



1959

## District Court Digest

North Dakota Law Review

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In the law school royalty election, PDP swept the slate, with Bill McMenemy elected King, Wes Harry-Queen, and Bob Langford-Chancellor. Among the officers of Jr. Bar for the coming school year are Wes Harry, Vice President, and Jim Johnson, Treasurer.

Bill Hodny was named Editor-in-Chief of the 1959-1960 Law Review staff, and will be most ably assisted by three members of Bruce Inn as Associate Editors. Jim Corum, Wes Harry and Jim Johnson will fill the posts of Associate Editors.

Officers for the coming school year are: Mel Koons, Magister; Gil Record, Clerk; Stuart Lundberg, Exchequer; and Bob Langford, Historian.

Dennis Sobolik was given the award for the Outstanding Graduating member of Bruce Inn. Graduating this year are: Odell Astrup, Ted Camrud, John Craven, Wilfred Dillenburg, Gerald Jukkala, Paul Kloster, William Lindell, William Mc Menamy, Keith Nelson, Lloyd Noack, John Orban, Dennis Sobolik, William Strutz, Rodney Webb, and Pedar Wold.

ROBERT D. LANGFORD.

#### DISTRICT COURT DIGEST

CONTRACTS — DEFENSES AND SET-OFFS TO WHICH AN ASSIGNEE'S RIGHT IS SUBJECT. — *Universal C. I. T. Credit Corp. v. Mahanna*, District Court of the Fifth Judicial District, Williams County, North Dakota, Eugene A. Burdick, District Judge.

Stockman Motors, Inc., third party defendant, (hereinafter "Stockman") was indebted to defendant, an employee, in the approximate sum of \$1,200.00. Defendant purchased a car from Stockman, the purchase price of which was \$1,568.80. Defendant intended to finance the difference between the amount owed him by Stockman and the price of the car by a loan at a local bank after his return from a trip. However, defendant desired insurance coverage while on the trip and before issuing the insurance Stockman required the defendant to sign a conditional sales contract with the understanding that the contract was not to be assigned. Contrary to the agreement Stockman assigned the conditional sales contract to plaintiff. At the time of assignment the amount owed by the defendant on the contract was the full pur-

chase price in the sum of \$1,568.80. Subsequent to assignment defendant made payments on the contract to the plaintiff totaling \$600.00. The amount paid by defendant to plaintiff plus the sum owed by Stockman to defendant was approximately \$1,800.00, an amount in excess of the purchase price of the automobile.

Plaintiff alleges that \$968.80 remains due on the contract and brings an action in claim and delivery to recover possession of the automobile. Defendant contends that the contract was not assignable but if it was assignable that he has an off-set against the indebtedness in the amount owed him by the assignor, Stockman.

The court ruled that nonassignability of the contract is not a defense because the defendant by his conduct in making payments to the assignee of the contract waived his right to assert such defense. "He did not, however, merely by making payments on the contract, waive the right to assert any off-set that he might have by reason of indebtedness owing by the assignor, Stockman Motors, Inc., to him . . ." The court then cited *Farmers Ins. Exchange v. Arlt*, 61 N.W.2d 429, which quotes Section 167 of the Restatement of the Law, Contracts in support of the decision. Section 167 allows the obligor to set-off against the assignee all rights which would have been available against the obligee in the absence of assignment provided such set-offs "are based on facts existing at the time of the assignment or are based on facts arising thereafter prior to knowledge of the assignment by the obligor."

## DIGEST OF ATTORNEY GENERAL OPINIONS

### CITY CURFEW ORDINANCE — ARREST OF NON-RESIDENT PARENT March 3, 1959

A North Dakota city curfew ordinance provided that the parent of the violating minor shall also be guilty of ordinance violation.

"While we can find no statutory or case law directly in point, it would appear that such an ordinance would be binding upon nonresident parents only if they are within the corporate limits of the municipality at the time their minor child violates the ordinance." See 5 McQuillin, MUNICIPAL CORPORATIONS 123, sec. 15.28 (3rd ed.).