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Our Supreme Court Holds

the Bill of Rights enacted on December 16, 1689 in the reign of William and Mary; the Declaration of Indeepndence adopted on the 4th day of July, 1776, which among other things provides: "We hold these truths to be self-evident, that ALL men are created equal, that they are endowed by their Creator with certain unalienable rights that among these are life, liberty and the pursuit of happiness." The Constitution of the United States adopted in 1787 and the subsequent amendments which provide among other things, "The trial of all crimes except in cases of impeachment, shall be by jury." Article V providing that: "No person shall be held to answere for an infamous crime unless on the presentation or indictment of a Grand Jury or be subject for the same offense to be twice put in jeopardy, nor to be compelled in any criminal case to be a witness against himself nor be deprived of life, liberty or property without due process of law." The Sixth Amendment which provides as follows; "In all criminal prosecutions, the accused shall enjoy the right of a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committeed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense." Similar provisions may be found in the constitutions of various states.

To what purpose, it may be asked, should these matters of substance and of procedure be set down in these solemn documents if lawyers are to adopt the view suggested in the foregoing charge under this count? Guilt or innocence is incapable of simple and easy determination. Over-simplification of this question lies at the bottom of all lynch law. It involves investigation of such matters as intent, malice, premediation, matters in mitigation, justification, excuse, matters involving questions of environment and heredity and mental responsibility. All of these are pertinent and relevant to the inquiry as to guilt or innocence.

It follows that no man can be said to be guilty under the law unless he confesses his guilt in open court by plea or is convicted in the manner and form provided by the law.

Thus, the principle involved is a legal rather than a moral one. The lawyer who defends a person charged with crime is not only entitled to but is in duty bound to insist that government itself should abide by the salutary rules above mentioned.

The Defense rests.

—Francis Murphy

OUR SUPREME COURT HOLDS

In Presbytery of Bismarck, a religious corporation, et al., Pltfs. and Applts., vs. S. J. Allen, et al, and the First Presbyterian Church of Leith, N. D., Defdts. and Resps.

That where property or contract rights of religious organizations are concerned, civil courts will assume jurisdiction.

That where a local religious society, be it either an association or corporation, is a subordinate member of a general church organization,

with superior ecclesiastical tribunals, with the ultimate power in some supreme judicatory, distinguished as the Presbyterian type, its property is not owned by the local organization or the individuals thereof, but is held in trust for the general church body to be used in accordance with the decisions of the superior church judicatory.

That where a local church society incorporates for the purpose of promoting worship according to the constitution, laws, and usages of the Presbyterian Church in the United States of America, and acquires church property, and thereafter its congregation votes to separate itself from such Presbyterian Church without the consent of the Church Judicatory in authority, and then erects itself into a different and hostile organization, the use and control of the local church property remain with the Presbyterian Church in the United States of America, and subject to the authority of the proper church judicatory. Appeal from the District Court of Grant County, Lowe, J. REVERSED. Opinion of the Court by Hutchinson, Dist. J. Burr, J. disq.

In the Matter of the Application of Midwest Motor Express, Inc., Northern Pac. Ry. Company, a corporation, Applt., vs. S. S. McDonald, et al, as members of Public Service Commission, et al, Respt.

That statute which requires the Public Service Commission, before granting a certificate of public convenience and necessity, to a common carrier by motor vehicle, to take into consideration travel on the proposed route, increased cost of maintaining the highways, the existing transportation facilities in the territory to be served and the effect granting of such certificate will have upon those facilities and prohibiting the granting of such certificate where the service furnished or that could be furnished by existing transportation facilities is reasonably adequate, is a restriction upon the power of the Public Service Commission to grant certificates of public convenience and necessity to carriers by motor vehicles (Sec. 49-1814, R. C. 43.)

That under the public policy of this state, as declared by the legislature, public convenience and necessity do not require additional transportation service by common carrier motor vehicles to a territory that already has reasonably adequate service or where the additional service will create ruinous competition or materially impair the existing service to any part of the territory.

That statutes, relating to appeals from administrative agencies, require a trial de novo in District Court upon the record, upon an appeal from a determination of the Public Service Commission and also a trial de novo upon an appeal from the District Court to the Supreme Court where appellant demands a review of the entire case. (Sections 28-3219, 28-3221, 28-2732, R. C. 1943).

That daily freight service by "hotshot" car atttached to a daily passenger train and tri-weekly service by way of freight with pickup and delivery service on l. c. l. shipments is held to be reasonably adequate service to a territory where the l. c. l. volume averages 3 to 7 tons on the daily freight and 8 to 12 tons on the way freight, where there is no evidence of special circumstances requiring additional service and where there is a possibility that the granting of additional service would materially impair the existing service to a part of the territory.

Appeal from the District Court of Mercer County, Berry J. REVERSED. Opinion of the Court by Burke, J.

In W. M. Covertson, Pltf. and Respt. vs. Grand Forks County, a Municipal Corporation, et al., Defts. and Respts. and Oscar O. Odegaard and James P. Keogh, Defts. and Respts.

That where the county auditor, being charged with the duty of giving notice of expiration of the period of redemption to a delinquent taxpayer, follows the statutory procedure prescribed for service of such notice, the service is valid and is effective to extinguish the owner's right of redemption though the notice was not actually received by him

That where a county sells property acquired through tax deed proceedings at the annual sale prescribed by Ch. 286, Sess. Laws N. D. 1941, the sale is complete when a bid is accepted by the County auditor and the payment required is made by the bidder.

That Chapter 286, Sess. Laws N. D. 1941, gives to the former owner of real estate forefeited to the county under tax deed proceedings the right to repurchase the real estate so long as the tax title thereto remains in the county.

That where a successful bidder at the annual tax sale of property acquired by the county under tax deed proceedings fails to pay the amount required by statute into the county treasury and the original owner tenders the amount necessary to repurchase in accordance with the terms of the statute prior to the delivery of a deed to the bidder, a valid repurchase is effected and a deed thereafter delivered to the bidder is a nullity.

Appeal from the District Court of Grand Forks County, Hon. P. G. Swenson, Judge. AFFIRMED. Opinion of the Court by Morris, J.

In J. E. Novak, Pltf. and Applt. vs. Anna M. Novak, Deft. and Respt.

That the word "may" as ordinarily used in a statute is permissive only and operates to confer discretion; but depending upon the context and circumstances under which it is used it sometimes may be construed as being mandatory and the equivalent of the word "must."

That permissive words in a statute which confers power and authority upon a public officer or body will be held to be mandatory when the act authorized to be done concerns the public interest or the rights of individuals and it appears that the legislature intended the statute to be mandatory in character.

That Section 14-0605, Revised Code 1943, providing that "When a decree for separation, forever or for a limited period, shall have been pronounced, it may be revoked at any time thereafter by the judge by whom it was pronounced or by his successor, under such regulations and restrictions as the judge may impose. Application for revocation may be made by either party to the decree. * * * If it shall be made to appear on the hearing of such application that the original decree has been in existence and force for more than four years and that reconcilliation between the parties to the marriage is improbable, the judge may revoke the separate maintenance decree and, in lieu thereof, may render a decree absolutely divorcing the parties * * *.", is construed, and it is HELD, for reasons stated in the opinion that the statute is not mandatory in character and that the word "may" as used therein is permissive and not mandatory.

That the record is examined and HELD, for reasons stated in the opinion, that there was no abuse of discretion in the denial of the plaintiff's application for the revocation of the decree for separation and maintenance.

Appeal from the District Court of Burleigh County, Hon. Fred Jansonius, J. Application for the revocation of a degree of separate maintenance and for a decree of divorce in lieu thereof. From an order denying the application, plaintiff appeals.

AFFIRMED. Opinion of the Court by Nuessle, J.