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OUR SUPREME COURT HOLDS

In Northwestern Mutual Savings and Loan Association, a corporation, Pltf. and Respt. vs. Irvine V. Hanson, and Theo. Hamm Brewing Company, a corporation, Deft. and Applts.

That a valid tax deed clothes the grantee with a new and complete title under an independent grant from the soverign authority of the state.

That an action to determine adverse claims to real property is essentially an equitable action.

That a vendee under a contract for the sale of real estate who is legally obligated to pay the taxes on the premises is stopped from asserting, as against the vendor, a tax title having its inception in the vendee's default, though there has been no collusion or bad faith in the vendee's acquisition thereof.

That one who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact and who omits to make such inquiry with reasonable diligence is deemed to have constructive notice of the fact itself. (Section 7290 Comp. Laws N. D.)

That where a vendee is estopped from asserting against his vendor an after acquired tax title that had its inception in the vendee's breach of covenant, a mortgagee of the vendee who took his mortgage with notice, actual or constructive, of the facts creating the estoppel, is in no better position than the vendee with respect to the right of the vendor.

Appeal from the District Court of Eddy County Hon. R. G. McFarland, Judge. AFFIRMED. Opinion of the Court by Morris, C. J.

In Workmen's Compensation Bureau, Unemployment Compensation Bureau Division, a department of the State of North Dakota, Pltf. and Applt. vs. Farmers State Bank of Lisbon, Deft. and Respt. and Jakob Walters, Intng Deft. and Respt.

That contributions exacted under the provisions of the North Dakota Unemployment Compensation law, Chap. 232, S. L. 1937, as amended by chapter 215, S. L. 1939, are calculated upon the number of individuals employed by any individual or association or corporation and are collected from the employer and not from a mere employing unit.

That under the provisions of the law of 1937, an employing unit, as well as an employer, must have had at least eight individuals in his employ.

That under the provisions of the 1939 law any individual or association having one individual in his employ is an employing unit; but an employing unit having less than eight individuals in its employ is not an employer under the provisions of sec. 2 (f) 1 of either law.

That Sec. 2 (f) 4, 215, S. L. 1939, provides; "Any employing unit which together with one or more other employing units, is owned or controlled (by legally enforcible means or otherwise) directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforcible means or otherwise) and which, if treated as a single unit with such other employing unit, interests, or both, would be an employer under paragraph (1) of this subsection." But the mere fact that one person is shown to be the owner of a majority of the stock in each of three separate banking corporations, including the defendant bank, does not constitute the defendant bank an employer as defined in the subsection quoted.

Appeal from the judgment of the district court of Ransom County, Hutchinson, J. AFFIRMED. Opinion of the court by Burr, J.

IN THE MATTER OF MICHAEL BOISE, an illegitimate feeble-minded child.

That the residence of an illegitimate child for relief purposes follows that of the mother, and such child has the residence of the mother at the time of his birth, if the mother then has any within the state.

That in determining the right of a feeble-minded child to support under the public relief acts, the responsibility of the county is the same as that for an indigent of sound mind.

That it is the purpose of the statutes governing poor relief administration to give needed relief to every actual resident of this state, who has resided one year continuously in this state, and after such resident has the qualification of residence he remains entitled to such relief until he gains a residence somewhere else.

That when a person entitled to poor relief has resided one year continuously in any county in this state, he gains a residence and settlement therein for poor relief purposes, and such residence and settlement continue until such person is voluntarily absent from the county for the period of one year.

That where a person entitled to relief has acquired a residence and settlement within a specific county for relief purposes and has been voluntarily absent from said county for at least one year without any support having been given by that county, the responsibility of that county for the support of such person is ended even though part of the time of the absence may have been spent in another state.

That in determining the county responsible for the support of the needy poor of this state, where there is a controversy between two or more counties as to the legal settlement of the person involved, it becomes incumbent to determine the place of abode of the said person for the year immediately preceding the application for assistance and relief; and where during that period the indigent has resided in two or more counties of the state, then the county in which he has resided for the longest period during that year is the county responsible for his support.

Appeal from the judgment of the District Court of Richland County, Hutchinson, J. AFFIRMED. Opinion of the Court by Burr, J.

In Eddy County, a public corporation, Pltf. and Respt. vs. Wells County, a public corporation etal, Defts. and Wells County, a public corporation, Deft. and Applt.

That subsection 4 of section 4 of chapter 97, S. L. 1933, is construed, and HELD, for reasons stated in the opinion, that in computing the period of continuous residence of an indigent in any county for relief purposes the time within which such person has received relief from any county is excluded; but the continuity of such residence is not broken by the receipt of such relief.

That under subsection 6 of section 4 of chapter 97, S. L. 1933, the the residence of an indigent in a given county for poor relief purposes is lost by voluntary absence from that county for one year or more, regardless of the receipt by such person of poor relief during a part of the period of absence, unless such relief is provided by such county.

Appeal from the District Court of Eddy County ,McFarland, J. Action to determine the residence of an indigent family for the purposes of poor relief and to recover for payments made by the plaintiff Eddy County in that behalf. From a judgment for the plaintiff, defendant Wells County appeals. REVERSED. Opinion of the Court by Nuessle, J.

In Regional Credit Corporation of Minneapolis, a corporation, Pltf. and Respt. vs. Griggs County, etal., Defts. and Griggs County, N. J. Thune and Bert Nelson, Applts.

That chapter 279, Session Laws 1931, an act amending and reenacting sections 2166, 1925 Supplement to the 1913 Como. Laws, and section 2186,

Comp. Laws 1913, as amended, relating to the collection of personal property taxes, etc., considered and, HELD, following Advance Thresher company v. Beck, 21 N. D. 55, 128 N. W. 313 and First National Bank v. Kelly, 36 N. D. 546, 162 N. W. 901, that mortgages on personal property belonging to one class are superior to liens on distraint for taxes assessed against a valuation of other classes of personal property.

That a mortgagee of personal property does not waive the lien of his mortgage where he consents to a sale of the mortgaged property on condition that the proceeds of the sale shall be received by a designated third and applied by the latter on the mortgage debt after the payment of the costs of the sale.

Appeal from the District Court of Griggs County, Hon. P. G. Swenson, Judge. Action to recover money paid under protest for personal property taxes. From a judgment for the plaintiff certain of the defendants appeal.

AFFIRMED. Opinion of the Court by Nuessle, J.

In Elmer King and Mrs. Anna King, Pltfs and Respts. vs. Stark County, a municipal corporation, Defts. and State Highway Department, Deft. and Applt.

That a party not aggrieved by an order or judgment cannot appeal.

That State Highway Commissioner was not aggrieved by an order refusing to vacate a judgment against him and the State where the judgment imposed no obligation upon him and did not directly and adversely affect him or the Highway Department.

Appeal from the District Court of Stark County, Hon. Harvey J. Miller, Judge.

Motion to dismiss granted. Opinion of the Court by Burke, J.

In Anna Borg, Pltf. and Applt., vs. Arthur Sidney Anderson, Deft. and Respt.

That in an action to determine the custody of a child the paramount consideration is the child's welfare.

Upon the record in this case it is determined that the welfare of the child who is now eleven years of age will be best subserved by permitting her to remain in the home of her maternal grandmother in which she has been cared for since she was six months old, and that the fact prevails over the right of her father to her custody.

Appeal from the District Court of Ramsey County, Miller, Spec. Judge. REVERSED. Opinion of the Court by Morris, Ch. J.

In F. E. Oelkers, Pltf and Respt. vs. B. Pendergrast, etal Deft. and Joe Pendergrast, Deft. and Applt.

That one not a member of any partnership may incur the liabilities of a partner, and by estoppel be held to be an ostensible partner.

That any one permitting himself to be represented as a partner, general or special, is liable as such to third persons to whom such representation is communicated, who on the faith thereof give credit to the alleged partnership; but one is not held to be an ostensible partner by the mere opinion, conjecture, or inference of the third person seeking to hold him liable as a partner.

That before one can be said to incur the liabilities of a partner so as to be considered an ostensible partner, it must appear that he either represented himself to be a partner, or permitted someone else to hold him out to be a partner, or negligently allowed such holding out to be done.

That record is examined and it is held: that there is an entire failure of proof to show that the defendant Joe Pendergrast was a member of the

alleged partnership or that he could be considered to be an ostensible partner.

Appeal from the judgment of the District Court of Bowman County, and from an order denying a new trial, Berry J. REVERSED. Opinion of the Court by Burr, J.

In State of North Dakota for benefit of Workmen's Compensation Fund, etal. Pltfs. vs. Emil Thompson and E. A. Tuftedahl, doing business under the trade name of Tuftedahl, Chevrolet Company, Defts.

That ownership alone is not sufficient to impose liability upon the owner of an automobile because of the negligence of another whom he has permitted to use the automobile.

That a prospective purchaser of an automobile was not, while driving the car for the purpose of satisfying himself as to its quality, the agent of the owner and his negligence while so driving could not be imputed to the owner.

That where an employee under the Workmen's Compensation Act has died as the result of injuries for which compensation is payable, inflicted under circumstances which created a liability in some person other than the Workmen's Compensation Fund, and his dependants have filed a claim for compensation, the Workmen's Compensation Fund is subrogated to the right of the dependents to recover against that person and the State is the proper party plaintiff in an action for such recovery.

That an allagation of general damages in a complaint in an action for wrongful death is sufficient to allow proof of and recovery for damages suffered by the person in whose behalf the action is brought by reason of the interruption of a legal right to support or maintenance.

Appeal from the District Court of Divide County, Lowe, J. Defendants separately demurred to the complaint. Demurrers were overruled, each defendant has appealed.

REVERSED as to the defendant Tuftedahl. AFFIRMED as to the defendant Thompson. Opinion of the Court by Burke, J.

In Clara Jacobson, Pltf and Applt. vs. Mutual Benefit Health & Accident Co., Deft. and Respt.

That a judgment rendered by a court having jurisdiction of the parties and subject-matter is conclusive of the right of the parties in all other actions or suits between the same parties in the same or any other tribunal of concurrent jurisdiction, as to all questions or facts put in issue in the suit and actually adjudicated therein. Dennis v. Pease etal, 61 N. D. 718, 240 N. W. 611, followed and approved.

That it is a general rule that cause of action may not be divided and for a breach of an indivisible contract there can arise but one cause of action. If in the action therein the plaintiff does not demand the entire relief to which he is entitled he can not thereafter complain.

That where an item of a single cause of action has been omitted from the complaint because of the fraud of the defendant or by reason of the mutual mistake of the parties, the doctrine of res judicata will not apply to such omitted item.

That a general allegation of fraud is not a sufficient statement upon which to predicate fraud; but the specific facts constituting the alleged fraud must be set forth.

That where plaintiff when commencing an action has at hand the means to know of and ascertain the amount of an item and negligently and carelessly fails to avail himself thereof ,so that the item is omitted in the complaint, and this error was in no way induced by the defendant, nor the result of a mutual mistake of the parties, then the doctrine prevails that aparty can not in one action sue for a part of that to which he is

entitled and thereafter in a subsequent action sue for the omitted item when the right of recovery rests on the same state of facts.

That under a demurrer based on the ground that the complaint does not state facts sufficient to constitute a cause of action, the court will examine the complaint not only with reference to failure to state matters necessary to constitute a cause of action, but also with reference to allegations of the complaint which show on their face that plaintiff is not entitled to the relief demanded.

That when the complaint on its face sets forth matters which are a bar to the relief sought the complaint is subject to demurrer on the ground that it fails to state facts sufficient to constitute a cause of action. AFFIRMED. Appeal from an order of the District Court of Burleigh County sustaining a demurrer to the complaint, Hutchinson, Spec. J. Opinion of the Court by Burr, J. Morris, Ch. J. specially concurring.

In Michigan Trust Company, Pltf and Applt. vs. O. Young Chaffee, Deft and Respt.

That letters testamentary or of administration have no legal force or effect beyond the territorial limits of the state in which they are granted; whatever effect is given to them beyond such limits is a matter of comity.

That unless such right is given by statute, an executor or administrator cannot sue in his representative capacity in any state or country other than that in which his letters testamentary or of administration were granted.

That in this state a foreign executor or administrator is given the right to sue in his representative capacity by chapter 212, S. L. 1927.

That upon his appointment and qualification, an ancillary representative becomes vested with title to all assets belonging to his decedent within the jurisdiction of his appointment. As to such assets his title supersedes that of domiciliary representative, and it is his duty to receive and gather in such assets.

That an ancillary representative in possession of a negotiable instrument belonging to his decedent, which instrument was located in the state in which the ancillary representative was appointed at the death of the decedent and came into the possession of such representative as an asset of the estate of the decedent, is entitled to receive payment of such note, and may maintain suit thereon against the maker at the makers domicil notwithstanding a domiciliary administration is there pending.

From a judgment of the district court of Grand Forks County Swenson, J. plaintiffs appeal.

REVERSED. Opinion of the Court by Christianson, J.

In H. W. Lyons, Pltf. and Respt., vs. Otter Tail Power Company, Deft. and Appelt.

That where the right to costs upon an appeal in an action accrues prior to a final determination of such action upon the merits, it is permissible, under the rules of the Supreme Court and the statutes of this state, to enter a separate judgment for such costs.

That for the reasons stated in the opinion it is held, that it was not error for the district court to strike defendants counter-claim in this action.

Separate appeals from orders of the district court of Stutsman County, Jansonius J. Order denying motion to vacate a judgment for costs. AFFIRMED. Order striking defendant's counterclaim, AFFIRMED. Opinion of the Court by Burke, J. Christianson and Burr, JJ specially concurring.