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Our Supreme Court Holds

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is not like the old line legal reserve insurance companies. There the amount is much larger and may be invested in for a business venture." The maximum limit which may be invested in life insurance policies by an insolvent person has not been fixed by statute in this state.

Quaere: Are we to understand that any amount whatever may be invested in life insurance in North Dakota, and still be free from payment of the debts of the insured? Is Sec. 8718a an exemption statute? If so, is it constitutional? If it is not an exemption statute, just what is an exemption statute in North Dakota? Does sound policy dictate the necessity for an amendment which, while setting up an ample insurance estate for the family, will prevent investing large sums in exempt insurance?

RAYMOND R. RUUD
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OUR SUPREME COURT HOLDS

In George Anderson, Pltf. and Applt., vs. Emma M. Roberts, et al., Defts., and Victor Moynier, Deft. and Respt.

That after a certificate of tax sale has been issued, the validity thereof may not be challenged with respect to any of the tax proceedings prior thereto unless those defects are such as may be urged under the provisions of Section 2193, Comp. Laws N. D. 1913, or are beyond the power of the legislature to remedy.

That the description of land assessed in the name of the owner thereof and described as: NW¼, S. 14, T. 139, R. 79. Ac. 160, is sufficient to support a tax levy and subsequent proceedings resulting in a tax sale.

That where land sold as one tract at tax sale is contained in a legal subdivision of 160 acres belonging to one owner and is occupied as a unit, such sale is valid as against the contention that the land should have been advertised and sold in smaller subdivisions.

That Chapter 235, Session Laws N. D. 1939, requires the publication of a notice of expiration of redemption and the service thereof by registered mail on the record title owner, the person in possession and mortgagee, lien holders and other persons interested in the property as may appear from the records of the register of deeds and clerk of the district court of the county wherein the property involved is situated.

That under Chapter 235, Session Laws N. D. 1939, a county does not acquire title to real property under tax deed proceedings until the prescribed notice of expiration of redemption has been published and served upon all parties entitled to redeem in the manner prescribed by the statute.

That until statutory notice of expiration of redemption has been published and served upon all parties entitled to receive such notice, and the prescribed period of redemption has expired, the right of redemption remains as to all.

That where two separate tax sales are held for taxes levied upon the same property for the same year, one being for general taxes and the other for hail taxes and separate certificates are issued therefor as prescribed by law, there exist separate rights of redemption from each sale and a notice of redemption that fails to disclose the separate sales, certificates and respective amounts for which the property was sold, is an insufficient notice and is not effective to terminate rights of redemption.

(Syllabus by the Court)

Appeal from the District Court of Burleigh County, Hon. Fred Jansonius, Judge. AFFIRMED.
Opinion of the Court by Morris, J.
Christianson, J. concurring specially.

In Martin Beehler, Pltf. and Applt., vs. Joe Schantz and Mary Schantz, his wife, Defts. and Respts.

That a judge of the district court has the power to entertain a motion to be relieved from a default judgment entered upon the order of another judge of the same district court, even though such judge has denied a similar motion, and the second motion is made upon grounds different from those presented in the first motion, and particularly when the first judge requests the second judge to hear and determine the motion.

That in an action to determine adverse claims to real property, it is an adequate defense that another action is pending between the same parties for the same cause of action.

That in an action to determine adverse claims, where defendants claim title to the property, it is a sufficient defense to allege that the plaintiff's title to the property rests upon a deed given him by the county, based upon a tax deed to the county, which tax deed is void because the tax sale was not held as required by law, and no notice of expiration of time of redemption was given to anyone.

That a motion to be relieved from a default judgment is addressed to the sound discretion of the trial court, and an order grantig said motion will not be disturbed unless an abuse of discretion is shown.

Appeal from the District Court of Sioux County, Hon. H. L. Berry, Judge.

AFFIRMED.

Opinion of the Court by Burr, Ch. J.

In Lower Yellowstone Irrigation District, Pltf. and Respt., vs. Anna L. Nelson et al., Deft., Ludwig Rossol, Deft. and Applt.

That Act of Congress of April 21, 1928, C394 Sec. 2, 45 Stat. at L. 439 as amended June 13, 1930, C477, 46 Stat. at L. 581, U. S. C. A. Title 43 Sec. 455a, recognizes that an interest is held by desert land entryman in public lands prior to the acquisition of a completed equitable title by such entryman and authorizes states and the political subdivisions thereof to tax such interest.

That interest of desert land entryman in public lands prior to his acquisition of a completed equitable title thereto is real property and taxable as such under the laws of North Dakota (Secs. 2075, 5249, C. L. 1913).

Appeal from the District Court of McKenzie County, Hon. A. J. Gronna, Judge. Opinion of the Court by Burke, J.

AFFIRMED.

In Fidelity & Casualty Co. of N. Y., Pltf. and Applt., vs. First Nat. Bank & T. Co. of Fargo, Deft. and Respt., and McVille State Bank of McVille, Intr. and Respt.

That ostensible authority to do an act may be created by conduct of the principal which reasonably interpreted causes a third person to believe that the principal consents to have the act done on his behalf by the person purporting to act for him.

That Section 6908, C. L. 1913, places signatures made without authority in the same category as forged signatures for the purpose of determining the rights of parties claiming thru or under such signatures.

That a bank upon which a check is drawn, which has been cashed by another bank upon a forged indorsement of the payee's name, may in the absence of negligence or notice recover from the collecting bank the money paid on the check in the due course of business.

That a check indorsed by an agent with ostensible authority may not be considered as bearing a forged indorsement or an indorsement made without authority.

That an indorsement of a check made by an agent with ostensible authority passes title to an innocent holder who thus becomes a holder in due course.

That a drawee bank having paid a check to a holder in due course may not recover the proceeds of the check from such holder upon the ground that the indorsement by which title to the check passed to the holder was made upon ostensible authority and not the actual or implied authority of an agent of the payee.

That the drawer of a check is liable thereon to a holder in due course who has received the check by virtue of an indorsement depending for its validity upon the ostensible authority of an agent of the payee and such drawer may not escape liability upon the ground that such agent had no actual or implied authority to make the indorsement.

Appeal from the District Court of Cass County. Hon. Daniel B. Holt, Judge. Affirmed. Opinion of the court by Morris, J.

In State ex rel Lamb as Commissioner of Highways and Robinson, as Registrar of Motor Vehicles, Applts., vs. C. E. Van Horne and State Bonding Fund, Respts.

That error is never presumed on appeal, but must be affirmatively shown by the record; and the burden of so showing it is upon the appellant.

That an appellant who charges that the trial court erred in its instructions to the jury has the burden of showing affirmatively by the record that the instructions challenged operated to his prejudice, and prevented him from having a fair trial.

That in the absence of a request for an appropriate instruction, the failure of a trial court to instruct the jury does not constitute prejudicial error. In such case failure to instruct can be urged as error only if in light of the evidence the nondirection constitutes misdirection.

That the sufficiency of the evidence is not reviewable on appeal unless such sufficiency was challenged in the trial court in a manner prescribed by law.

From a judgment of the district court of Burleigh County. McFarland, J. Plaintiff's appeal. AFFIRMED. Per curiam.

In John R. Haslam, Pltf. and Applt., vs. J. E. Babcock, Deft. and Respt.

That the granting of a new trial for insufficiency of the evidence to justify the verdict lies in the sound judicial discretion of the trial court where there is a substantial conflict in the evidence upon the points with respect to which the sufficiency is challenged.

That a verdict will be sustained upon appeal as against a challenge of insufficiency of the evidence where the evidence though conflicting is legally sufficient to sustain the verdict under the instructions given by the trial court.

That where upon a motion for a new trial or upon appeal from a judgment the sufficiency of the evidence is challenged, a specification of insufficiency of the evidence to sustain the verdict must point out wherein the evidence is insufficient.

That in determining whether a statement contained in the trial court's instructions to the jury is erroneous, it must be considered in connection with its context and the instructions as a whole.

Appeal from the district court of Benson County, Hon. G. Grimson, Judge.

AFFIRMED. Opinion of the Court by Morris, J.