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Our Supreme Court Holds

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tors are not responsible for paying a just debt notwithstanding that the corporation was insolvent at the time; but if the payment was an unlawful preference, the remedy, if any is against the creditor. Where the statute of limitations has commenced to run against the liability of officers for a corporate debt, it seems that the running of the statute is not suspended or affected by the recovery of the judgment against the corporation upon the debt, nor by the renewal of the indebtedness by the corporation. In a court of equity, the court commented that at all events it is not too much to say that a party who claims to have paid a debt by a successful plea of the statute, and seeks an affirmative remedy on the ground of such fortunate venture, is not regarded as a special favorite of the court. The statute of limitations is a personal privilege accorded by law for reason of public expediency; and the privilege can only be asserted by a plea; the statute of limitations only bars the remedy and not the debt, and a debt uncollectable by operation of law taking away the remedy in sufficient consideration for the execution for a new promise to pay.

Although there is a dearth of authority, the cases there are reveal that a corporation can and may waive the statute of limitations by its officers or directors or agents. But as to the question of the liability of the directors and officers for so waiving the statute of limitations, no authority was found that dealt with the situation directly in point. However, there is no question that the moral obligation to pay a debt which has been barred by the statute of limitations still exists. And in light of justice, the performance of moral obligations should be encouraged instead of impeded by imposing the risk of liability. And to label this communicable performance by a manager of a corporation as mismanagement for which a liability can be imposed is analagous to saying that what is right is wrong. Thus it is submitted that no liability should be imposed upon director and officers for so waiving the statute of limitations.

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OUR SUPREME COURT HOLDS

In Mrs. Hester McKinnon, Pltf. and Respt., vs. North Dakota Workmen's Compensation Bureau, Deft. and Applt.

That the Workmen's Compensation Act does not cover diseases contracted by an employee outside of his employment; and where compensation is sought on the theory that the death of the employee was caused by disease, it must be shown that the disease was approximately caused by the employment.

That where the alleged origin of such disease is purely speculative and the disease may equally have been caused by factors unconnected with the employment, the burden of proof has not been sustained, and no compensation can be allowed.

That evidence examined, and it is held: the plaintiff has failed to show that the disease from which the worker died was approximately caused by his employment.

(Syllabus by the Court)

Appeal from the District Court of Nelson County, Hon. P. G. Swenson, Judge.

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

In State of North Dakota, Pltf. and Applt., vs. Otto Rasmusson, as County Auditor of Cavalier County, North Dakota, Deft. and Respt.

That rights of purchasers of bonds of school districts are subject to the provisions of statutes, in effect at the time of the issuance of the bonds, relating to detachment of territory from school districts, organization of new school districts and the equalization of property, funds on hand and debts between school districts which have been affected by a change in boundaries.

That where territory is detached from one school district and organized into a new school district, the tax levies made by the old district for debt service do not follow the detached territory except insofar as the same may be relevied by an arbitration board under the provisions of section 1328, Compiled Laws of 1913.

(Syllabus by the Court)

Appeal from the district court of Cavalier County, Hon. W. J. Kneeshaw, Judge.

AFFIRMED. Opinion of the Court by Burke, J.

In the Matter of the Application of Joe Moore, for a Writ of Habeas Corpus.

That the Writ of Habeas Corpus cannot be used as a substitute for appeal or writ of Error to obtain a review of the correctness of acts or rulings of a court, acting within its jurisdiction. On Habeas Corpus the inquiry is limited to questions of jurisdiction.

That as a general rule a trial court has no authority to set aside a valid judgment and impose a new or different judgment increasing the punishment, after the original judgment has been put into operation. But the court's power to pronounce judgment is not exhausted where it has pronounced a judgment which is void, or so defective in matter of substance as to be unenforceable. In such case the court has power to substitute a legal and valid judgment for the former invalid one.

That where the judgment pronounced upon one who has been regularly convicted of a crime, orders imprisonment in a place other than that prescribed by law, the court which pronounced the judgment has authority to amend it to provide imprisonment in a place prescribed by law.

Original Writ by Joe Moore for a Writ of Habeas Corpus. WRIT DENIED. Opinion of the Court by Christianson, J.

In Steve Schnell, Pltf. and Respt., vs Northern Pacific Railway Co., et al., Defts. and Applts.

That where a plaintiff fails to make proofs sufficient to sustain a verdict in his favor, errors occurring in the course of the trial that do not affect the quantum of his proofs are nonprejudicial and immaterial and will not in themselves warrant the granting of a new trial.

That whether a new trial shall be granted rests largely in the sound discretion of the trial court and an order granting a motion therefor will not be disturbed unless it can be said that there was an abuse of that discretion. Such discretion, however, is a legal discretion to be exercised in the interest of justice, so if it appears on the record that the party making the motion has not made a case, and there is no reasonable probability that on a new trial he can make a case, an order granting a new trial will not be sustained.

That ordinarily the question as to whether there is contributory negligence is one of fact to be determined by the jury. But when the evidence is such that only one inference can fairly and reasonably be drawn therefrom, the question becomes one of law to be determined by the court.

That the record in the instant case is examined, and held, for reasons stated in the opinion, that the plaintiff was guilty of negligence which was a proximate cause of the accident and injury on account of which he seeks a recovery.

Appeal from the District Court of Cass County. Hon. M. J. Englert, Judge. Action for damages on account of negligence. Verdict for the defendants. From an order granting a new trial, defendants appeal. REVERSED. Opinion of the Court by Nuessle, J.

In David W. Goodman, et al., Petrs., vs. Fred Christensen, et al., Respts.

That under the provisions of sections 86 and 87, of the State Constitution and section 7339, Comp. Laws N. D. 1913, the Supreme Court has superintending control over all inferior courts and in the exercise thereof has power to issue such original writs as may be necessary.

That the provision in section 10 of chapter 269, Session Laws N. D. 1941, to the effect that decisions of the district court under that chapter are final, does not deprive the Supreme Court of superintending control over the district court or restrict its power and authority to exercise its superintending jurisdiction.

That the provision in section 10, chapter 269, Session Laws N. D. 1941, directing the district court to determine appeals under that chapter before the first day of October does not deprive that court of power to enter judgment after October first in a case wherein it has acquired jurisdiction pursuant to the statute, nor is the Supreme Court without authority to direct the district court to proceed in such a case after the date prescribed by statute has passed.

That no relief from alleged excessive assessments can be granted under chapter 269, Session Laws N. D. 1941, to petitioners who have not presented their complaints to local boards of review in organized territory or to the board of county commissioners acting as a local board of review if the property involved is taxable in unorganized territory.

That if a bill, containing an emergency clase, passed by the legislature and approved by the governor, failed to receive a favorable vote of two-thirds of the members present and voting in either house, the bill becomes a law on July first after the close of the legislative session.

That for reasons stated in the opinion, it is held that the provisions of chapter 269, Session Laws N. D. 1941, affording relief from excessive tax assessments are wholly prospective and do not apply to 1941 assessments. Original Application for Supervisory Writ. WRIT DENIED.

Opinion of the Court by Morris, J.

In Ruth J. Hoffman, Plt. and Applt. vs. John M. Ness, Administrator, et al., Defts. and Respts.

That where promissory notes are executed and delivered, and money borrowed thereon, and thereafter are renewed by the giving of other promis-

sory notes, the defense of the statute of limitations is of no avail when the action is brought upon the renewed note within six years from the time the renewal note was due, even though the original notes were given many years before.

That where an administrator borrows money for the purpose of preserving and caring for the estate, suit may be brought against him in the district court.

That where an administrator has borrowed money for the use and benefit of the estate, he has the right to present this to the county court for allowance as part of his expenses as administrator, even though he may not have been authorized by the county court to borrow the money.

That where the administrator borrows money for the use and benefit of the estate, he has the right to present this to the county court for allowance as part of his expenses as administrator, even though he may not have been authorized by the county court to borrow the money.

That where the administrator borrows money for the use and benefit of the estate, and presents the same to the county court for allowance as part of his expenses, it is the duty of the county court to examine the transaction and to allow the same if it be shown that such action on his part was necessary to preserve the estate, and the money borrowed was used for the benefit of the estate. If so found, the county court will allow this item as one of the expenses of administration to be paid out of the assets of the estate.

That under the record in this case, it was error on the part of the trial court to dismiss this action at the close of the plaintiff's case.

That on the retrial, if it be shown that the administrator borrowed the money for the use and benefit of the estate, and the money was furnished for that purpose, the trial court should ascertain the amount, and order the administrator to present the account to the county court as part of his expenses in the administration of the estate in order to determine what portion thereof, if any, the county court will allow to the administrator as part of his expenses in the administration.

Appeal from the District Court of Richland County, Hutchinson, J.

REVERSED. Opinion of the Court by Burr, Cr. J.