

Mortgage, Taxation Of.

Where a mortgage has been assigned prior to the first Monday in March but the assignment not placed of record and the assessor, relying upon the record, has assessed the mortgage to the mortgagee, such assessment should be changed and the mortgage assessed to the assignee, upon the mortgagee appearing before the board of equalization and making affidavit to the effect that he has assigned the mortgage prior to the first Monday in March and giving the name of the assignee.

Helena, Montana, July 22, 1905.

J. E. Barbour, Esq., County Attorney, Big Timber, Montana.

Dear Sir:—Your letter of the 20th instant to hand, in which you request an opinion upon the following facts: "Is a chattel mortgage, or mortgage deed, and the debt thereby secured, standing upon the records unsatisfied and not canceled, and not barred by the statutes of limitation, on the first Monday of March, of this year, subject to assessment and taxable against the mortgagee, notwithstanding the fact that the mortgagee files his affidavit with the board of equalization alleging that prior to said first Monday of March he had, for value, assigned such note and mortgage, although such assignment was not filed for record?"

In my opinion such a mortgage cannot be taxed to the mortgagee, where he comes in and files an affidavit fully setting forth the facts, which states absolutely that the mortgage was so assigned prior to the first Monday in March at 12 o'clock noon. Such affidavit should, however, contain the name of the person or company to whom such assignment was made, so that in the event that the assignee is a person liable for taxation on such mortgage that the board of equalization can order the same assessed to him. The fact that the assignment was not recorded prior to the first Monday of March would not change the status of the case. Section 3825, Civil Code, provides "that the assignment of a debt secured by mortgage carries with it the security," and while the assignment of a mortgage should be recorded in order to operate as notice

to all persons subsequently deriving title to the mortgage from the assignor, yet the mere assignment of the debt is sufficient in fact to change the ownership of the credit and the security therefor, and when such assignment has, in fact, been made, although notice of the assignment has never been recorded, the mortgage so assigned is not any longer owned by, in possession of, or under control of, the mortgagee, as required by Sections 3700 and 3701, Political Code, in order to make him liable for the taxation thereof.

I mail you, under separate cover, copy of the opinion in the Flowerree Cattle Company case, and as this copy belongs to the supreme court stenographer I wish you would kindly return same to this office as soon as possible.

Yours very truly,

ALBERT J. GALEN,

Attorney General.