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District Court Digests

North Dakota Law Review

BENCH AND BAR

DISTRICT COURT DIGESTS

CRIMINAL PROCEDURE — VALIDITY OF TRAFFIC TICKET - SUMMONS - COMPLAINT FORM. — *State v. Trygg,* District Court of the Fourth Judicial District, Burleigh County, North Dakota, C. L. Foster, District Judge.

This case concerns the validity of the Traffic Ticket-Summons-Complaint form used by the Highway Patrol. Defendant was given a ticket on a charge of following another vehicle too closely. The alleged offense occurred on August 9, 1957 and the defendant was ordered to appear before the court August 12, 1957. The words "J.P." were circled on the ticket and written in ink below "Police Station, Bis.". The charge read "following another vehicle too closely; reckless driving". Defendant moved to quash the alleged summons for the following reasons: (1) Summons and Complaint did not state venue or adequately designate the court; (2) the Complaint did not state facts sufficient to constitute any public offense under the laws of this state; (3) the Complaint did not clearly designate a public offense for which the defendant was to be tried. The court denied the motion to quash. On appeal to the District Court, the Court *held,* that the Traffic Ticket-Summons-Complaint form did not constitute an adequate Summons and Complaint as required by law.

Under section 39-0709 of the North Dakota Revised Code of 1943, the defendant is to have five days in which to appear, not three, and under section 39-0708 the consent of the accused to such time and place of appearance is to be shown. The Court felt the magistrate had assumed that the defendant's appearance at the time and place fixed constituted a voluntary appearance. However, the Court did not consider such appearance as voluntary when the document would lead the ordinary citizen to believe his appearance had been legally required and that if he did not so appear he would be subject to arrest for a separate offense.

In discussing that part of the "ticket" which pertained to the charge of "following a vehicle too closely", the Court quoted *State v. Tjaden,* 69 N.W.2d 272 (N.Dak. 1955) which held that "the complaint should contain the elements of the offense with sufficient particularity to apprise the accused of the nature of the crime and enable him to prepare his defense and permit a conviction or acquittal to be pleaded in bar of a subsequent prosecution for the same offense."

The Court pointed out that section 33-1204 of the Code provides that a complaint in justice court must comply substantially with the form set forth in the statute. The Court felt that the "ticket" in this instance did not apprise the defendant of what he was required to meet at the trial, for following a vehicle too closely is not necessarily reckless driving. The charge of driving too closely, as set forth by c. 257, § 19 (1) of the 1955 Session Laws, must necessarily vary under different conditions and therefore the particulars should be set out in the complaint rather than the conclusion of the officer. The Court further stated "the procedure outlined by law is not cumbersome or tedious, and it seems doubtful if those uneducated in the law can properly prepare criminal complaints. Such things should be left with the duly constituted authorities. The Court understands the necessity of keeping records of traffic violations so that motor vehicle records will show the violations of the various traffic regulations and the necessity for the uniformity. In this case it seems to the Court that the procedure followed confuses such records as it is not possible to tell from the records, which recites 'guilty as charged in the complaint' whether the finding was guilty of reckless driving or following another vehicle too closely."

DISTRICT COURT DIGEST

DIVORCE — REDUCTION OF PAYMENTS UNDER SUPPORT AGREEMENT. — *Hummel v. Hummel,* District Court of the First Judicial District, Cass County, North Dakota, John C. Pollock, Judge.

This was an order requiring defendant to show cause why alimony and support payments made to defendant by plaintiff should not be reduced in the sum of $70.00 per month. At the time of of the divorce of the parties, plaintiff had voluntarily agreed to pay defendant $75 for care and support of a minor son and $65 alimony, a total of $140 per month. The agreement was incorporated in the divorce decree of the court. Plaintiff in support of his order to show cause stated he was in the United States Foreign Service; that he had remarried; and that his present income was such that he could not maintain his second wife and make payments to defendant as usual. The Court *held* that plaintiff's application for reduction in payments agreed by him to be made to defendant and approved by the court at the time of the divorce would be denied.

The Court cannot abrogate the terms of plaintiff's original agree-

ment. Defendant entered into the agreement in good faith and by the terms of the agreement lost all rights except those specifically set out in such agreement. In justice to the defendant the terms of the agreement must be met by the plaintiff. At the time of his second marriage, plaintiff was aware of commitments voluntarily made by him at the time he procured the divorce. The Court further stated "this Court has consistently held that the duty of a divorced spouse is to his first family and not to his after acquired obligations entered into with full knowledge of his duty to his first family."

DISTRICT COURT DIGEST

USURY — NOTE WITH LEGAL INTEREST RATE IN FOREIGN STATE UNENFORCEABLE IN NORTH DAKOTA AS USURIOUS. — *Household Finance Corp. v. Sikorski,* District Court of the First Judicial District. Cass County, North Dakota, John C. Pollock, Judge.

Plaintiff, a Minnesota corporation, made a loan to defendant, a resident of North Dakota, and received a note for $252.02 plus interest at a rate allowed by the Minnesota Small Loan Act. Plaintiff brought suit to collect the note and interest but was denied a default judgment. The provision for interest in the note calls for payment at a rate which is usurious under the statutes of North Dakota. Such provision is void as against the public policy of North Dakota and payment of such interest cannot be enforced in the courts of this state. (North Dakota Revised Code of 1943, §§ 47-1409, 47-1410).

Under the principles of comity North Dakota courts are open for the enforcement of foreign contracts in all instances where the legislature has not declared the terms of such foreign contracts to be repugnant to the public policy of this state. (Supply Co. v. Trust Co., 52 N.D. 209, 202 N.W. 404 (1924).

DIGEST OF ATTORNEY GENERAL OPINIONS

EDUCATION — TRANSPORTATION PAYMENTS

September 16, 1957

Under Chapter 136 of the 1957 Session Laws which amends Section 15-3404 of North Dakota Revised Code of 1943, it is now permissible for a school district to furnish transportation payments to high school students as well as grade school children. This chapter is purely permissive and a district could pay family transportation for grade school children without making like payments to

high school children. To make such a distinction is not an unfair or unlawful classification and would not violate Section 20 of the North Dakota Constitution. However, if the district is furnishing transportation to some high school students in the district it must furnish transportation to all.

EDUCATION — TUITION FOR STUDENTS FROM AN OUTSIDE DISTRICT
Sepember 17, 1957

Section 15-4016 of the North Dakota Revised Code of 1943 as ammended by Chapter 140 of Session Laws of 1957 makes it mandatory for a high school district to charge tuition for students from an outside district. The charge is to be the county average of the cost of high school education. A district furnishing a high school is, of course, not liable if a student from its district chooses to attend high school in another district, but in such a case the receiving district must collect the tuition fees from the child or its parents.

RURAL FIRE PROTECTION DISTRICTS — ELIGIBILITY TO SIGN PETITION TO CREATE.
November 18, 1957

The wife of a landowner is a freeholder by virtue of her homestead interest within the meaning of Section 1 of Chapter 165 of the 1957 Session Laws which requires assent of sixty per cent of the freeholders residing in a rural territory before a rural fire protection district can be established. However, section 2 of the same act requires that the names of the freeholders must appear on the current tax schedules of the county auditor before they can be counted as part of the sixty per cent.

BENCH AND BAR
ERRATUM

In the October, 1957, issue of the *North Dakota Law Review*, there appeared a citation honoring the Honorable William L. Nuessle, former Chief Justice of the North Dakota Supreme Court. The staff of the *North Dakota Law Review* notes that the citation listed Judge Nuessle as having graduated in 1889, whereas the true date was 1899. Needless to say, we extend our profound apologies to His Honor for having given him an additional—and undesired—ten years of seniority to add to those he has already acquired through so many years of distinguished service.

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