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Our Supreme Court Holds

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In M. Ruchverg, Pltf. and Respt., vs. H. S. Russell, et al., Defts. and Applts.

That under sections 7417, 7418, C. L. 1913, relating to the place of trial of civil actions, the right of a defendant in a civil action to have the place of trial changed to the proper county is absolute, if proper demand therefor is duly made.

That where, under the provisions of said sections 7417, and 7418, supra, a defendant is entitled to a change of place of trial to the county of his residence, and duly demands such change of place of trial before the time for answering expires, as prescribed by section 7418, supra, he does not waive the right to a change of place of trial by interposing an answer, and may move for a change of place of trial after the time for answering has expired.

That sections 7417, 7418, C. L. 1913, relating to the place of trial of civil actions are not changed or affected by the statutes providing for a garnishment action. (Laws 1895, Ch. 65; Sections 7567-7587, 8952-8953, C. L. 1913.)

That the right of a defendant in a civil action to a change of place of trial of the main action to "the proper county" is in no manner affected by a garnishment action, that has been brought contemporaneously with the main action and is pending when the demand for a change of place of trial is made.

That it is held, for reasons stated in the opinion, that the defendants in this case have established the existence of facts which entitle them, under the law, to a change of place of trial. Appeal from the County Court of Cass County, Paulson, J. From an order denying their application for a change of venue, the defendants appeal. REVERSED. Opinion of the court by Christianson, J.

In State ex rel Alvin C. Strutz, Attorney General, Petr. and Respt., vs. Berta E. Baker, State Auditor, et al., Respts. and Applts.

That chapter 29, Laws 1939 (as amended by chapters 35 and 310, Laws 1941) and chapter 209, Laws 1939 (the State Equalization Fund Law,) are construed, and for reasons stated in the opinion, it is held, that the appropriation made by said chapter 29, Laws 1939, as amended, for disbursements to be made under the State Equalization Fund Law (Chap. 209, Laws 1939) are not dependent upon the amount of collections of retail sales taxes; but constitutes a positive and direct appropriation out of any moneys in the State Treasury not otherwise appropriated.

That the appropriation made in Chapter 29, Laws 1939, as amended by chapters 35 and 310, Laws 1941, for the biennium beginning June 1st, 1939, and ending June 30, 1941, did not lapse at the end of the biennium but continued to be available until October 1st, 1941, for payments duly authorized for the fiscal school year ending June 30, 1941.

(Syllabus by the Court)

Appeal from the District Court of Burleigh County, Jansonius, J. From a judgment in a mandamus proceeding in favor of the relator the respondents appeal.

AFFIRMED. Opinion of the Court by Christianson, J.

In Theodore Luedke, Plt. and Respt., vs. Viola M. Oleen, Executrix of the Last Will and Testament of J. A. Oleen, and as an individual, Deft. and Applt.

That where one Oleen, having organized an assessment benevolent society, made a contract (Exhibit B) with the directors of such society,

to the effect that the disposition of all funds, fees, and assessments levied and collected from the members of the society should be entrusted to Oleen, to be dispensed by him, with full power to do everything necessary to be done by the association; and thereafter the said society is organized under the provisions of chapter 145 of the session laws of 1937, such contract, (Exhibit B), gave the said Oleen no proprietary interest in the corporation organized; no interest in said association descended to his estate because of such contract, and a subsequent contract made by the executor of his estate with the secretary-treasurer of the corporation conveyed no interest in the corporation because of this contract, Exhibit B.

That a contract entered into between the secretary-treasurer of the assessment benevolent society organized under the provisions of chapter 145 of the Session Laws of 1937 and one claiming to control the action of the annual meeting of the society because of the possession of proxies, in which contract the parties agreed that the secretary-treasurer should continue as such officer so long as he managed the society according to the wishes and desires of the other party to the contract, is void as against public policy.

Appeal from the District Court of Ward County, Hon. G. Grimson, Special Judge.

AFFIRMED. Opinion of the Court by Burr, Ch. J.

In the Matter of the Appeal of John M. Peschel from a Decision of the Board of County Commissioners in and for Richland County, North Dakota.

That words commonly used in a permissive sense may be construed as mandatory when such mandatory construction is necessary to give effect to the intention of the legislature.

That fees authorized to be collected by Clerks of the District Court under the provisions of Chapter 175, Session Laws N. D. 1935, are not fees for services rendered by such clerks in their official capacity and may be retained by them as their personal funds.

That fees which are the personal funds of the officer collecting them, if paid involuntarily into the county treasury, may be recovered from the county upon presentation of a proper claim therefor.

That evidence examined and it is held that payment into the county treasury of fees to which the Clerk of the District Court of Richland County was personally entitled may be recovered from the county as being paid involuntarily.

Appeal by Richland County from the District Court of Richland county, Hon. C. W. Buttz, Acting Judge.

AFFIRMED: Opinion of the Court by Morris, J. Burr, C. J. dissents.

In William J. Armstrong, Plt. and Respt., vs. Gordon McDonald and the Office Specialties Company, a corporation, Defts. and Applts.

That a motion for judgment notwithstanding the verdict does not go to the weight of the evidence, and such motion should not be granted unless the moving party is entitled to judgment as a matter of law.

That on appeal from an order denying a motion for judgment notwithstanding the verdict and from the judgment, this court will examine the evidence to ascertain whether there be any conflict on substantial matters which requires a submission of an issue to the jury; and in this respect we adopt the view of the testimony most favorable to the appellee.

Appeal from District Court of Ward County, Hon. A. J. Gronna, Judge.

AFFIRMED. Opinion by Burr, Ch. J. Morris and Burke, JJ. dissent.

In Asbury Hospital, a Corporation, Pltf. and Applt., vs. Cass County, North Dakota, a public corporation; R. F. Croal, as State's Attorney of Cass County, North Dakota, and his successors in office; and Alvin C. Strutz, as Attorney General of the State of North Dakota, and his successors in office, Defts. and Respts.

That the Declaratory Judgments Act (Supp. 1925, Sections 7712a-7712-a16) is intended to provide a method whereby parties to a justiciable controversy may have the same determined by a court in advance of any invasion of rights or breach of obligation. But no action or proceeding lies under the Declaratory Judgments Acts to obtain a decision which is merely advisory, or which determines only abstract questions. The action of proceeding must involve an actual controversy of a justifiable character between parties having adverse interests.

That in the instant case it is held, for reasons stated in the opinion, that a controversy as to whether a statute which requires corporations to dispose of certain rural real estate within a prescribed period is applicable to the plaintiff and to certain real estate owned by it, is one properly determinable under the Declaratory Judgments Act.

That where the language of a statute is clear, certain and unambiguous, the courts have only the simple and obvious duty to give effect to the intention which the legislature has thus expressed.

That initiative measure, adopted June. 29, 1929, (Laws 1933 pp. 494-495), as amended by Laws 1933, Ch. 89, and Laws 1935, Ch. 111, which provides that "all corporations, both domestic and foreign, who now own or hold rural real estate, used or usable, for farming or agriculture, except such as is reasonably necessary in the conduct of their business, shall dispose of the same within ten years from the date that this Act takes effect," and that in case any corporation fails within the time fixed to dispose of such real estate, then "title to such real estate shall escheat to the county in which such real estate is situated upon an action instituted by the State's Attorney of such county," does not mean that corporations are required to dispose only of real estate that had been acquired, and was being held ultra vires.

That such initiative measure, as amended, does not ipso facto effect an escheat if a corporation fails to dispose of real estate within the prescribed period. The holding of real estate, which the statute rquires a corporation to dispose of, beyond the prescribed period, constitutes a basis for an action to effect escheat; but the corporation continues to own and hold the real estate until title is divested by judgment rendered in the action brought to effect the escheat.

That a corporation can have no legal existence beyond the bounds of the State which created it; and, although it may act in another State, it cannot do so as a legal or constitutional right but only by the comity and consent of such State.

That subject to the constitutional limitations that a State cannot exclude a corporation engaged in interstate commerce, or a corporation that is an agency or instrumentality of the Federal Government, a State may prohibit foreign corporations from doing business therein, or it may make the right to do business depend on such terms and conditions as in its discretion it may see fit to impose.

That a foreign corporation which does business or carries on any activity in a State through comity or acquiescence, or under a license given without valuable consideration, does not have a contract binding the State not to destrict the activities of the corporation in, or to exclude it from, the State.

That a State may prohibit all foreign corporations, which it might exclude from the State, from acquiring real estate therein for any purpose. The State, also, has the power to require all foreign corporations, which

it might exclude from the State, to dispose of all real estate not reasonably necessary in the conduct of their business, provided it affords such corporations a reasonable time in which to dispose of such real estate.

That for reasons stated in the opinion, it is held, that the requirement of the statute that corporations dispose of real estate of the character described in the statute, which the corporations owned when the statute became effective, within ten years thereafter, did not, nor did the procedure prescribed by the statute, operate to deprive the plaintiff of property without due process.

That the "equality-of-the-laws" clause of the 14th Amendment to the Constitution of the United States, and the "uniformity of operation" requirement of Section 11 of the State Constitution do not forbid classification.

That Classification is primarily for the legislature; and in determining the validity of legislative classification, judicial inquiry does not concern itself with the accuracy of the legislative finding, but only with the question whether it is so lacking in any reasonable basis as to be arbitrary.

That there are such distinctions between general corporations and cooperative corporations as to justify classification, and different treatment as to each of such classes.

That one may attack the constitutionality of a statute only when, and so far as it is being, or is about to be, applied to his disadvantage; and to raise the constitutional question he must show that the alleged unconstitutional feature of the statute injures him and so operates as to deprive him of a constitutional right.

That a corporation is not a citizen within the meaning of the provisions of the Constitution of the United States (Section 2, Article 4, and Section 1, 14th Amendment) as to privileges and immunities of citizens.

From a declaratory judgment of the District Court of Cass County, Swenson, J., plaintiff appeals.

Affirmed. Opinion of the Court by Christianson, J. Burr, Ch. J., being disqualified, did not participate, Hon. Harvey J. Miller, Judge of Sixth Judicial District, sitting in his stead.

In Arlene Hodges, formerly Arlene Merriam, Plt. and Respt., vs. John A. McCutcheon, et al., Defts. and John A. McCutcheon, Deft. and Applt.

That the finding of trial court, that the answering defendant's contention that it was plaintiff's duty to pay the taxes upon the property here in suit was not sustained by credible evidence, is correct.

That where a notice of the expiration of redemption from the sale of real property at tax sale stated as necessary to effect a redemption an amount which included delinquent taxes for years prior to that for taxes for which the land was sold, without specifying the amount of such prior taxes so that the amount necessary to redeem could be determined from the notice, the notice was insufficient.

Appeal from the district court of McLean County, Hon. R. G. McFarland, Judge. REVERSED.

Opinion of the Court by Burke, J.