



1942

## Our Supreme Court Holds

North Dakota Law Review

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### Recommended Citation

North Dakota Law Review (1942) "Our Supreme Court Holds," *North Dakota Law Review*: Vol. 18 : No. 6 , Article 3.

Available at: <https://commons.und.edu/ndlr/vol18/iss6/3>

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## OUR SUPREME COURT HOLDS

In *Odelia Messer, Plt. and Respt., vs. City of Dickinson*, a municipal corporation, Deft. and Applt.

That the legislature has power to define a nuisance and subject to constitutional limitations may legalize an act which might otherwise be a nuisance.

That a municipality is not subject to a suit for damage for creating or maintaining a nuisance where the act that is made the basis of the suit is specifically authorized by statute and the nuisance is the necessary result of its reasonable and proper performance.

That section 14 of the North Dakota Constitution guarantees compensation to the owner of private property taken or damaged for public use.

That the legislative declaration contained in section 7231, Comp. Laws N. D. 1913, that "Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance" does not affect the right of the owner of private property taken or damaged for public use to maintain an action for damages resulting from acts of a municipality within the scope of section 14 of the North Dakota Constitution.

That a legislative grant of power to a municipality to do acts which may result in injury if improperly or negligently performed does not immunize the municipality against responding in damages for acts performed negligently or in an unreasonable manner. Appeal from the District Court of Stark County, *Berry, J.* AFFIRMED. Opinion of the Court by *Morris, J.*: *Christianson, J.* specially concurring.

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In *the Deere & Webber Company, Pltf. and Applt., vs. J. J. Moch*, Deft. and Respt.

That parties to a written contract of sale may exclude and negative implied warranties arising and otherwise available under section 6002a15, 1925 Supp. to Comp. Laws.

That implied warranties are imposed by operation of law and unless specifically negated or waived, become a part of the contract of sale by virtue of statute.

That a provision in a conditional sales contract to the effect that no implied warranty shall imply or qualify "the terms of this contract" neither negatives nor waives implied warranties except as to the specific terms of the conditional sales contract and is not a bar to an action for damages for breach of implied warranties.

That evidence examined and it is held to sustain a verdict for damages for breach of implied warranties.

That evidence examined and it is held to sustain a verdict for damages for breach of warranty to the extent of \$427.50. Appeal from *Emmons County, Grimson, G. Spec. Judge.* Modified and Affirmed. Opinion of the Court by *Morris, J.*

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In *Clyde M. Collins, et al., Pltfs. and Appls., vs. Robert N. Stroup, Adm. et al., Respts. and Appls.*

That under the provisions of section 5649 of the Compiled Laws of this state, it is not necessary that attesting witnesses be present at the time the testator subscribes his name to a will. Such subscription may be made in the presence of one or both the attesting witnesses; or acknowledged by the testator to one or both. Where signed by the testator in the presence of one, as to the other it is sufficient if at the time the witness signs, the testator acknowledges to him that the signature is his; but he must declare to each that the instrument is his will, and request each to sign as a witness.

That where two persons, owning separate property, unite in executing the same instrument as the last will and testament of each, such joint instrument will be construed as if the parties had executed two separate and distinct instruments.

That where such joint instrument is presented to the county court as the last will and testament of one of the testators, and is proven to have been executed and attested as required by law, such instrument will be considered to be the last will and testament of such testator without reference to whether it was properly executed and attested as the will of the other testator.

Appeal from the District Court of Mercer County, Hon. H. L. Berry, Judge. Affirmed. Opinion of the court by Burr, Cr. J.

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In Dakota National Bank of Fargo, a corporation, Pltf. and Respt., vs. W. O. Salzwedel, Deft. and Applt.

That where a debtor, upon whose property a levy is made by virtue of a writ of execution, claims the property levied upon as exempt, whatever exemption to which he is entitled under the law is limited to the property claimed, and any property not scheduled by him as exempt is subject to the levy.

That the absolute exemptions to which a debtor is entitled on a levy under a writ of execution are not dependent upon quantity or value.

That the additional exemptions to which a debtor may be entitled, by reason of the fact that he is the head of a family, are dependent upon value.

That where a debtor claims such additional exemptions are to be allowed him out of his property when levied upon under a writ of execution, he must schedule the same and deliver to the officer having the execution a copy of his schedule and the property therein claimed must thereafter be appraised according to statute in order to ascertain its value.

That where a debtor, upon whose property a levy has been made under a writ of execution, makes and delivers to the officer having the execution a schedule of property which he claims as additional exemptions, the officer is justified in retaining such property in his possession until after appraisal in order that it may be ascertained whether the property seized is less in value than the amount of the exemption allowed by law.

Syllabus by the court.

Appeal from the district court of Cass County, Hon. M. J. Englert Judge. AFFIRMED. Opinion of the Court by Burr, Ch. J.

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In State doing business as Public Welfare Board, Pltf. Applt., vs. W. R. Whitver, Administrator, Deft. and Respt.

That a debt incurred by a husband to the state on account of a cash grant of old age assistance, is not a debt incurred for necessary household supplies of food, clothing, fuel and shelter for which his wife is liable under the provisions of section 4414, Supplement to the Compiled Laws of N. D. 1913.

That the obligation imposed upon a wife by section 4409, Comp. Laws 1913 to support her husband out of her separate property when he has no separate property and is unable from infirmity to support himself is a conditional obligation which does not fall upon the wife unless she has means to furnish support.

That where wife was under no obligation to support her husband during the time he was receiving old age assistance, the fact that she acquired some property after his death would not operate to create an obligation for support which would relate back to the time the assistance was furnished. Appeal from the District Court of Dickey County, Hutchinson, J. AFFIRMED. Opinion of the Court by Burke, J.