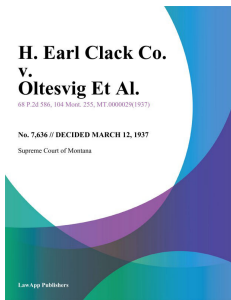


# VOICEOFMERCY.COM Ebook and Manual Reference

## H EARL CLACK CO V OLTESVIG ET AL EBOOKS 2019



Author: Supreme Court of Montana

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Mortgages ? Foreclosure ? Defense That Mortgage Based on "Wagering" Transactions on Grain Market ? What Constitutes Such Transactions ? Evidence ? Insufficiency ? Appeal and Error ? Motion to Strike Bill of Exceptions from Files for Failure to Serve and File in Time ? Equity Cases ? Findings ? When Conclusive on Appeal. Appeal and Error ? Bills of Exceptions ? Motion to Strike for Failure to Serve and File Bill in Time. 1. While a bill of exceptions not served and filed until four days after the expiration of the period of sixty days granted by the trial court in addition to the time allowed by law is subject to a motion filed in the supreme court to strike the bill from the files, such motion will not be granted where the judgment appealed from must be affirmed on the merits. Same ? Equity Cases ? When Only Findings Disturbed on Appeal. 2. The findings of the district court in an equity case will not be disturbed on appeal unless the evidence clearly preponderates against them. Contracts ? Wagering or Gambling Transactions ? What Constitutes "Wagering" on Grain Market. 3. In order to invalidate a contract as a wagering or gambling transaction, (in the instant cases an alleged transaction on the grain market) both parties must have intended that, instead of delivery of the article, there should be a mere payment of the difference between the contract price and the market price, i.e., a settlement of the difference, the burden of proof being upon the party assailing the transaction on that ground. Mortgage Foreclosure ? Defense That Transaction Arose Out of Grain Market Dealings ? Evidence ? Insufficiency ? Judgment for Plaintiff Held Proper. 4. In a mortgage foreclosure suit defendant asserted that the mortgage arose out of a wagering transaction involving dealings in the grain market and therefore was invalid. The defendant testified that in the transactions had by him with plaintiff company he merely intended to speculate on the market and never intended to take delivery of the grain bought. On the part of plaintiff it appeared that it did nothing more than lend its money, credit and facilities in executing defendants orders; the only profit made by it in the transaction - Page 256 was the interest on the mortgage note. Held, that the finding of the trial court that there not having been an agreement on the part of both parties that there should be merely a settlement of the difference between the contract and the market price, the transaction was not a wagering one, and hence the mortgage was not invalid, was correct.

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