. Most of the persons to whom the notices are addressed have failed to specify the item of mortgages in their returns.

In past years mortgages have not been taxed by the municipality. While it was permissable under the old law the practice was not followed. The new revenue law makes it incumbent upon the assessor to search the county records for mortgages and to insert them in the rolls.

Commissioner Fleming estimates that the gain to the Omaha assessment for 1904 by reason of the addition of mortgages will run from $1,500,000 to $3,000,000. Mr. Fleming says he feels absolutely certain of his ground in this procedure.

Raise Rockefeller Tax.

The assessment of the Standard Oil company has been nearly doubled over that of last year, which was the highest in history, standing at $33,000. After a long conference with General Manager Ruth it was decided to fix a valuation of $62,000, which accordingly was done. The increase was not strongly objected to by representatives of the Rockefeller company.

John A. Scott, representing the Ames estate of Boston, conferred with the board regarding the taxation of the buildings burned and damaged by Allen Bros.' fire at Ninth and Jones streets. It was decided to decrease the assessments on the improvements from $90,000 to $50,000 on the three buildings affected.

All of the important schedules have been received by the board, which will close its sessions Monday night, although a brief meeting will be held Tuesday to formally end the sitting. The valuations were classified early and consideration began with the largest amounts. Only those of $1,000 and less remain.

The banks will be accorded a hearing Monday morning at 9 o'clock.

SUPREME COURT SYLLABI.

The following opinions will be officially reported:

1/92. Saline county against Gage county. Error from Gage. Reversed and dismissed. Ames, C. Division No. 1.

1. A county can become obligated to contribute toward the expenses of building a bridge over a stream upon a boundary line between itself and another county either by entering in the first instance into a joint contract for the construction of such bridge in the manner prescribed by statute or by subsequently ratifying a contract for that purpose.

2. When the county boards of adjoining counties have attempted to enter into a joint contract for the purpose above mentioned, but by reason of the neglect of requisite formalities one of such counties fails of becoming obligated thereby, and the other, in good faith and pursuant to the contract, builds and pays for the bridge, the former may ratify and confirm the contract by the allowance, in behalf of the latter, of a claim for one-half the contract price of the structure, and a taxpayer cannot defeat or annul such ratification by appealing from the order of allowance.

11752. Marvel against Marvel. Error from Hamilton. Affirmed. Duffie, C. Division No. 2.

1. A parol agreement made at the time of executing a conveyance of real estate that the grantee shall hold the property in trust for the grantor and when sold pay the proceeds to him, the conveyance not being obtained by fraud or undue influence, is void as an attempt to create an express trust in real estate by parol, and the land and the money for which it is sold belong to the grantee.

2. The evidence by which a contract shall be proved is no part of the contract itself and is governed therefore by the lex fori and not by the lex loci contractus.

12242. Villa against Grand Island Electric Light, Ice and Cold Storage company. Appeal from Hall. Former judgment adhered to. Holcomb, J.

1. The question of whether a petition states a cause of action or discloses grounds sufficient for the granting of equitable relief may be raised at any stage of the proceedings in the appellate court up to and including the filing of a motion for a rehearing.

2. A prayer for general equitable relief coupled with that of one for specific relief cannot be extended so as to warrant the granting of relief not embraced within and comprehended by the allegations of fact contained in the pleading.

3. The appointment of a receiver in an equitable action is ordinarily an ancillary remedy, provisional in character and incidental to the main object or purpose of the suit.

4. Save in certain classes of suits in equity which constitute well recognized exceptions, the jurisdiction of courts of equity does not warrant the appointment of a receiver to take charge of and administer the property and business of a corporation in an independent action where that is the main object and purpose of the suit and the sole and only relief asked for.

5. Petition in the case at bar examined, construed and held defective in substance and insufficient to support the orders of the court appointing a receiver to take charge of and sequestrate the property and business of the defendant corporation, directing a sale thereof, and the confirmation of the sale made under such orders.

6. In the absence of statutory authority courts of equity do not possess jurisdiction over corporate bodies to the extent of, on the application of private parties, appointing a receiver, sequestrating the property and business and selling the same through the instrumentality of such receiver, and thereby wind up the affairs and terminate the business and indirectly dissolve the corporation.

7. The former judgment of reversal in Vila et al. against Grand Island Electric Light, Ice and Cold Storage company et al., 34 N. W. Rep., 136, adhered to.

12705. Logan county against McKinley Banning L. & T. company. Appeal, Logan. Affirmed. Holcomb, J.

1. In an action brought in the district court by a county to foreclose a tax lien on real estate for delinquent taxes, the determination of the question whether or not the county could, under the statute, maintain such action, without an antecedent administrative sale by the county treasurer and the issuance to the county of a tax sale certificate as a basis for such proceedings, goes to the existence of a cause of action, and not to the jurisdiction of the court.

2. A decree rendered in a foreclosure proceeding for the sale of real estate to satisfy a tax lien, barring the equity of redemption of the owner of such property, is an adjudication of that question which cannot be inquired into on objections to confirmation of sale on the ground that the owner had not been given the time to redeem allowed by law.

3. Where the district court has jurisdiction of the subject of the action and of the parties in a foreclosure proceeding, questions which affect the regularity of the decree are concluded thereby. Such a decree cannot be assailed for any mere irregularity upon a motion to set aside a sale made in pursuance of such decree.

4. Where a decree in foreclosure proceedings by its terms erroneously denies to the owner of the equity of redemption the time to redeem from sale which is allowed by law, his remedy is by a direct proceeding to obtain a reversal or modification of the decree, and not by an indirect attack thereon, by objecting to the confirmation of sale made in pursuance of the decree because of such error.

12072. English and Scottish American Mortgage Investment company against Globe Loan and Trust company. Error from Douglas. Affirmed. Albert, C. Division No. 2.

1. A note was then signed: "Globe Loan and Trust Co." "H. O. Davies, Presdt." "W. B. Taylor, Secy." Held, that such note on its face shows no personal liability on the part of Davies or Taylor.

12663. Hyde against Hartford Fire Insurance company. Appeal from Lancaster. Affirmed. Duffie, C. Division No. 2.

1. Where the owner of real estate binds himself in a mortgage executed thereon to keep the premises insured for the protection and indemnity of the mortgagee, such mortgagee will have an equitable lien upon the money due on a policy taken out by the mortgagor although the policy may run to the mortgagor alone.

2. Where a mortgagee assigns a mortgage containing a covenant on the part of the mortgagor to keep the premises insured as further security, and agreeing that the mortgagee may procure such insurance if the mortgagor fails to do so, and in his assignment guarantees the payment of the mortgage indebtedness, and thereafter such assignor of the mortgage becomes the owner of the mortgaged premises and takes out insurance thereon in his own name to the full amount of the insurable interest of the mortgaged property, and a loss occurs while his liability as guarantor of the mortgaged debt is still in full force, the then owner of the mortgage will have an equitable lien on the proceeds of the policy to the extent of his interest in the property destroyed by the fire.

3. The fact that the statute of limitation had barred a personal action against the assignor on his guarantee of payment when suit was commenced by the assignee to establish her claim to the proceeds of the policy, does not in any manner release or impair her equitable lien upon such proceeds.

12215. South Omaha against O'Rourke. Error from Douglas. Reversed and remanded. Hastings, C. Division No. 1.

1. For purposes of taxation and revenue, a precinct actually formed and organized will be deemed a de facto organization whether the meeting of the county commissioners at which it was made was lawfully adjourned and held or not.

2. Where a precinct as formed embraced four wards of a city, each of which was by statute made a precinct for taxing purposes, an assessor elected for and exercising his office in all four of them, without objection and with the acquiescence of the people, is a de facto assessor in each ward.

3. City taxes paid under protest are not recoverable because based upon an assessment made by such a de facto assessor who was acting for all four wards.

12211. Jetter et al against Lyon. Error from Burt. Affirmed. Barnes, C. Division No. 2.

1. Proof of heirship is not confined to the records of the probate court alone, but may be established by the testimony of any one who knows the facts constituting such relation.

2. A condition in a deed conveying real estate, by which it is provided, "that no malt, spirituous or vinous liquors shall be kept nor disposed of on the premises conveyed, and that any violation of this condition, either by the grantee or any person claiming rights under him or her, shall render the conveyance void and cause the premises to revert to the grantor, his heirs and assigns," is a valid condition subsequent which, until broken, runs with the land.

3. On a breach of such condition the grantor, if living, or if dead his heirs, may claim a reversion of the estate and can maintain an action in ejectment to recover it.

4. Record examined and held that such right had not been waived by either the grantor or the plaintiffs.

12210. Oelke against Sheis. Error from Otoe. Affirmed. Ames, C. Division No. 1.

1. A verdict of a jury from conflicting evidence will not be disturbed in this court because of being against the weight of evidence, and the weight and credibility of testimony is for their determination exclusively.

2. The fact that a promissory note was found in the possession of the payee at the time of his death is evidence that he had not made a present of it to the maker.

3. It is not error for the court to instruct a jury as to the legal significance of uncontradicted evidence or admitted facts.

12732. Albers against Koseluh. Appeal from Lancaster. Former judgment adhered to. Barnes, C. Division No. 2.

1. An affidavit for service of summons by publication which contains no venue and does not disclose the county of which the official before whom it purports to have been sworn is an officer, is void on its face and confers no jurisdiction on the court to render a decree of foreclosure against non-resident defendants.

2. Such void affidavit cannot be cured or made valid by resorting to extrinsic evidence when the validity of the decree rendered thereon is assailed.

3. The statute of limitations, as to adverse possession, does not run against persons while under disability, such as minors, and an action brought to recover an interest in real estate within ten years after they arrive at the age of majority is commenced in time.

4. Former judgment in this case adhered to. 34 N. W. Rep., 521.

12701. Mann against German-American Investment company. Appeal, Adams. Order district court vacated; action dismissed. Glanville, C. Division No. 2.

1. The holder of a contract purporting to be for the purchase and sale of a diamond, issued by what is commonly called a tontine company, is not a stockholder in such company, and cannot secure the appointment of a receiver for such company because of the mismanagement of its affairs by its officers.

2. To the holder of such a contract who has not reduced his claim to judgment, and who has no lien upon the property of the company, has no standing in a court of equity in an action to sequester or impound the assets of such company.

3. Whether the holder of such a contract can have "clean hands," as required of one who seeks the aid of a court of equity, quaere?

4. An order of the district court appointing a receiver for a corporation in an action wherein such relief is the only relief sought, will be vacated for want of authority in such court to make the same.

5. A prayer for general relief, coupled with one for the appointment of a receiver, only will not be considered as a prayer for relief other than such appointment, unless the petition states a good cause of action for other relief.

12807. School District Omaha against McDonald. Error, Douglas. Motion overruled. Sullivan, C. J.

1. If a correct conclusion has been reached, even by a wrong course of reasoning, the unsuccessful party is not entitled to a rehearing.

12946. Russel against McCarthy. Appeal, Holt. Affirmed. Kirkpatrick, C., Division No. 3.

1. Where, in foreclosure proceedings instituted by a county for the purpose of enforcing its lien for taxes against real estate, it appears that no sale for such taxes has been made by the county treasurer in the manner provided by law, a decree entered in favor of the county, while erroneous, is not void, and if unappealed from will be sufficient to divest the owner of his title.

2. Pleadings examined and held sufficient to sustain the judgment of the trial court.

12549. Westover & Co. against Van Doren Iron Works Co. Error from Lancaster. Judgment. Barnes, C. Sedgwick, J., dissenting.

1. The provisions of the code relating to amendments should be liberally construed, but one cannot mend an affidavit in attachment so as to state a cause of action different from that stated in the original affidavit on which the writ was issued.

2. The statute provides that in an action tried by a justice of the peace, where the defendant has been arrested, or his property attached, the justice shall render judgment immediately on the conclusion of the trial; by taking such a case under advisement, by consent of parties, to a future day, in order to examine the evidence and briefs filed therein, the justice does not lose jurisdiction to render judgment.

3. Where, on a petition in error, the district court reverses a judgment of a justice of the peace, it should not dismiss the case, but must set it down for trial, as provided in section 721 of the civil code.

12508. Lincoln Traction Company against Moore. Error, from Lancaster. Reversed. Barnes, C. Division No. 2.

1. Questions not presented to the trial court by the motion for a new trial and which are not mentioned in the petition in error, cannot be considered by this court.

2. In an action for personal injuries due to the frightening of plaintiff's team by the alleged negligent operation of a street car in running the same carelessly and negligently at a high rate of speed and where it appeared from the testimony of all of the witnesses that the car was going slowly, that the motorman slowed it down and stopped it as soon as he saw that the team was becoming frightened, no inference of negligence arises and a judgment for plaintiff will be reversed for want of evidence to sustain it.

12183. Scheick against Scheick. Appeal from Buffalo county. Reversed with inst. Hastings C. Department No. 1. Unreported.

1. Evidence found to contain nothing to support a finding that defendant at the time of alleged violations of marital duty was not accountable for her actions by reason of mental weakness.

11877. State ex rel Young against Royse. Error from Custer. Affirmed. Oldham, C., Department No. 2. Unreported.

1. City authorities will not be required by mandamus to levy tax for water supply in excess of limit on such tax existing at time of contract. State against Wahoo, 62 Neb. 40, followed and approved.

12143. American Order of Protection against Stanley. Error from Valley. Affirmed. Glanville, C., Department No. 2. Unreported.

13122. Harnett against Holdrege. Error from Douglas county. Affirmed. Barnes, C. Sullivan, C. J. (concurring). Unreported.

1. An answer which is not attacked by demurrer or otherwise, as faulty, defective or insufficient, and to which no objection is made until the defendant offers his evidence on the trial will be liberally construed and if, under this rule, it can be said to state a defense it will be sustained, and thereafter treated as sufficient for all purposes.

2. Pleadings examined, and held, that the answers of each of the defendants are sufficient to state a defense to the plaintiff's petition.

3. Writing the words "For value received we hereby guarantee the payment of the within note, and waive presentment for payment, demand and notice of protest," over an indorsement in blank on the back of a promissory note is a material alteration of the liability of the indorser, and, if done without his knowledge or consent, releases him from his obligation as such.

4. Writing the words "This note to be exchanged for consolidated mortgage bonds of Nebraska and Northwestern Irrigation Company when issued at 85" across the face of a promissory note after it has been indorsed in blank without the knowledge or consent of the indorsers, is a material change of the note, and releases such indorsers from any liability thereon.

5. A blank indorser of a promissory note payable to the order of the maker thereof, which is indorsed by such maker and afterwards is delivered to a third person as payee, in absence of any special agreement to the contrary, becomes liable thereon as second indorser and will not be held to be a joint maker of the note.

6. Such a note creates no obligation or liability against any one until it is put in circulation by delivery to a third person as payee, and, although the payee endorses the note first, one who writes his name in blank on the back thereof before delivery, assumes the liability of an accommodation indorser only.

7. Record examined, and held, that it contains no reversible error in the admission or execution of evidence.

8. The indorser of a promissory note on which suit has been brought by the representative of a deceased person, is a competent witness in his own behalf, and may testify as to the condition of the note when it was indorsed by him.

9. Such a witness may testify as to any matter which does not involve a personal transaction or conversation between himself and the deceased person.

10. One can not recover as for money loaned, on a petition which charges the defendants with no other liability than that of indorsers of a promissory note.

11. Assignments of error not argued orally or in the plaintiff's brief, will be considered waived.

12512. In re application of Wm. M. Campbell for a writ of habeas corpus. Original writ denied. Albert, C. Division No. 2. Unreported.

1. In a bastardy proceeding, a complaint in which it is stated that the complainant is an unmarried woman, residing in the county where the complaint was filed, and that on a certain day immediately preceding its filing, she was delivered of a bastard child, and that the accused is its father is sufficient to sustain a verdict of guilty and a judgment thereon when assailed for the first time in the appellate court. Following Campion against Latimer, No. 12[illegible]

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RUGS—9x11 tapestry rugs in choice colors and designs, at 16.50

LACE CURTAINS—Nottingham lace curtains, new effects, worth $4.50, Monday 1.98

BIG MILLINERY SALE

Undivided choice of any of our $2.00 trimmed hats—at 25c

These hats must be sold out this Monday to make room for holiday furs. It will pay you to investigate.

Another Great Special Sale of COATS in Our Cloak Department.

SENSIBLE XMAS GIFTS. CASH OR CREDIT.

$20.00 JACKET FOR $10.00—This price gives you the choice of a big assortment of beautiful Coats, 30 to 36 inches long, made from the finest all wool kersey and tweed effects, long coat styles, lined with heavy taffeta silks, large sleeves and shoulder capes, wonderful value for the money—Monday $15

Montenac cloths, lined with heavy satin. Coats that have the style of those costing three and four times the price we ask. Reliable materials and well made $10

$5.00 Walking Skirt for $3.95. $10.00 SATIN LINED KERSEY COATS, $5.00.

200 STYLISH SUITS, Worth up to $25.00 and $30.00, at $15.00

All clever suits in cheviots and Scotch tweed effects, long coat styles, lined with heavy taffeta silks, large sleeves and $5.00 Walking Skirt for $3.95. $10.00 SATIN LINED KERSEY COATS, $5.00.

Great Holiday Sale of Furs

Sable or Isabella Fox Single Skin Scarf—Finished with two large natural brushes, $6.50, $7.50, $8.50, $10.00, up to 22.50

Double Sable and Isabella Scarfs—Same as sold at $25.00—Our price $15

Fransciola's genuine Sable Wolf—very finest, valued at $20.00—Our price $10

$10.00 Isabella Fur Scarfs, $7.75.

Ladies' Dressing Sacques

50 dozen flannelette sacques, kimona style braid, trimmed with yoke, regular price 65c, special sale price, 39c

THE PEOPLE'S STORE

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16TH & FARNAM STREETS, OMAHA.

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$2.50 WAISTS FOR $1.45

Made from extra fine all wool cassimere, full blouse front, pleated and trimmed large puff cuffs. Shown in black, cream, light blue and royal, red. Special, this sale, $1.45

TO THE PUBLIC

Our customers are entitled to a full understanding of the Trading Stamp WAR that is now on in this city.

The idea of a cash discount to cash buyers is a settled business principle that has long been recognized in WHOLESALE business circles. It is only fair and just that the RETAIL buyer who pays CASH should likewise have a discount that should not be given to the retail buyer who buys ON CREDIT. It is this idea that we propose to introduce into Omaha merchandising. We are running a cash business and we propose that our cash buyers shall have the benefit of their cash discount with us whether others are willing to give such discount or not. OUR WORD IS GOOD.

In seeking to put this idea into practice we made arrangements with the SPERRY & HUTCHINSON CO. to give their Trading Stamps in Omaha. We did not contract with them until we had thoroughly investigated their standing and their business methods and satisfied ourselves that through their system we could give to our customers the LARGEST MEASURE OF REWARD FOR THEIR CASH TRADE. Accordingly we entered into a contract with the Sperry & Hutchinson Co. in good faith, AND OUR WORD IS GOOD.

Shortly after this we were visited by a delegation informing us that the Trading Stamp Co. would not be allowed to do business in Omaha. We assured this committee that we had pledged our co-operation to the Trading Stamp Co. and in this OUR WORD IS GOOD.

NEXT, the Business Men's Association appointed a committee, who employed a man to call on the retailers of the city and to pledge them against giving Green Trading Stamps. The chairman of this committee had himself been giving premium coupons in his own shoe business for a number of years and is doing so today. Evidently he thinks that what is good for him is not good for his competitors. BUT OUR WORD IS GOOD.

NEXT, the Commercial Club, in solemn session, resolved that Trading Stamps were pernicious and should not be allowed to circulate in Omaha. By this time we had promised Trading Stamp opening day and we opened. OUR WORD IS GOOD.

NEXT, the retail grocers were called together in secret conclave, and by unanimous vote decreed that Trading Stamps must go, but Trading Stamps will not go, and OUR WORD IS GOOD.

NEXT, the Retail Grocers Association presented an ultimatum to the grocery jobbers of Omaha in which it was decreed that the jobbers of Omaha should not sell to any firm giving Trading Stamps except for cash, and should not deliver to such firms except at their own platforms. The Wholesale Grocers deliberated, consulted with us, and asked us if we could not give up Trading Stamps. We told them "No, our customers have our promise, AND OUR WORD IS GOOD."

But isn't it funny that these "2 by 4" retailers should demand that this big house should incur the enormous disadvantage of buying for cash? Why, bless their poor hearts! that is just the reason we beat them all out. We buy more goods for cash than any dozen of them put together. We are running twenty delivery wagons on the street every day, and have more wagons hauling goods into our store every day than all of them put together. This is the biggest grocery store west of Chicago. We sell more groceries in two weeks than our entire grocery stock will invoice. That is why Bennett's goods are always fresh and pure. Our trade is the most desirable grocery trade in the reach of the Omaha or any other jobbers. That's why the Sioux City jobbers have put in a resident salesman here today and are going to put in a ware house. That's why the Chicago jobber tells us to telegraph at his expense and every order will be sent rush and the freight will be taken care of.

We sell today ONE-FIFTH OF ALL THE GROCERIES SOLD AT RETAIL IN OMAHA and before this Trading Stamp war is over we will sell one-half, if the capacity of our building will let the people in. THE TRADING STAMP WAR IN OMAHA IS ON, and we beg hereby to notify the Retail Grocers Association that the Bennett Company will continue to run its own business in its own way, and the first lesson that we want them to learn is that OUR WORD IS GOOD.

Trading Stamps With All Purchases at Bennett's