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## Mortgages—Sale Under Deed of Trust Upon Non-Payment of Taxes Is Valid

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**MECHANICS LIENS—LIEN AGAINST LESSOR WHEN IMPROVEMENTS BY LESSEE ARE TO BELONG TO HIS REVERSIONARY INTEREST.**

*Sumrall v. Russel* (Civ. App. Texas), 255 S. W. 239:

Action for foreclosure of mechanics' lien brought against the lessor of real estate. Russel had leased his land for a term of years, part of the consideration for the lease being that the lessee was to erect thereon a building which should go to the lessor at the expiration of the lease. Accordingly the lessee, Brown, entered into a contract with plaintiff to erect a building and it is for a balance due on this contract that plaintiff brings this action. The court held:

That even though the building erected was to go to the lessor at the expiration of the lease, that the contractor had no lien against the lessor for work and material furnished the lessee, under Art. 16, Sec. 37 of the Constitution.

That the conditions of the lease whereby the lessee was to erect a building on the land which should go to the lessor at the expiration thereof, did not make the lessee the agent of the lessor for the purpose of charging him with a lien.

That Art. 16, Sec. 37 of the Constitution gives a contractor a lien independent of statute upon the leasehold estate of the lessee who causes improvements to be made.

*Allen Estate Association v. Boeke & Son* (Mo. Sup.), 254 S. W. 858:

Action under provisions of Secs. 7240-7244 R. S. Mo. 1919, praying for an adjudication of certain mechanics' lien suits which had been brought by respondents against the Allen Estate Association. The Association was the owner in fee of the property against which the liens have attached. The property was leased for a term of years, one of the conditions of the lease being that the lessee was to make lasting improvements which were to go to the lessor at the expiration of the lease.

The mechanics' liens in question have accrued as result of improvements contracted for by the lessee pursuant to the terms of the lease. The court held:

That the lessor by requiring his lessee to make permanent improvements of substantial benefit to the reversion, made the lessee his agent and those furnishing labor or material, under contracts with the lessee, had a right to mechanics' liens against the lessor's reversionary interest.

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**MORTGAGES—SALE UNDER DEED OF TRUST UPON NON-PAYMENT OF TAXES IS VALID.**

In the recent case of *Lunsford v. Davis*, 254 S. W. 878, the Supreme Court held that foreclosure and sale under a deed of trust upon non-payment of taxes is permissible when the deed is conditioned upon said payment. The court,

it is true, in this case set aside the sale but upon the grounds of lack of good faith on the part of the trustee. The existence of the right to foreclose was specifically recognized and the court cited several prior Missouri decisions.

Probably the most outstanding is the case of *Rumsey v. People's Railway Company*, 154 Mo. 215, a suit brought to foreclose a deed of trust against one of the predecessors of the United Railways for failure to meet interest coupons. The deed was conditioned upon the payment of the interest coupons, the principal to become due upon the failure to pay the interest.

At page 246, the court said, "It was a matter of contract, and in the case at bar it is expressly provided in the mortgage deed of trust that it is 'distinctly understood and agreed' that failure to pay any one of said coupons for thirty days after due should cause all of said bonds to become immediately due and payable, and we know of no reason why such a contract is not valid. It is an agreement which the parties were at liberty to make, and there is nothing in it immoral or against public policy and is a perfectly valid contract."

In the case of *Philips v. Bailey*, 82 Mo. 639, the court held that a tender of the interest due before foreclosure, but when the date for its payment was passed, waives the default and prevents a valid foreclosure. However, the court recognizes the right to foreclose in the absence of the payment of the interest.

The deed of trust must be conditioned upon payment of interest or taxes, and not merely upon payment of the principal, or the right to foreclose for non-payment of taxes or interest does not exist. This point is illustrated by the case of *Wilson v. Reed*, 270 Mo. 400, in which the agreement of the parties was that the interest, if not paid when due, was to become part of the principal and bear interest. The deed was conditioned upon the payment of principal only and the court refused to permit a foreclosure for non-payment of interest. The court went as far so to say that there are cases involving like circumstances in which the right to sue for interest does not exist until the maturity of the principal.

The result of the Missouri decisions seems to be that a deed of trust can be conditioned upon the payment of interest or taxes as well as upon the payment of the principal and that a provision that, upon a failure to pay taxes or interest, the entire debt shall become due is valid and will be enforced, subject to the rules of equity requiring good faith and fair dealing.

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## RELIGIOUS SOCIETIES—ARBITRATION AND AWARD.

The recent case of *Bogard et al. v. Boone, et al.* (Court of Appeals of Kentucky), 255 S. W. 112, was a suit between the trustees of rival factions of the Mt. Zion Baptist Church, Colored, of Paducah, Kentucky. each faction claiming to be the true congregation, and as such entitled to the church property.

An agreement was entered into between the rival factions by which the whole matter was submitted to arbitration and articles to that effect were drafted and duly executed by the acting trustees of the rival factions. These