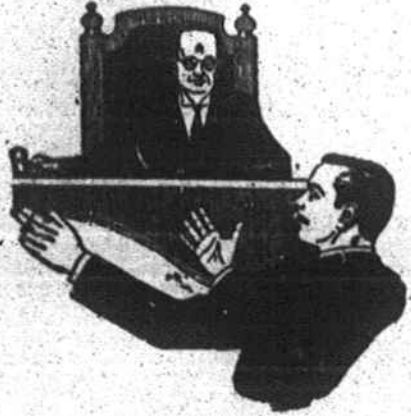


THIS IS THE LAW



by Charles W. Daniel
for the
North Carolina
Bar Association

MORTGAGES

The word "mortgage" has a definite meaning for almost everyone. The law concerning mortgages is continually growing in response to changing uses made of this device. This discussion will deal solely with mortgages on real estate, although many of the principles discussed apply equally to mortgages on personal property, or "chattel mortgages," as they are known.

A mortgage has been defined as any form of instrument whereby title to real estate is reserved or conveyed as security for the payment of a debt or the fulfillment of other obligation. Thus, a mortgage can be used as security for the performance of the conditions of a bond or other agreement. However, the most frequent use made of the mortgage is to secure the repayment of a loan of money made to the borrower, or mortgagor. His obligation to repay the loan is usually contained in a note or notes, which are separate from the mortgage. The mortgage itself refers to the borrower, and states that the title to the property has been conveyed to the lender or mortgagee, who may, under certain conditions, enforce the payment of the note or notes through the foreclosure of the mortgage and the sale of the property.

DEEDS OF TRUST

In North Carolina, the term "mortgage" is commonly used to include, in addition to the conventional mortgage, another paper known as a "deed of trust." Instead of being a two-party instrument like the mortgage, the deed of trust is a three-party paper. The borrower in this type of instrument conveys the title to his property to a trustee to secure the repayment of his note or notes to the lender. The trustee has no direct interest in the security; he merely holds the legal title to the property so long as the deed of trust is outstanding. It is his duty to foreclose the deed of trust if a default occurs and if the lender demands foreclosure. For purposes of this article the term "mortgage" will include "deed of trust" as well, except where indicated otherwise.

Drive-In Opens "Robe" Showing

The Bessemer City Kings Mountain Drive-In theatre has completed installation of CinemaScope and stereophonic sound equipment, according to Gay Stinnett, owner of the theatre, and opened a week-long presentation of "The Robe" on May 12.

New equipment installed in the theatre included new speakers, two to each car, a large 42 x 90 foot screen and all new booth equipment.

The new equipment enables the theatre, Mr. Stinnett said, to bring to the public the new CinemaScope films.

to the highest bidder. The borrower can, of course, bid at the sale. The sale does not become final until ten days have elapsed, during which time the bid may be raised. Upon the filing of a raise of bid, the property must be readvertised and recold at public auction. This procedure may be repeated as often as raises of bid are filed on the property. At any time prior to the final expiration of time for raise of bid, the borrower can stop the foreclosure proceedings by paying off the debt, plus accrued costs.

DEFICIENCY JUDGMENTS

What can the lender do if the property fails to bring a price sufficient to pay off the indebtedness? Subject to one important exception noted below, the lender can sue the borrower and obtain a judgment requiring him to pay the difference between the mortgage debt and the amount realized from the foreclosure sale. Such a judgment is spoken of as a "deficiency judgment."

Under North Carolina law a lender cannot bring suit for a deficiency judgment where the mortgage was originally given to secure the payment of the balance due upon the PURCHASE PRICE of real estate. In other words, the lender must rely solely upon the real estate to recover the balance due upon a purchase money mortgage. This rule of law was enacted during the depression of the 1930's.

TRANSFER OF MORTGAGED PROPERTY

Can the borrower on real estate transfer the property without paying off the debt? Ordinarily, the borrower can sell or otherwise dispose of the property as he sees fit, leaving the mortgage debt unaffected. The new owner of the property must, of course, keep up the payments on the mortgage. The holder of the note secured by the mortgage must accept payments of the debt from the new owner of the property.

If the new owner of the mortgaged real estate defaults in his payments, can the original borrower still be forced to make these payments? As a practical matter, the question seldom arises. The holder of the debt ordinarily depends only on the real estate for payment. As a matter of law, he is required first of all to foreclose against the real estate. If the mortgage, as shown on its face, was originally a "purchase money mortgage," then, as noted above, the land alone must stand for the debt. The fact that the original borrower has transferred his interest to another does not alter this fact. If the mortgage was NOT originally a "purchase money mortgage," then, the borrower can be required to make up any deficiency of the mortgage debt after foreclosure. Any subsequent owner of the real estate, who expressly agreed to pay the debt, can likewise be required to make up any deficiency.

PAYING OFF THE MORTGAGE

The usual method of disposing of a mortgage debt is, of course, by payment in full. At the time of payment the mortgage or deed of trust, and the accompanying notes, should be marked "satisfied and paid in full" by the holder of the debt, and should be presented to the Register of Deeds for cancellation. Failure to have the papers promptly presented for cancellation may give rise to trouble later, should the original papers be misplaced.

Hens and pullets in North Carolina during 1952 produced 50 percent more eggs than they did in 1952.



GARDEN TIME
ROBERT SCHMIDT
N. C. STATE COLLEGE

Weeds are probably the number one problem in vegetable gardens during the summer season. They choke out small plants and compete with them for the nutrients and moisture in the soil. The old control method of cultivator, sweep and hoe is still a good one but means a lot of hard work and the modern gardener is looking for an easier way out.

Everyone is looking for a chemical that can be sprayed on the garden and which will kill all the weeds and grass without harming the vegetables. That is a big order. The trouble lies in the fact that we grow so many different kinds of vegetables and they belong to so many botanical species and families — some of which are closely related to our common weeds — that the chemicals used to control weeds will also kill the vegetables.

For several years commercial carrot growers have been successfully using solvents and certain oils as sprays to kill weeds in carrot fields. Onion growers have also had some success with the use of chemicals. In recent years a material known as 2,4-D has been used extensively to kill broadleaved weeds in corn, gladiolus and in lawns. Used at the proper strength, 2,4-D has not caused injury to these crop plants and has effectively controlled weeds. However, the spray of 2,4-D will drift in the wind and cause damage to other crop plants and shrubbery and grape vines. A sprayer used for 2,4-D should not be used to spray other plants.

Most vegetables and other garden crops are susceptible to severe damage by the usual herbicides so the chemical companies have been busy experimenting with other materials. The latest

developments are the pre-emergence sprays. These pre-emergence weed killers do not act like other herbicides in that they have no effect on well established weeds or crop plants. They are very effective against weeds that are just germinating or are just emerging from the soil but are less than 1-4 inch in height.

Pre-emergence sprays are best applied to freshly cultivated soil. One application will usually keep the soil free from weeds for three weeks or more. Then the cultivation and spray application must be repeated. Well-developed crop plants are not harmed by these pre-emergence sprays but neither are well developed weeds.

North Carolina grain dealers are expected to organize a statewide trade association in the near future.

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Merchants Warned Of Check Flasher

All business establishments in the Kings Mountain area, especially garages and service stations, have been asked by the police department to be on the alert for a bad check artist.

According to the police department, the passer usually presents a check in the amount of \$32.50 and signed Joe Hill. After the checks are cashed, the police said, the man spends a small amount of the cash.

Police also said that the man may be riding with another man and two or three small children in a 1940 coupe with S. C. license C34559.

United States farmers will likely plant about 11 per cent less acres of Irish potatoes in 1954 than a year earlier.

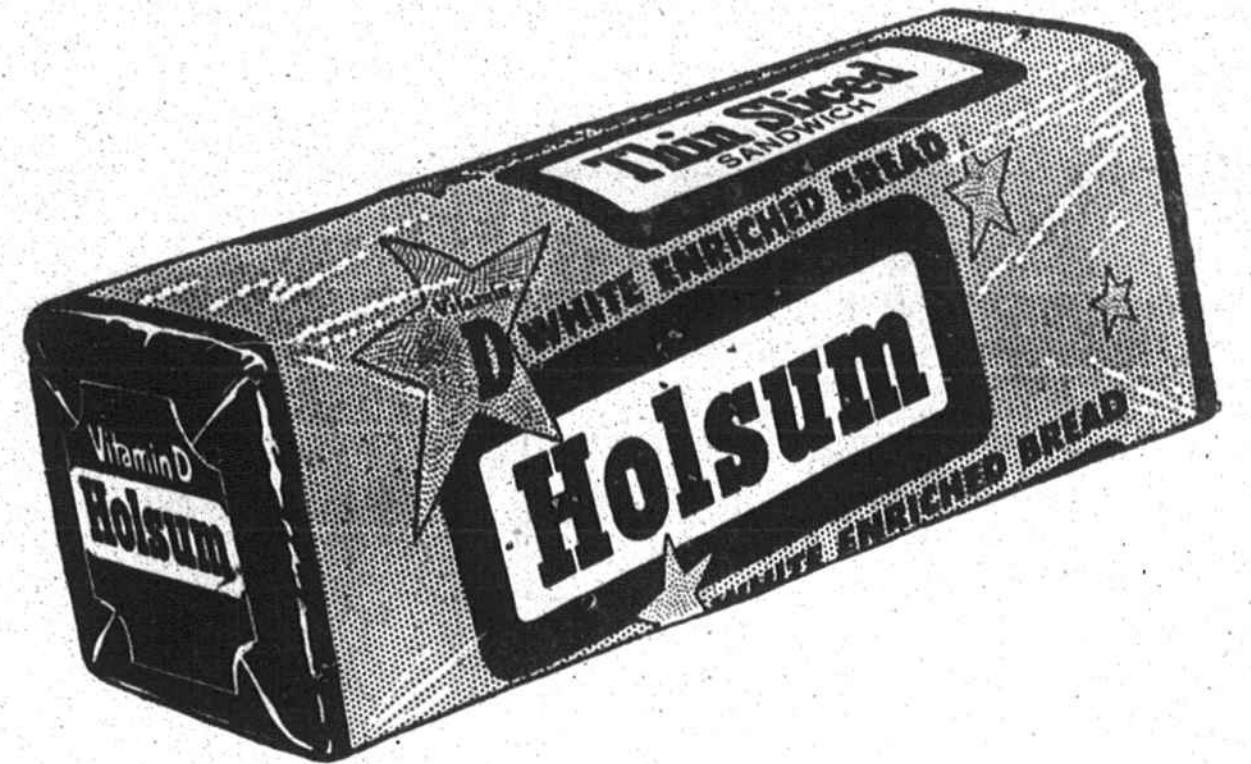


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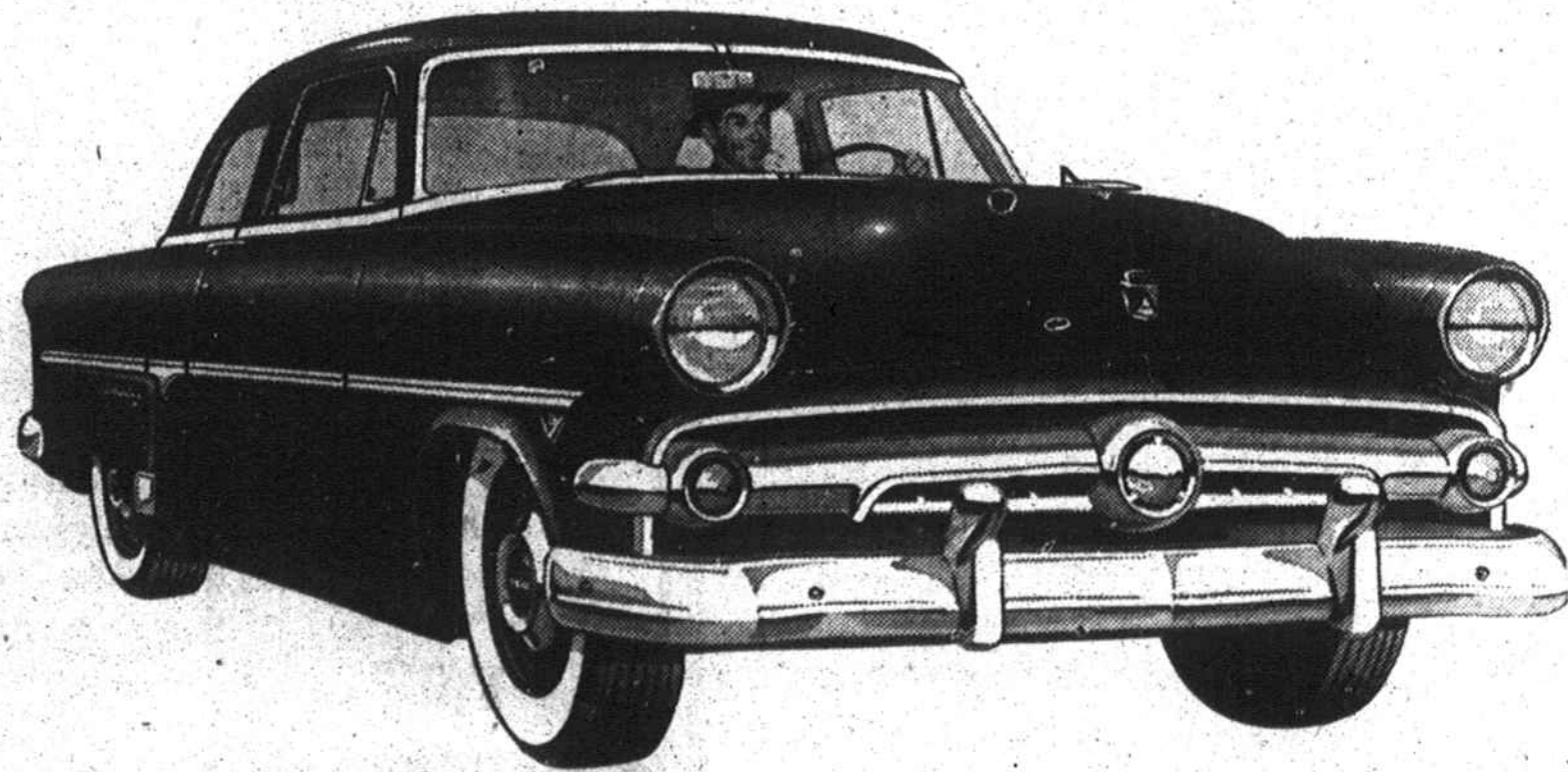
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*SOURCE: E. L. Felt & Company. Registrations for period September through March, the latest month for which figures are available.