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Our Supreme Court Holds

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The general rule is that in order to constitute a transaction an actual bailment, there must be a delivery to the bailee. There must be a full transfer, either actual or constructive, of the property, to the bailee, so as to exclude the possession of the owner and all other persons, and give the bailee for the time being the sole custody and control thereof. Inasmuch as there is no bailment, it will seem difficult to support the right of a court to force the deposit company to disclose property in a safe deposit box belonging to the defendant, and later damage its own property for the purpose of taking possession of the property and delivering it up in direct opposition of the contract of the parties. Further, the exercise of such power seems unnecessary and unjustified, for if the property in the box is in the possession of the renter, it would be subject to attachment and levy as any other personal property in his possession.

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OUR SUPREME COURT HOLDS

In P. L. Keating, Pltf. and Respt., vs. F. H. Peavey & Company, Deft. and Applt., and The State of North Dakota ex rel, the Board of Railroad Commissioners of the State of North Dakota, Inter. and Respt.

That a bailment of grain to a public warehouseman is terminated by the destruction of the grain.

That defendant's answer, which alleges the destruction of the identical grain stored by plaintiff in its warehouse, states a defense to plaintiff's complaint which alleges conversion of the grain at a time subsequent to its destruction.

Syllabus by the court. Appeal from the District Court of Burleigh County, Hon. Fred Jansonius, Judge. Opinion of the Court by Burke, J. REVERSED.

In Frank A. Donaldson, Pltf. and Respt., vs. City of Bismarck, Deft. and Applt.

That the declaration in the Constitution that private property shall not be taken or damaged for public use without just compensation having been first made was intended to secure to owners, not only the possession of property, but also those rights which render possession valuable.

That where a city establishes, maintains and operates a dump near a dwelling then occupied by the owner as a home, with the result that the air in and about such dwelling becomes impregnated with ashes, and noxious and offensive odors to such an extent that the dwelling can no longer be occupied in comfort and with safety, and as a consequence the market value of the property is substantially depreciated, such property has been "damaged" within the purview of section 14 of the Constitution of North Dakota, which provides that "private property shall not be taken or damaged for public use without just compensation having been first made."

That where two actions are consolidated by agreement of the parties, the power and jurisdiction of the court with respect thereto is the same as if only one action had been brought containing all the issues embraced in the actions as consolidated. After such consolidation the defendant may not assert that a cause of action was split in one of the actions.

That the evidence is examined, and for reasons stated in the opinion, it is held that the trial court was correct in finding that plaintiff's real property had been damaged in the sum of $3500.

That where plaintiff elects to treat an injury to his real property as permanent, and asks for, and is awarded, judgment for damages for permanent injury to such property, he is not entitled, in addition thereto, to damages for inconvenience, annoyance and discomfort sustained in the occupancy of such property, or to damages for depreciation in the rental value of the property, as these were elements involved in and covered by the assessment of damages for the permanent injury.

That where the establishment, maintenance and opinion of a city dump results in permanent injury to real property, and no compensation has been made before the property is damaged, the owner becomes entitled to payment of compensation for the amount of damage to his property as of the date of the invasion and damaging of his property, and interest from the date of such invasion and damaging of the property is a part of the just compensation the owner is entitled to recover. APPEAL from the District Court of Burleigh County, Jansonius, J. MODIFIED AND REMANDED. Opinion of the court by Christianson, J.

In All American Benevolent Society, a corporation, Pltf. and Applt. vs. Oscar E. Erickson, Commissioner of Insurance, Deft. and Respt.

That the power granted to the insurance commissioner by section 7, chapter 145, Laws of North Dakota 1937, to approve the form of benefit certificates issued by assessment benevolent societies includes the right to determine whether or not a proposed benefit certificate conforms to statutory requirements.

That section 5 of chapter 145, Laws of North Dakota 1937, is construed and it is held: that this section in granting to assessment benevolent societies the right to classify membership upon the basis of age, by implication prohibits classification of membership upon any other basis.

That section 8 of chapter 145, Laws of North Dakota 1937, as amended by chapter 154, Laws of North Dakota 1939, is construed and it is held that this section declares statutory grounds of incontestibility which may not be omitted from certificates issued by assessment benevolent societies. Appeal from the District Court of Cass County, Hon. M. J. Englert, Judge. AFFIRMED. Per Curiam opinion.

In State ex rel Brunette, Petr., vs. W. F. Sutton et al, as members of the Board of County Commissioners of Cass County, et al., Respts., and C. H. Thue, Respt. and Applt.

That whether a village shall be incorporated pursuant to the provisions of sections 3840 et seq., Comp. Laws 1913, and acts amendatory thereof, is a matter to be determined by the electors residing within the territory embraced within the limits of the proposed village.

That persons intending to incorporate a village pursuant to sections 3840 et seq., Comp. Laws 1913, must make application therefor by petition to the Board of County Commissioners of the county wherein such proposed village is located.

That where persons making such an application for incorporation present a petition complying with the statutory requirements to the County Board, the Board has no discretion in the matter but must grant the application.

That notice of the application and of the time of presentation of the petition for incorporation to the County Board for hearing must accompany the survey, map and census required by section 3840, Comp. Laws 1913, when the latter are exhibited for examination pursuant to the provisions of section 3843, Comp. Laws 1913, and the Board acquires no jurisdiction in the matter where no such notice is given. Appeal from the District Court of Cass County, Hon. P. G. Swenson, Judge. Proceeding in certiorari. From a judgment for the petitioner, Respondent Thue appeals. REVERSED. Opinion of the Court by Nuessle, J.

In E. L. Gunderson, Plt. and Applt., vs. A. H. Maides, et al, Board of City Commissioners of Ray, et al., Defts. and Respts., and The Bank of North Dakota, Intnor. and Respt.

That municipalities have a contingent liability under chapter 174, Session Laws N. D. 1923, as amended by chapter 171, Session Laws 1929, to make good a deficiency that exists in a special assessment fund upon the maturity of the last special improvement warrant drawn against such fund.

That when special assessments are levied against property especially benefited by a special improvement to care for the cost of such improvement, the amounts assessed against specific tracts or parcels of real estate thus benefited are limited to and may not exceed the benefits from such improvement accruing to such tracts.

That where a municipality causes a special improvement district to be formed for the purpose of constructing a special improvement therein, the cost of which may be legally assessed against the property benefited, and there exists a contingent liability on the part of the municipality to make good a deficiency that may arise in the special assessment fund created for the payment of the cost of such improvement, and the municipality has procured a Federal grant for the purpose of defraying part of the cost of the improvement, it may levy the entire cost against the property benefited, if it limits the aggregate collections to be made from special assessments to the amount remaining after deducting the grant from the total cost of the improvement. Appeal from the District Court of Williams County, Gronna, J. AFFIRMED. Opinion of the Court by Morris, J. Christianson, J. and Burr, Ch. J. concur specially.

In Gustave A. Schutt and Martha Schutt, Pltfs. and Applts., vs. Federal Land Bank of St. Paul, Deft. and Respt.

That an order denying the trial of a case by a jury, and holding that the case is properly triable by the court without a jury is not appealable under section 7841, C. L. 1913. Appeal from the District Court of Stutsman County, McFarland, J. Appeal from an order denying a trial of the case by jury. APPEAL DISMISSED. Per curiam opinion.