

FROM THE HIGHEST STATE COURT

The Decisions Received from Supreme Court Judges.

One of Them of Great Importance to Money Lenders and Borrowers.

A Mortgage Which Requires the Mortgagor to Pay Taxes Renders the Mortgage as Regards Payment of Interest Null and Void.

Three opinions were received from the supreme court yesterday by Deputy Clerk Semon, for filing in this city. One of these, which is being below, is of unusual importance, as it decides the question for the first time, as to the validity of the clause inserted in many mortgages, which requires the mortgagor to pay to the mortgagee taxes, the court holding that such an agreement renders the mortgage, as far as the payment of interest is concerned, null and void. The opinion referred to is as follows:

Sarah R. Burbridge, appellant, vs. P. H. Lemmert, respondent. Action to foreclose a mortgage on real property to secure the payment of a promissory note, dated January 29, 1889, for \$12,000, made by defendant payable to plaintiff or order five years after date, with interest at the rate of 10 percent per annum, payable annually, and if not so paid annually, then the whole principal and interest to become immediately due and payable at the option of the holder of the note.

The defendant failed to pay interest for the first year, and about six months after it became due (September 1, 1890) this action to foreclose for both principal and interest was commenced. The answer of the defendant denied that the principal or any interest thereon had ever become due on said note or mortgage, by reason of facts affirmatively alleged in the answer, as follows:

"For a second and separate defense the defendant alleges that the city and county of Los Angeles, California, on the 29th day of January, 1889, at the time of the execution of the note and mortgage set forth in the complaint, the plaintiff demanded of the defendant the execution of the agreement hereinafter set forth as a part of the said note and mortgage, and in accordance with said demand the defendant, with said W. C. Furry, at said city, on said 29th day of January, A. D. 1889, at the time of the execution of said note and mortgage, as a part thereof, made, executed and delivered to the plaintiff an agreement in writing and in the words and figures following, to wit:

Southern California National bank.

"It is hereby agreed by P. H. Lemmert as principal and P. H. Lemmert, surety, that in consideration of Mr. Sarah R. Burbridge lending P. H. Lemmert twelve thousand (\$12,000) dollars at 10 percent interest, we, the undersigned, agree to and bind ourselves and our assigns and heirs to pay all taxes of whatever nature which may be assessed against said mortgage of twelve thousand (\$12,000) dollars, and that Mrs. Sarah R. Burbridge or her assigns shall be to no costs or expense on account of taxes on said mortgage.

"P. H. Lemmert, Principal.

"W. C. Furry, Surety.

The court found all these affirmative allegations in the answer to be true; and, as a conclusion of law therefrom found: "That the written agreement set forth in defendant's answer was and is in contravention of section 5 of article XIII of the constitution of this state, and renders null and void all the provisions of the said note and mortgage as to the payment of any interest specified therein."

and consequently that no interest ever accrued or became due, so as to give plaintiff the right by election to treat the principal as due prior to the expiration of five years from the date of the note; and thereupon rendered judgment dismissing plaintiff's complaint.

The plaintiff appeals from the judgment, and also from an order denying her motion for a new trial.

1. It is contended by counsel for appellant that the findings of fact as to the instrument set out in the answer in which the defendant agreed to pay the taxes on the mortgage, are not justified by the evidence. It is claimed that the instrument was not demanded nor authorized by plaintiff; and was not executed at the same time as the mortgage was executed, nor as a part of the same transaction. Upon these issues the evidence is conflicting, but the preponderance thereof seems to be in favor of the respondent, and amply sufficient to justify the findings of the court. The evidence touching these issues covers 75 pages of the transcript, and cannot fairly be condensed as not to occupy more than reasonable space in this opinion; and for this reason a statement of it is omitted.

2. The mortgage contains the same provision as the note as to the consequence of a failure to pay the annual interest; and also authorized the mortgagee, if necessary to protect the mortgaged property to insure the full and complete payment of the taxes on the mortgage, and to pay the taxes thereon "whether the taxes on this mortgage or the money hereby secured"; and provides that the sums so paid, with interest at same rate, shall be deemed to be secured by the mortgage.

Counsel for appellant contends that the express exception of the taxes on the mortgage from the taxes which the mortgagor may pay and recover the mortgage with conventional interest, is inconsistent with a stipulation in the same mortgage, that the mortgagor is, nevertheless, to pay the taxes on the mortgage; that is to say, it is inconsistent for mortgagor and mortgagee to agree that the mortgagee may pay the taxes on the interest of the mortgage in the land and recover it back with interest, and at the same time agree that the mortgagor shall pay the taxes on the mortgagee's interest in the land.

That the latter part of the agreement is unlawful is clear; but that the two parts of the agreement are necessarily inconsistent is not so clear.

How We Grow Old.

The threat that this is the most frequently feared of the meridian of life is reached in the case of persons who neglect obvious means to renew failing strength. Vigor, no less the source of happiness than the condition of long life, can be created and perpetuated where it does not exist. Thousands who have experienced or are experiencing the effects of Hostetter's Stomach Bitters, bear testimony to its wonderful efficacy as a creator of strength in the system. A steady performance of the bodily functions, renewed appetite, fresh and healthy repose attend the use of this thorough and standard renovator. Use no local tonic represented to be akin to or resembling it in effect in its place. Hostetter's Stomach Bitters, which is an acknowledged remedy for indigestion, malaria, nervousness, constipation, liver and kidney complaints and rheumatism.

sistent with each other, I am unable to perceive. But, however this may be, all the provisions of the mortgage, including the concurrent agreement that the mortgagor should pay the taxes on the mortgage, must be read together, and seeming inconsistencies reconciled if they can be without violence to the language, for the purpose of ascertaining the intention of the parties. If, when thus read and construed, the intention be found to be clear and certain, such intention must prevail, though the agreement be thereby rendered unlawful.

The agreement that the mortgagor should pay the taxes on the mortgage was prepared with a distinct care and deliberation, and a surety was required to sign it, and its language is so unequivocal and certain as to the intent that the mortgagor should pay the taxes on the mortgage, that there is no doubt that such was the intention of the parties. This view of the case renders all other points discussed by counsel immaterial.

I think the judgment and order should be affirmed.

We concur:

YASPER, C. TEMPLE, C. HAYNES, C. PATTERSON, J. HARRISON, J. GAROUTTE, J.

Other Opinions.

Frazier (respondent) vs. Lynch et al. (appellants). Action to recover possession of certain land in San Diego county, with damages for the withholding thereof. The main point involved is as to whether or not the evidence was sufficient to sustain the verdict, the defendants contending that it was not shown that they were in possession of the land sued for, which fact is most material to the issue. The supreme court, after a lengthy review of this point, said in the opinion:

"The possession of the land by the defendants was a fact to be shown by the plaintiff, and while it may be sufficient in some cases to show a constructive, as contradistinguished from an actual, possession (Crane vs. Chiradelli, 45 Cal., 255) yet the evidence presented in this case did not tend to establish a constructive possession, and it is not a presumption of law that a trespass continues from the time of its commission until any subsequent date, nor should the jury have been permitted to infer the possession of the defendants from the fact that they had previously committed a trespass upon the possession of the plaintiff."

The trial court having so instructed the jury, the judgment and order are reversed.

Estate of Christian P. Haas, deceased. Rehearing denied, but judgment, excepted, except that part thereof disallowing claim of Ella V. Haas; as to that part, affirmed.

THROUGH THE CEILING.

ANOTHER ESCAPE FROM THE CITY PRISON.

A Man Gets Tired of Being in Jail and Punches a Hole in the Roof and Makes an Exit.

It has been only a few days since 10 prisoners in the city jail quietly made their way out, and not a trace of them has been discovered since that time. An investigation of the escape was made, and as a result Jailer Hare, a faithful and intelligent man, was stupidly made to bear the brunt of the affair by being suspended from his position. The Herald took the position at the time that the city council was to blame in allowing the old rattle trap of a jail to remain in a condition where, by the slightest exertion, a prisoner could escape.

Since the escape the other day a new jailer has been put in, and two police officers, in addition, have been kept on guard in the jail at night. But yesterday afternoon, about 6 o'clock, in spite of the vigilance, a young man named Murphy, in jail for 30 days for vagrancy, made his escape through the roof window at the rear part. He had been acting as assistant cook for several days in the day time and was locked up at night. Yesterday afternoon just after dinner and before the dishes were cleaned up, Officer Hill, who is day jailer, stepped into the hospital for a moment. The cook turned around to get Murphy to do something, but he had gone to the back room and had climbed up to the barred windows above. He managed to pull a loose bar out, squeeze through and escape over the back wall of the jail, into the vacant lot where the batch of ten disappeared.

Just how long the city authorities will maintain a jail that is such a laughing stock is the question. Its insecurity has become so well known that the police department is under great uneasiness all the time.

Murphy had served about half his time, and had not been recaptured up to a late hour last night.

POLICE VS. CONSTABLE.

Deputy District Attorney Conkling Talks About the Contest.

Deputy District Attorney Conkling said to a Herald reporter yesterday that there was some misconception on the part of the police department as to the attitude of the district attorney's office about the placing of business in the different justice courts. He claimed that the district attorney is clothed with discretionary power by which complaints may be filed in certain courts when in his judgment justice will be better obtained.

Referring to the claim of the police department that they were acting to save the county money that the constables would get for services which should be performed without other pay than their salaries, by police officers, Mr. Conkling said there would be no saving, that the constables had no difficulty in working up to their \$83 a month, and almost invariably over it. That amount was all they could get, and they were officers elected under the law.

There is a certain amount of criminal business, and if there are too many men to do it, the police force should be decreased. In regard to intimations that he stood in with Justice Bartholomew Mr. Conkling said that as a matter of fact he did not believe that functionary was very friendly to him, owing to legal matters which had taken place before he went into the district attorney's office.

For that "ouch to your feeling" Take a Bromo-Seltzer; trial bottle 10 cents.

LA CROSSE AT ATHLETIC PARK.

The Riversides Defeat the Los Angeles Team.

A Spirited and Interesting Exhibition of the Indian Game.

Los Angeles Labored Under a Severe Handicap—Many of the Best Local Players Absent—A One-Sided Score.

A few hundred sporting enthusiasts witnessed an exciting and interesting lacrosse contest at Athletic park yesterday afternoon, and were rewarded with a fair exhibition of the Canadian game. Lacrosse is not as well known in this country as it should be, for the game has many sportsmanlike qualities, and there is enough of the scrimmage and scrap nature about it, coupled with a chance for the display of hard work, to keep the interest always up to a high tension. The Riverside and Los Angeles teams have played several matches, and so far results have been even, which added to the interest that centered in this game. The local team was handicapped by the unavoidable absence of three of the best players, and the consequent weakness at critical moments was very noticeable. However, they put up an earnest and

conscientious game, and were distinctly in the contest from first to last.

The two teams lined up at the start as follows:

Riverside: Positions: Los Angeles: J. R. Beamer, Goal: O. Satterwhite; J. Kennedy, Point: E. W. Eridan; Dr. Moss, Cover point: J. Duncan; Chas. Doak, 3d defense: A. Stewart; C. Castelman, 2d defense: C. E. Pierce; C. Mackey, 1st defense: J. C. Robertson; Mr. Atter, Center: J. E. Culbert; O. Derby, 1st home: J. E. Culbert; F. Copley, 2d home: D. E. Welcome; J. P. Lyons, 3d home: Chas. Howard; H. Perry, Outside home: A. E. McKenzie; V. Noble, Inside home: S. H. Dea; J. C. Young, 1st back: S. H. Dea; Referee, A. C. Way.

The first half was without any decisive results, although it looked to the spectators as though each side had scored one goal. As the expiration of the first 10 minutes' play McKenzie secured the ball from Dr. Moss and threw for a goal. Everyone thought he had succeeded, but the umpire would not allow it. The ball then came down in the Los Angeles goal, and the play was sharp and exciting. A few moments before half-time was called the Riverside claimed a goal, but the claim was denied. There were many narrow escapes for the Los Angeles team in this half, and several times a goal for their opponents was narrowly averted by the brilliant playing of Satterwhite, Howard and Robertson.

As no goal had been made, the teams began the second half in the same position. Without much difficulty the ball was worked down to the local goal, and in just 2½ minutes from the commencement of play J. F. Lyons of Riverside threw a goal.

Another goal was claimed (but not allowed) for Riverside after 35 minutes' play, and from this time no more points were scored until after all the spectators had left the grounds.

At about 4 o'clock a number of the game, and there was considerable talk about calling the game a draw. Under that impression the spectators left the grounds; but it appears that the game was resumed later and resulted in another goal for the visitors, making the score 2 to 0 in their favor.

Considering the disadvantages under which the Los Angeles team was working, it would seem to a layman that they put up a very creditable game, with the exception that the support they gave to their own players was not prompt enough. Each player stuck close to his individual opponent, and did his best to check him; but team support was lacking, and also the aggressiveness that comes from thorough confidence.

Other games are under negotiation, as also the formation of a league of amateur clubs, embracing the Bay city and the southern citrus belt, and a series of interesting contests will undoubtedly be the result.

Juvenile Football.

The Young St. Vincent's yesterday defeated the Boys' Brigade football team by the score of 18 to 0. The features of the game were the goal keeping of Mott and the work of the half backs. A. Smith was hurt in the first half and was obliged to retire from the game.

St. Vincent. Boys' Brigade. Harvey, Center. A. Brown. Thibbets, R. Guard. R. Brown. McGrath, E. Guard. T. T. T. O'Hara, E. Tackle. H. Wilson. Dillon, L. Tackle. Hamilton. Morgan, E. End. Hamilton. Edwards, Q. Back. Hanchette. Mott, F. Halfback. Brown. A. Smith, F. Halfback. McIntosh. R. Smith, Fullback. Campbell. Brode, Fullback. Campbell.

Baseball Notes.

The local baseball management has added another name to its list of players for the coming season, that of W. S. Wright, familiarly known as "Rasty." It will be remembered that last season the Herald was wont occasionally request the public to direct its vision to the neighborhood of the efficient center-fielder. This same advice is continued for the present season. Keep your eyes on Rasty.

The National league committee on revision of the playing rules has about completed the report that it will make at the league meeting March 10th, which report will in all probability be adopted. The size of the diamond will remain as

now with the pitcher in the center. The pitcher's box will be abolished and he required to deliver the ball from behind a 12-inch strip through the center of the diamond from first-base to third. This will make his distance from the batter about 63 feet. There will be a closer definition as to what shall constitute a balk, thus allowing the base runner more latitude and increasing the latter's chances. Another change to encourage team, batting is to give the batter who makes a sacrifice hit not only credit for it but also in reckoning his batting average it shall not count against him as a "time at bat." The ball is still retained, but the bat is abolished. It is thought that with these changes the batting will be sufficiently increased to make the game fast enough for the most exciting.

The Jacoby Bros. Baseball club returned from San Bernardino yesterday with another game to its long list of victories, having defeated the club of that city by a score of 20 to 14. Owing to the heavy wind and the rough condition of the grounds, it was impossible to play a close game. A large crowd witnessed the game and cheered every good play. Stevenson of the Jacoby Bros. distinguished himself at the bat. Buskirk, Smith and Sprecker played a good infield. The Jacoby club was treated splendidly by the San Bernardino boys, and will long remember their trip.

THEY THREW STONES.

Two Railroad Men Got into Trouble on Alameda Street.

"You say in the paper that it is John Doe and Richard Roe," remarked Police Clerk "Major" Bean, with that marked courtesy of manner which has earned for him the title of the Chesterfield of the police force, shortly after two well-dressed young men were brought into the police station yesterday afternoon.

Officer Fay had arrested the men on Alameda street, where they were playfully mashing in the shutters of one of the crabs with stones, and was relating the circumstances to a reporter, when the police clerk declined to give their names. Afterwards, when spoken to about the matter by Chief Glass, he stated that his reason for not giving their names was because they had not been put on the book at the time the question was asked, though he had noted them on a memorandum.

The men, whose names were Vandervort and E. F. Hurbert, two Pullman car conductors on the Santa Fe railroad. They were under the influence of liquor when brought to the station, and had been taking in the row of crabs on Alameda street. As on other nights, near the Backett saloon, they entered into conversation with some of the inmates of one of the crabs, and they were told to move along. One of them struck the shutter of the place with his fist, and they then proceeded to mashing in the shutters of the place. The inmates blew a police whistle and the fellows ran away. They were caught by Officer Fay, however, and the patrol wagon summoned. At the station the men acted as if they were very much outraged by their arrest, and threatened to make it hot for the people who had the audacity to interfere with free American citizens in the exercise of their inalienable rights. They were required to put up \$20 apiece for their appearance in the police court today.

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A Pretty Block.

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Highest of all in Leavening Power.—Latest U. S. Gov't Report.

Royal Baking Powder

ABSOLUTELY PURE

HE WOULD ADORN A HALTER.

A Rape Fiend Who Attempted an Atrocious Crime.

Little Teresa Casula Narrowly Escapes Being His Victim.

An Unknown Mexican Who Tried to Outrage the Person of an Unprotected Child on Tuesday Evening Last.

An atrocious assault to commit rape was committed Tuesday evening about 7 o'clock, which the police department has been keeping secret, but the particulars of which were obtained yesterday.

The victim was a little girl 13 years of age by the name of Teresa Casula, who lives with her family at a place up in a cañon back of the Catholic cemetery.

She was sent after some cows belonging to her father between 6 and 7 o'clock. She had to go quite a little distance from the house to find them in the pasture, and was bringing them home, when she was assaulted by a Mexican. He was a young man about 25 years old, quite strongly built, with black hair and eyes, and without any particular distinguishing marks. He took the girl to the side of the road, threw her down in spite of her cries and struggles, and proceeded to the accomplishment of his purpose. He held the girl's mouth so that she could not scream, and had almost succeeded, when the girl's brother and a friend, who had been up the road, accidentally but most opportunely came along. The Mexican jumped up and ran away as fast as he could, the men after him. They got so close to him that they picked up stones and tried to bring him down. He was hit several times, and grunted, but kept right on. In order to lighten himself for greater speed he threw off his coat and hat, which the pursuers secured.

It was almost dusk when the assault was made and grew rapidly dark while the young men were trying to catch him, so that he finally got away. The boys then procured horses and followed him, but without avail. They rode to the city and reported the occurrence at police headquarters about 9 o'clock at night. Mounted Officer Woodward was sent out to assist in the search, but although the hills back of the place were scoured in every direction the fellow easily made himself scarce in the darkness. He may have been and probably was within hearing and almost touching distance of the people hunting for him, but it was a dark night and it was not a difficult matter to evade detection.

The police yesterday made some efforts to capture the Mexican, but had not succeeded up to last night.

The little girl was somewhat bruised in the scuffle with her assailant, and her clothes were torn, but it is not believed that she was otherwise injured.

The young man had a great chase after the fellow, and one of them was almost within reaching distance of him at one time, when he threw off his coat and hat and made a fresh start. He must have been hurt quite badly by the stones with which he was hit, but a desperate tenacity kept along and distanced his pursuers.

The people in the neighborhood were very much excited over the attempted crime, and if the man had been caught it would have been all up with him.

CHRISTIAN ENDEAVORERS.

Proceedings at Yesterday's Semi-Annual Convention.

The semi-annual convention of the Christian Endeavor unions of Los Angeles county was held yesterday at Immanuel Presbyterian church.

The session opened at 9 o'clock yesterday morning with a devotional service by W. L. Whitelaw, jr., which was followed by reports from county officers and a business session and a Bible study at 10 o'clock by Mr. Read.

At 11 o'clock conferences were held as follows:

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