EDITORIAL NOTES

1. Aspects of priorities of Iowa tax liens have been discussed in Felton, *Federal Tax Liens, Their Priority and Enforcement,* 10 DRAKE L. REV. 3, 21-24 (1960), and *The Unrecorded Sales Tax Lien,* 5 DRAKE L. REV. 51 (1955). Note, *Iowa Tax Liens and Their Priorities,* 47 IOWA L. REV. 121 (1961), at page 138 refers to the second of these articles, and disagrees with its conclusion that the purchaser of personal property may acquire a title which is subject to the unrecorded sales tax lien.

IOWA CODE § 422.26 (1958), creating a lien for unpaid income taxes, requires notice of that lien to be filed with the recorder of the county where taxpayer's property is located, to preserve the "lien against subsequent mortgagees, purchasers, or judgment creditors." IOWA CODE § 422.56 (1958), incorporating the provisions of § 422.26 into the sales tax law, eliminates the need for recordation in some respects. The first sentence of §422.56, after incorporating § 422.26, says "the lien . . . shall be prior and paramount over all subsequent liens upon any personal property within this state, or right to such personal property, belonging to the taxpayer without the necessity of recording as [provided in § 422.26]."

Placing emphasis on the words "subsequent liens", the IOWA Note says: "[The Drake article] infers from the statutory language quoted [the first sentence of § 422.56] that the tax lien would supersede the rights of any subsequent *purchaser* of the personalty without the necessity of recording the tax lien. . . . It is difficult to perceive any basis for this inference, especially since the statute incorporates the provisions of IOWA CODE § 422.26 (1958) by specific reference." The Note's statement that the DRAKE article's inference comes from the first sentence of § 422.56 is incorrect. Had the Note quoted the two succeeding sentences in the section, the basis for the inference would have been apparent and easier to perceive. The second sentence of the section is: "The requirements for recording shall, *as applied to* [*the sales tax*], apply only to the liens upon real property." The third sentence permits the Commissioner to disclose the liability of a taxpayer for unpaid sales taxes to (1) anyone from whom the taxpayer seeks credit, or (2) anyone with whom the taxpeyer negotiates the sale of personal property. Disclosure would otherwise have violated the requirements of IOWA CODE § 422.65 (1958), that tax information of this sort be kept confidential. Recordation requirements, in § 422.26, were for the preservation of the lien against both subsequent lienors and subsequent purchasers. The third sentence seems unnecessary, to the extent of its reference to negotiating sales, if the unrecorded lien has no effect on subsequent purchasers. The reference in the first sentence of the section to "subsequent liens" might, standing alone, create an inference that "subsequent purchasers" need not worry, but in context, with the remaining sentences, the worrisome cloud of the lien is not so easily dispelled.

2. In *Misconduct of Jury Members in Iowa,* 10 DRAKE L. REV. 126, 127 (1961), the question of jurors discussing liability insurance of defendant as being reversible misconduct was discussed.

The Court again dealt with this problem in *Youngs v. Fort,* 109 N.W.2d 230 (Iowa 1961) where, after the instructions had been read to the jury and

before the jury retired to deliberate, one of the jurors asked the trial judge if he could ask a question, and in response to an affirmative answer, the juror stated, "May I ask if there is any insurance in this case?" The judge responded, "That is a matter that you cannot consider." In its opinion, the Court stated that there was no error in the juror's question nor the judge's answer, because it is common knowledge that jurors think, speculate and discuss the question of insurance. "Prejudicial error does not follow from a correct statement appropriately made."

The Court was also confronted with the question of jury misconduct in In re *Springer's Estate*, 110 N.W.2d 380 (Iowa 1961). The evidence showed that the jury foreman and his wife had engaged in a discussion with a friend during the trial, and that remarks were made concerning the character of one of the proponents in the case. However, the foreman testified that as soon as the conversation came up, he informed the other party that he was a juror in the case and that he wanted no part of the conversation. He further testified that the conversation did not influence him and that he did not discuss the conversation with the other jurors. The Court, on review, held that there was some evidence of misconduct, but none to show that the substantial rights of the proponent were affected. Therefore, there was no reversible error.

3. *The "No Eyewitness" Rule in Iowa*, 6 DRAKE L. REV. 101 (1957) discusses the extent of the applicability of this rule as shown by previous Iowa cases. The rule is again discussed in *Vandello v. Allied Gas & Chem. Co.*, 110 N.W.2d 232 (Iowa 1961). In this case, the court allowed the rule to be applied in favor of plaintiff's freedom from contributory negligence where at least three or four people testified to having seen plaintiff's car immediately before the accident, but no one actually witnessed the impact with defendant's truck.

4. Public Law 87-183, 75 Stat. 413, passed by the United States Congress on August 30, 1961, has amended 28 U.S.C. § 1732 (1958) which was discussed in *Microfilming of Business Records*, 6 DRAKE L. REV. 74 (1957).

Prior to the amendment, reproductions by photographic process of business records which were made in the regular course of business could be introduced as evidence in the federal courts, regardless of whether the original had been destroyed. This rule did not apply, however, to records kept in the regular course of business pertaining to transactions in trust or custodial accounts.

The words "unless held in custodial or fiduciary capacity" have now been deleted from the statute by the amendment, thus allowing the introduction of photostats or microfilms of records held in such a fiduciary capacity into evidence in federal courts.

This amendment was passed because of testimony from the Trust Division of the American Bankers Association that trust departments of banks have amassed such an enormous quantity of records as to create a serious storage problem, which could be met through photographic reproductions of those records.