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Real Property--Land Held Under Passive Trust Not Subject to Lien for Franchise Tax (Bing v. People, 254 N.Y. 484 (1930))

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power to regulate the use of its highways extends to their use by non-residents as well as by residents,[12] and by virtue of such power a state may condition a non-resident's privilege to operate an automobile within its territorial limits upon his appointment, express or implied, of an agent to receive process.[13] The statute in instant case requires that the return receipt shall be filed along with the affidavit of compliance and the summons and complaint in the court in which the action is commenced. It is to be noted that it is the return receipt and not the ordinary post office receipt that must be filed. The return receipt is something of an admission of service. It is not necessary that the receipt shall bear his personal signature.[14] It is substantial compliance if the person signing had authority.[15] The statute in question is constitutional.[16] It appears that defendant had knowledge of the receipt of such papers. There has been substantial compliance. The aperture through which the defendant is trying to escape is too narrow.

J. M. P.

REAL PROPERTY—LAND HELD UNDER PASSIVE TRUST NOT SUBJECT TO LIEN FOR FRANCHISE TAX.—Charter Construction Company, pursuant to an agreement whereby plaintiffs, its stockholders, surrendered to it their stock, transferred certain real property to the Glenbrook Company which took an undivided interest for the benefit of plaintiffs. The state levied a franchise tax on the Glenbrook Company. Plaintiffs seek to bar the state from asserting a lien on the property in question. On appeal, from a judgment for defendant, *Held,* reversed. A property tax assessed on a corporation cannot become a lien upon land as to which it was a mere depositary of the legal title. Plaintiffs herein sustained the burden imposed by section 501 of the Real Property Law of establishing their legal title. Bing v. People, 254 N. Y. 484, 173 N. E. 687 (1930).

Where no trust duty is imposed by the deed upon the grantee it is a mere passive trust and the fee passes directly to the beneficiaries named therein.[1] A person who claims an interest in real property not less than a ten-year term must set forth in his complaint the estate he claims to have.[2] A franchise tax is not a prop-

[12] Hendrick v. Maryland, 235 U. S. 610, 59 L. Ed. 385 (1914).

[13] Kane v. New Jersey, 242 U. S. 160, 37 Sup. Ct. 30 (1916).

[14] Gesell v. Wells, 229 App. Div. 11, 240 N. Y. Supp. 628 (3rd Dept. 1930).

[15] *Ibid.*

[16] Hess v. Pawloski, 274 U. S. 352, 47 Sup. Ct. 632 (1926).

[1] Fisher v. Hall, 41 N. Y. 416 (1869); Dennison *et al* v. Dennison, 185 N. Y. 438, 78 N. E. 162 (1906); Jacoby v. Jacoby, 188 N. Y. 124, 80 N. E. 676 (1907); N. Y. Real Property Law (1909) Ch. 52, Sec. 93.

[2] Best Renting Co. v. City of N. Y., 248 N. Y. 491, 162 N. E. 497 (1928); N. Y. Real Property Law (1920) Ch. 930, Sec. 501.

erty tax but a tax upon the privilege of exercising the corporate franchise.[3] When title to personalty attached to realty remains in the lessee an unpaid tax on lessor's land cannot be declared a lien on lessee's personalty.[4] Where a statute provides that a tax on personalty shall become a lien on realty only after the owner fails to pay in due time, a lien cannot be asserted on land transferred before the time for payment of the personalty tax.[5] Taxes assessed on property occupied by a life tenant do not become a lien on property when it passes to the remainderman. Such a tax extends only to the estate of the life tenant.[6] It appears that the state's position here is tenable only if the Glenbrook Company held legal title to the land. The only possible theory upon which the company could be deemed to possess legal title would seem to be as a trustee. We have seen that this theory is impossible because of statutory enactment.[7]

F. A. D.

SALES—RIGHT OF RECOVERY FOR BREACH OF IMPLIED WARRANTY OF MERCHANTABLE QUALITY OF FOOD.—Plaintiff's wife, acting as his agent, asked for and purchased a loaf of Ward's bread at the defendant's grocery, which was delivered to her wrapped in a sealed package, as it had come from the baker. The loaf had concealed in it a pin which hurt the plaintiff's mouth and he seeks, in this action for breach of warranty, to recover for the injuries sustained. On appeal from a judgment for the plaintiff, *Held,* affirmed. Where merchandise is bought by description, though the choice be determined by the buyer, there is an implied warranty that the goods shall be of merchantable quality, and the breach of such warranty, in view of the special circumstances of the transaction, is sufficient basis for the recovery of consequential damages. Ryan v. Progressive Grocery Stores, 255 N. Y. 388, 175 N. E. 105 (1931).

This decision involves the construction of section 96, subdivisions 1, 2 and 4, of the Personal Property Law,[1] and its application

[3] People v. Knight, 174 N. Y. 475, 67 N. E. 65 (1903); People v. Miller, 177 N. Y. 51, 69 N. E. 124 (1903).

[4] Armstrong v. Mission Independent School Dist., 195 S. W. 895 (1917), *rev'd* (on other grounds) 222 S. W. 201 (1920).

[5] McKennon v. Warnick, 115 Ore. 163, 236 Pac. 1051 (1925).

[6] Commonwealth v. Wilson, 141 Va. 116, 126 S. E. 220 (1925).

[7] N. Y. Real Property Law, *supra* note 1.

[1] Added by L. 1911, Ch. 571.

1. Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment (whether he be grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose.

2. Where the goods are bought by description from a seller who deals in goods of that description (whether he be the grower or manufacturer or