North Dakota Law Review

Volume 24 | Number 3 Article 3

1948

Conflict of Laws - Full Faith and Credit Clause Application to Workmen's Compensation Awards

James A. Nordine

COMMENT

CONFLICT OF LAWS — FULL FAITH AND CREDIT CLAUSE APPLICATION TO WORKMEN'S COMPENSATION AWARDS

The Conflict of Laws questions in reference to Workmen's Compensation Acts have called forth numerous decisions from the courts. The earliest cases held that recovery thereunder was in the nature of recovery for tort and was governed by the law of the state of injury[1]. Opposed to this was the theory that the relationship was one of contract and was governed by the law of the state in which the contract was made, regardless of the state of injury[2]. The more generally accepted view and the one adopted by the United States Supreme Court is that the liability is not for tort but is imposed as an incident of the employment relationship as a cost to be borne by the business[3].

No difficulty arises where the contract of employment and the injury take place in the same state, but where the former is entered into in one state and the latter takes place in another the problem arises as to what effect, if any, must be given to the statute of the sister state under the full faith and credit clause[4]. That the state where the injury occurred has jurisdiction to award compensation has been definitely decided in *Pacific Employers Insurance Co. v. Industrial Accident Com-*

---

[1] Schwartz v. India Rubber Works, [1912] 2 K.B. 299; Gould's Case, 215 Mass. 480, 102 N. E. 693 (1913).

[2] Kennerson v. Thames Towboat Co., 89 Conn. 367, 94 A. 372; Matter of Post, 216 N. Y. 544, 111 N. E. 351 (1916).

[3] Alaska Packers' Association v. Industrial Commission of California, 294 U. S. 532 (1935). DODD, ADMINISTRATION OF WORKMEN'S COMPENSATION 814 (1936); 2 BEALE, THE CONFLICT OF LAWS, secs. 398.1-401.3 (1935); GOODRICH, CONFLICT OF LAWS sec. 98 (1927). It is apparent, then, that apart from full faith and credit, there is no choice of law problem.

[4] U. S. CONST. Art. IV, sec. 1: "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof." The Act of May 26, 1790, c. 11, 1 STAT. 122, provided for the proper authentication of the acts, records and judicial proceedings and declared: "And the said records and judicial proceedings authenticated as aforesaid shall have such faith and credit given to them in every court within the United States, as they have by law or usage in the courts of the state from whence the said records are or shall be taken." The Act of March 27, 1804, c. 56, 2 STAT. 298, extended the provisions of this statute to the public acts, records and judicial proceedings of the territories of the United States. These enactments subsequently became secs. 905, 906 of the REV. STAT., U. S. C., tit. 28, secs. 687, 688.

mission . There an employee of a Massachusetts corporation, resident of that state and regularly employed there, was injured in the course of his employment while temporarily in California. The Court held that the California court was not bound by the full faith and credit clause to apply, contrary to the policy of its statute, the Massachusetts statute; or to recognize it as a defense to the claim of an employee under the California act, which, because the injury was suffered in the employment there, also purported to be applicable and to give an exclusive remedy. Few matters, the Court said, could be deemed more appropriately within a state's concern than an injury to an employee within its borders. Likewise, in *Alaska Packers Association v. Industrial Accident Commission*[6] the state where the contract of employment is executed was held to have jurisdiction to make an award. There a non-resident workman and a packing company doing business in California executed a contract which provided that the employee would work for the season in Alaska and that both parties should be bound by the Alaska Act. Upon the employee's return to California an award for an injury suffered in Alaska was upheld on the ground that without a remedy in California courts he would be remediless and likely to become a public charge there, thus giving that state a legitimate public interest to make an award under its own Act.

Under the above holdings it is clear that eithre the state of employment or the state of injury has jurisdiction to make an award. However, in the event of either state making such award could it be interposed as a bar in a subsequent proceeding in the second state under the full faith and credit clause? The Supreme Court said yes in *Magnolia Petroleum Co. v. Hunt*[7]. In that case Hunt, resident of Louisiana, entered into a

---

[5] 306 U. S. 493 (1939). RESTATEMENT, CONFLICT OF LAWS sec. 399 (1934): "A workman may recover in a state in which he sustains harm under the Workmen's Compensation Act of that state although the contract of employment was made in another state, unless the Act provides in specific words or is so interpreted as to apply only when the contract of employment is made within the state."

[6] 294 U. S. 532 (1935). RESTATEMENT, CONFLICT OF LAWS sec. 398 (1934): "A workman who enters into a contract of employment in a state in which a Workmen's Compensation Act is in force can recover compensation under the Act in that state for bodily harm arising out of and in the course of employment, although the harm was suffered in another state, unless the Act provides in specific words or is so interpreted as to apply only to bodily harm occurring within the state."

[7] 320 U. S. 430 (1943).

contract of employment there and was sent to Texas where he was injured. The latter state awarded him compensation and subsequently he made claim for the same injury in Louisiana. The insurer set up the Texas award as a bar and invoked the full faith and credit clause. The Louisiana Board made an award (its Act providing a higher rate of compensation) after deducting the amount of the Texas payments. The United States Supreme Court vacated the second award on the ground that a final award for compensation under the Texas Act had the same effect as a judgment and was res judicata as to all matters which had been or could have been litigated; that since there was but one injury there was but one cause of action which merged in the judgment and since the matter was res judicata in Texas it must be given the same effect elsewhere as in the case of any other judgment for money in a civil action[8]. Subsequently in *Industrial Commission v. McCartin*[9] a case came to the Supreme Court for decision where the workman was injured in Wisconsin, the contract having been made in Illinois. A settlement contract was made which expressly reserved any rights the employee might have under the Wisconsin Act. This was incorporated in the award. Subsequently he applied for compensation in Wisconsin and received an award less the amount received in Illinois. The award was set aside by the Supreme Court of Wisconsin under the holding in

---

[8] The majority of state courts prior to this decision allowed a second recovery with deduction of the initial award: Price v. Horton Motor Lines, 201 S. C. 484, 23 S. E. (2d) 744 (1942); Miller v. National Chair Co., 129 N. J. L. 98, 28 A. (2d) 125 (1942); Salvation Army v. Industrial Commission, 219 Wis. 343, 263 N. W. 349 (1935); Migue's Case, 281 Mass. 373, 183 N. E. 847 (1933); Anderson v. Jarrett Chambers Co., 210 App. Div. 543, 206 N. Y. Supp. 458 (3rd Dept. 1924).

Seven states expressly allowed it by statute: Florida, FLA. STAT. (1941) sec. 440.09(1); Georgia, GA. CODE ANN. (Park et al., 1936) tit. 114, sec. 411; Maryland, MD. ANN. CODE (Flack, 1939) art. 101, sec. 80 (3); Ohio, OHIO CODE ANN. (Throckmorton, Supp. 1943) sec. 1465-68; North Carolina, N. C. CODE ANN. (Michie and Sublett, 1939) sec. 8081; South Carolina, S. C. CODE (1942) sec. 7035-39; Virginia, VA. CODE ANN. (1942) sec. 1887 (37).

It was also sanctioned by the authorities: 2 BEALE, *op. cit. supra* note 3, sec. 403.1; DODD, *op. cit. supra* note 3, at 820; 1 SCHNEIDER, WORKMEN'S COMPENSATION TEXT sec. 160 (1941). RESTATEMENT, CONFLICT OF LAWS sec. 403 (1934): "Award already had under the Workmen's Compensation Act of another state will not bar a proceeding under an applicable Act, but the amount paid on a prior award in another state will be credited on the second award." The majority opinion in the *Magnolia Case* referred to this section as follows: "This would seem to be intended as nothing more than a statement of local rules of conflict of laws when unaffected by the full faith and credit clause, since full faith and credit, if it does not require that a first award bar a second, would not compel credits upon the second award of payments made under the first."

[9] 330 U. S. 622 (1947).

the *Magnolia Case*. The United States Supreme Court reinstated the award and distinguished the *Magnolia Case* on the ground that under the Illinois Act the award there was intended to be final and conclusive only as to rights arising in Illinois, and Wisconsin was free under the full faith and credit clause to make an award.

At first blush it would appear that the *Magnolia Case* had been overruled; however, the Court in the *McCartin Case* made it clear that such was not true.[10] Although the Texas Board in the *Magnolia Case* made no express reservation as to the rights of the claimant under the Act of a second state, as did the Illinois Board, the Court stated that such a clause, of itself, could not decide the effect to be given the award by the second state. However, it did rely on it as bearing on the policy behind the Illinois Act.[11] Since there is no other appreciable difference in the statutes of the two states,[12] it is obvious that the *Magnolia Case* turned on the provision in the Texas Act precluding further recovery in that state if compensation had been obtained in the state of injury.[13] Apparently then, the two

---

[10] *Id.* at 623. "In *Magnolia Petroleum Co. v. Hunt* this Court had occasion to consider the effect of the full faith and credit clause of the Constitution of the United States where awards are sought under the Workmen's Compensation laws of two states. This case presents another facet of that problem."

[11] *Id.* at 630. The settlement contract which became the award provided: "This settlement does not affect any rights that applicant may have under the Workmen's Compensation Act of the State of Wisconsin." In reference to this clause the Court said: "This provision means more than might be implied in the case of an ordinary judgment or decree. Any party, of course, has the right to seek another judgment or decree, however inconsistent or futile such an attempt might be; and it takes no reservation in the original judgment or decree to give him that right. But when the reservation in this award is read against the background of the Illinois Workmen's Compensation Act, it becomes clear that the reservation spells out what we believe to be implicit in that Act — namely, that an Illinois Workmen's Compensation award of the type here involved does not foreclose an additional award under the laws of another state."

[12] "The employees of a subscriber . . . shall have no right of action against their employer as against any agent, servant or employee of said employer for damages for personal injuries, . . . but such employees . . . shall look for compensation solely to the association . . . ." TEX. ANN. REV. CIV. STAT. (Vernon, 1941) art. 8306, sec. 3.

"No common law or statutory right to recover damages for injury or death sustained by any employee while engaged in the line of his duty as an employee, other than the compensation herein provided, shall be available to any employee who is covered by the provisions of this act. . . ." ILL. ANN. STAT. (Smith-Hurd, 1935) c. 48, sec. 143.

[13] "If an employee, who has been hired in this state, sustained injury in the course of his employment he shall be entitled to compensation according to the law of this state even though such injury was received outside of the state . . . provided, further, that no recovery can be had by the injured employee hereunder in the event he has elected to pursue his remedy and recovers in the state where such injury occurred." TEX. ANN. REV. STAT. (Vernon, 1941) art. 8306, sec. 19. The majority opinion in the *Magnolia Case* in speaking of this provision stated:

cases stand for the proposition that a state can determine for itself the extent of the extraterritorial application of its own statute and the Supreme Court will give effect to such statute without weighing the interest of a second state in the matter. That a state should not be thus precluded from allowing the application of its own Act to provide maximum recovery for one of its injured citizens who may become a permanent public charge seems clear. Certainly the rule as thus laid down by the Court does not square with the policy previously expounded in the *Alaska Packers Case.*[14]

The most rceent case involving the problem is *Spietz v. Industrial Commission.*[15] There one Nicola, resident of Wisconsin, was employed there by Spietz and was later sent to Montana for temporary employment where he was injured. After two months in a Montana hospital he returned to Milwaukee, in the meantime receiving compensation checks from Spietz' insurer. Being still totally disabled he filed a claim before the Montana Accident Board. Subsequently an application was made in Wisconsin under that state's Act, which allows greater compensation than that of Montana. Shortly thereafter the Board in the latter state made an award and Spietz and his insurer appeared specially, pleading it in bar in the Wisconsin proceeding. The Wisconsin Commission later made an award which was vacated on review by the circuit court. On appeal to the Supreme Court of Wisconsin it was held that under the holding in the *McCartin Case* the award of the Montana was res judicata in that state only and the Wisconsin Commission was free to allow a recovery under its own Act, deduction being made of the amount of any payments received under the Montana award. There is little doubt that the Wisconsin court was correct in its decision, since the Montana Act contains no provision such as that found in the Texas statute,

---

"We have no occasion to consider what effect would be required to be given to the Texas award if the Texas courts held that an award of compensation in another state would not bar an award in Texas for as we have seen Texas does not allow such a second recovery."

[14] The Court in that case said: "The conflict is to be resolved, not by giving automatic effect to the full faith and credit clause, compelling the court of each state to subordinate its own statutes to those of the other, but by appraising the governmental interests of each jurisdiction, and turning the scale of decision according to their weight."

[15] 251 Wis. 168, 28 N. W. (2d) 354 (1947).

nor does it (Montana's) differ perceptibly from that of Illinois.[16]

It seems a more satisfactory solution to the problem would be to exempt Workmen's Compensation Acts from the operation of the full faith and credit clause and allow the states to apply their own conflict of laws rules as the justice of the individual cases dictates.

JOHN C. SMITH
Third Year Law Student
University of North Dakota.

SALES — WARRANTIES — DISCLAIMERS — EFFECTIVENESS AS TO VARIETY IN A SALE OF SEEDS BY DESCRIPTION

While traditional contract freedom has become increasingly limited by statutory regulation, contracting parties have taken various means to couterbalance these restrictions. For example, in the seed and nursery trade dealers have by disclaimer[1] absolved themselves of certain statutory warranty responsibilities arising from a sale by description[2]. Prevalence of this practice, both by express provision, and custom, has been stimulated by virtually universal support of the courts[3]; and its effectiveness has been denied only by the presence of fraud, concealment, misrepresentation, negligence[4], the reluctance

---

[16] "Any employer who elects to pay compensation as provided in this act . . . shall not be subject to any other liability whatsoever for the death of or personal injury to any employee except as in this act provided; and, except as specifically provided in this act, all causes of action, actions at law, suits in equity, and proceedings whatever, and all statutory and common-law rights and remedies for and on account of such death of, or personal injury to any such employee are hereby abolished. . . ." MONT. REV. CODE ANN. (1935) sec. 2838.

[1] Seller gives no warranty, express or implied, as to the description, quality, and productiveness, or any other matter, of any seed they send out, and will not be in any way responsible for the crop.

[2] N. D. REV. CODE, sec. 51-0115 (1943) ". . . sale of goods by description . . . there is an implied warranty that . . . goods . . . correspond with the description."

[3] J. I. Case Threshing Machine Co. v. Erickson, 21 N. D. 478, 131 N. W. 269; Lynch v. Curfman, 65 Minn. 170, 68 N. W. 5; Ann. Cas. 1912D, 1079 (a seller of personalty may by an adequately worded provision in his contract of sale exempt himself from liability as to the description, quality, etc., of the subject-matter of the sale).

[4] Kennedy v. Cornhusker Hybrid Co., 19 N. W. 2d 51 (Neb. 1945) (buyers lack of notice or knowledge of a disclaimer of warranty does not avoid disclaimer, in the absence of express representations, bad faith, fraud or concealment, if under the circumstances the buyer ought to be aware of the disclaimer); see also Leonard Seed Co. v. Crary Canning Co., 147 Wis. 166, 132 N. W. 902 (1911).

of a minority group of courts to acquiesce in such complete irresponsibility[5], or appropriate legislative action[6].

The North Dakota Sales Act provides for an implied warranty of identity in a sale by description[7], but antithetically permits[8], as do other jurisdictions[9], complete negation of such warranties by appropriate contract language[10]. But enignatically, *Smith v Oscar M. Wills & Co.*[11] held that a vendor's purported compliance with an order for alfalfa seed by providing sweet clover was not a substantial performance of the contract and allowed the vendee to recover, despite the presence of a complete disclaimer of warranty of description[12]; and in *Ward v Valker* it was held that providing plant bulbs different from those ordered was not a compliance with the vendees request where there were "anterior circumstances" which "indicated the existence of an implied warranty," and that such anterior warranty would not be dispelled by a subsequent disclaimer[14]. In no reported case, however, has North Dakota interpreted a contract for the sale of seeds or nursery products, in which a disclaimer was present, and the vendors only failing was that he supplied a different *variety* of the same kind of seed ordered.

Minneapolis Threshing Machine Co. v Hocking[15] held that

---

[5] Rocky Mountain Seed Co. v. Knorr, 92 Colo. 320, 20 P. 2d 304 (1933); Grafton-Stamps Drug Co. v. Williams, 105 Miss. 296, 62 So. 273 (1913); Wallis v. Pratt, [1911] A. C. 394; Howcroft v. Laycock, 14 T. L. R. 46 (1898).

[6] Mallery v. Northfield Seed Co., 196 Minn. 129, 264 N. W. 573 (1936) (seller, after giving the purity and germination percentages of the seed, in compliance with the statute, could not evade the effect thereof, or the warranty thereby made, by a subsequent condition that it gave no express or implied warranty); see Phillips v. Sharp, 44 Ohio App. 311, 185 N. E. 562 (1932).

[7] See note 2 *supra*.

[8] N. D. REV. CODE, sec. 51-0172 (1943) "Where any right, duty or liability would arise under a contract to sell or a sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by custom, if the custom is such as to bind both parties to the contract or the sale."

[9] Burnett v. Hensley, 118 Ia. 575, 92 N. W. 678; Grojean v. Darby, 135 Mo. App. 586, 116 S. W. 1062; Ann. Cas. 1912D, 1079.

[10] N. D. REV. CODE, c. 4-09 (1943) makes it a misdemeanor to knowingly mislabel seeds.

[11] 51 N. D. 357, 199 N. W. 861 (1924).

[12] Some evidence in this case of a sale by sample or inspection, and there is a difference of *kind* of seed as distinguished from *variety*.

[13] 44 N. D. 598, 176 N. W. 129 (1920).

[14] Is this inconsistent with N. D. Rev. Code, sec. 9-0607 (1943) stating "The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the oral negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument." See Allgood v. National Life Ins. Co., 61 N. D. 763, 240 N. W. 874 (1932) "the rule is positive substantive law."

[15] 54 N. D. 559, 209 N. W. 996 (1926).

"parties may exclude and negative all implied warranties which would arise under the Uniform Sales Act" and "a contract involving a legitimate subject matter, the terms of which do not inherently tend to be subversive of the public good, or contrary to good morals, will not, merely because its terms are harsh as to one of the parties, be declared void and unenforceable as contrary to public policy." That statement would indicate that if it were contrary to the interests of the public good, a disclaimer might not be enforceable, but this particular declaration of public policy is confined to farm machinery sales[16], indicating that it is aimed at the disclaimer only for the protection of agricultural interests. Thus, with the declared public policy of the state[17] justifying a negation of such disclaimers, and *Smith v Oscar H. Wills & Co.*, and *Ward v Valker* indicative of an inclination to avoid the effect of such disclaimers, but other statutory provisions clearly providing for the right to include such disclaimers in contracts[18], a conflict exists, which has never been clearly construed by the North Dakota courts. The construction which would be placed upon such provisions can only be conjectured under the circumstances, but a brief review of other jurisdictions indicates that the numerical weight of authority gives complete validity to the disclaimer; the principal theory being that parties are at liberty, within certain bounds, to contract as they see fit[19]. The cases generally hold such disclaimers to be completely effective, even as to variety, particularly where the disclaimer has been clearly brought to the attention of the buyer and

---

[16] N. D. REV. CODE, sec. 51-0707 (1943) "Any person purchasing any . . . harvesting . . . machinery, for his own use shall have a reasonable time after delivery for . . . testing the same, and if . . . not . . . fit for the purpose for which it was purchased . . . may rescind the sale. . . . Any provision in any . . . contract of sale . . . contrary . . . to this section, hereby is declared . . . against public policy and void." See also Bratberg v. Advance Rumely Threshing Co., 61 N. D. 452, 238 N. W. 552 (1931), sec. 51-0707 "is designed to effect a public object, viz., the protection of and the promotion of agriculture within the state."

[17] See note 16 *supra*.

[18] See notes 2 and 16 *supra*.

[19] Lumbrazo v. Woodruff, 256 N. Y. 92, 175 N. E. 525 (1931); Leonard Seed Co. v. Crary Canning Co., 147 Wis. 166, 132 N. W. 902, 37 L. R. A. (N.S.) 79 (1911) "If it be conceded that the contract is one-sided, it must also be conceded that the parties had a right to make a one-sided contract if they saw fit." See also Davis Seed Co. v. Bertrand Seed Co., 94 Cal. App. 281, 271 P. 123 (1928), "Any disclaimer of warranty so expressed that its existence and nature is understood by the parties to the sale as constituting a term of the bargain operates thus . . ."; *accord*, Belt Seed Co. v. Mitchelhill Seed Co., 236 Mo. App. 142, 153 S. W. 2d 106, 160 A.L.R. 365-367.

he has contracted with it in mind[20]. Similar results were found where the vendee is merely in such a position that he should have known of the disclaimer, though he may not actually have known of it[21]. Further, in many jurisdictions, even a custom to disclaim will be considered part of the contract if known to the buyer, or presumed to be known by him[22], and especially if the buyer has written notice of the custom[23]. Others have found pre-contract expressions of quality to be nothing more than expressions of opinion and not warranties, when a subsequent disclaimer is made a part of the contract[24], although similar circumstances have been held to be anterior warranties not negatived by subsequent disclaimers[25].

Only a few jurisdictions have clearly declared that a vendor cannot disclaim responsibility for providing the exact variety of seeds ordered[26], some on the theory that there must be a rational construction of such contracts[27], or that they would

---

[20] Reynolds v. Bind-Stevens Co., 179 Okla. 628, 67 P. 2d 440 (1937); Gray v. Gurney Seed and Nursery Co., 62 S. D. 97, 252 N. W. 3 (1933) (dictum); Black v. B. B. Kirkland Seed Co., 158 S. C. 112, 155 S. E. 268 (1930); J. S. Elder v. Applegate, 151 Ark. 565, (1922); Vaughan's Seed Store v. Stringfellow, 56 Fla. 708, 48 So. 410 (1904).

[21] Ross v. Northrup King and Co., 156 Wis. 327, 144 N. W. 1124 (1914); Seattle Seed Co. v. Fujimori, 79 Wash. 123, 139 P. 866 (1914); Blizzard Bros. v. Growers Canning Co., 152 Ia. 257, 132 N. W. 66 (1911); Kennedy v. Cornhusker Hybrid Co., 19 N. W. 2d 51 (Neb. 1945) (buyers lack of notice or knowledge of a disclaimer of warranty does not avoid disclaimer, in absence of express representation, bad faith, fraud or concealment, if under the circumstances, buyer ought to be aware of the disclaimer).

[22] Miller v. Germain Seed Co., 193 Cal. 62, 222 P. 817, 32 A.L.R. 1215 (1924) (existence of a general custom on the part of seller not to warrant seeds prevents inference of an intent to warrant, whether the custom is known to the buyer or not); see Sutter v. Assoc. Seed Growers, 31 Cal. App. 2d 543, 88 P. 2d 144 (1939) (disclaimer can override implied warranties of fitness, and custom of trade not to warrant may be part of the contract); National Seed Co. v. Leavell, 202 Ky. 438, 259 S. W. 1035 (1924); Hoover v. Utah Nursery Co., 79 Utah 12, 7 P. 2d 270 (1932); Blizzard Bros. v. Growers Canning Co., 152 Ia. 257, 132 N. W. 66 (1911).

[23] Hoover v. Utah Nursery Co., 79 Utah 12, 7 P. 2d 270 (1932), "A long established general custom not to warrant seed is held to be by the law a part of the contract in a sale of seed, and especially so where the buyer is given written notice of disclaimer of warranty." *But see*, Coates v. Harvey et al., 2 N. Y. S. 5 (1888), ". . . custom of the trade in warranting seeds is not competent to change either the contract of the parties or settled rules of law"; Kotthoff v. Portland Seed Co., 137 Ore. 152, 300 P. 1029 (1931) (custom of disclaimer not sufficient to override implied warranties of description).

[24] Lynch v. Curfman, 65 Minn. 20, 68 N. W. 5, (1896).

[25] Phillips v. Sharp, 44 Ohio App. 311, 185 N. E. 562 (1932).

[26] Kotthoff v. Portland Seed Co., 137 Ore. 152, 300 P. 1029 (1931); Grafton-Stamps Drug Co. v. Williams, 105 Mss. 296, 62 So. 273 (1913); Wallis v. Pratt, [1911] A. C. 394; Howcroft v. Laycock, 14 T. L. R. 46 (1898).

[27] Howcraft v. Laycock, 14 T. L. R. 46 (1898) "the presence of a disclaimer clause does not relieve the seller from the obligation to furnish goods of the character contracted for in performance of the contract . . . a rational con-

be contrary to law and justice[28]; others hold that conformance with description is a condition precedent[29], and a failure to so perform would not be a substantial performance[30]. Minnesota courts have held, under a statute[31] similar to that in North Dakota[32], that a vendor cannot disclaim matters contained on required tags and labels.

North Dakota could, therefore, by following certain of its own statutory provisions[33] permit such disclaimers and be in accord with the decided numerical weight of authority from other jurisdictions; but would more appropriately conform to its own established public policy in regard to agriculture[34] by refusing to give validity to such disclaimers. If such public policy cannot include a refusal to recognize such disclaimers because of the lack of express statutory[35] or judicial expression, legislative action should, it is submitted, be forthcoming to protect agricultrural interests in seed sales in a manner similar to that of farm machinery, by declaring such disclaimers contrary to public policy.

JAMES A. NORDINE
Third Year Law Student
University of North Dakota

---

struction must be put on the words relied upon, and the construction desired by the seller was unreasonable."

[28] Grafton-Stamps Drug Co. v. Williams, 105 Miss. 296, 62 So. 273 (1913), "It would be contrary to law and justice to be able to enforce such a provision."

[29] Wallis v. Pratt (1911), A. C. 394, "A disclaimer does not apply to a sale of seeds by description, but such a sale raises a condition rather than a warranty, and renders the seller liable for breach of the condition, and such a disclaimer clause does not cover this liability."

[30] Sanford v. Brown Bros. Co., 208 N. Y. 90, 119 N. Y. S. 333, 101 N. E. 797 (1909) (the nurseryman rather than the buyer should assume the responsibility that nursery products are true to name).

[31] 1 Mason's Minn. St. 1927, sec. 3957-3, 3957-4. See note 6 *supra*.

[32] N. D. REV. CODE, c. 4-09 — (1943).

[33] See note 8 *supra*.

[34] See note 16 *supra*.

[35] N. D. REV. CODE, c. 4-09 (1943); N. D. REV. CODE, c. 4-20 (1943).