North Dakota Law Review

Volume 21 | Number 6 Article 3

1944

An Interesting Decision

J. K. Murray

(Continued from front page)
view of the experience of other like Associations, it appears to me that it would be a better policy to wait until a later date before making a definite decision.

A few days ago I had the privilege of meeting with a representative group of the Cass County Bar Association and at that time submitted the matter to them for a determination of their view point on the subject. After some discussion, they went on record against having a State meeting this year unless there would be a drastic change between now and fall. In addition, they recognize the fact that it would be very difficult to prepare for sectional meetings unless we definitely knew we could have a meeting sometime in advance.

I intend to call a meeting of the Executive Committee at a later date and according to the resolution passed and approved at the Minot meeting, it is my understanding that the Executive Committee has full authority to dispense with the annual meeting if they see fit to do so.

Sincerely,

ROY A. PLOYHAR
Acting President.

HEAR YE—HEAR YE—HEAR YE

The State Bar Board desires for inclusion in the printed list for 1945 of attorneys the names of all attorneys in military service. Such a list has been run during the past two years, but apparently some have been missed, and of course the relatives have felt slighted. The board doesn't want to omit a single person who is entitled to be listed, but it hasn't any way of obtaining this information unless some one who knows sends it in to J. H. Newton, Secretary and Treasurer of the State Bar Board at Bismarck, so check the last list and if you know of any one in the service not listed advise Mr. Newton.

AN INTERESTING DECISION

Comment by Attorney J. K. Murray

Our Supreme Court holds that a certified abstract of title of real property is outlawed six years after date of certificate to abstract.

See Commercial Bank vs. Adams County Abstract

Company, 18 N. W. 2nd page 15.

This decision has a far reaching affect on the liability of abstractors and upon the protection of persons who have invested in real property relying upon the title thereof as shown by the abstract. Under this decision, in plain English, no person or corporation has any recourse against an abstract company after the

expiration of six years from the date of the certificate on the abstract, irrespective of how faulty the abstract may be and irrespective of the amount of damages the person may have sustained in reliance on such abstract. From time immemorial the liability on an abstract was deemed to have accrued when the person actually sustained the damages and discovered the defects in the abstract. This decision puts parties who have relied on abstracts in great danger because there may be defects galore in the title and after six years from the date of the certificate on the abstract, no recourse can be had against the abstract company.

It is difficult to reconcile this decision with our statute fixing the liability of abstract companies, which statute provides that an abstractor shall be liable for ALL DAMAGES SUSTAINED by any person relying on such abstract, on account of defects in the Abstract.

See Section 43-0111 R. C. 1943.

It would appear from the language of this statute that liability of the abstractor accrues when the person or party sustained damages, and not before. It would further appear from this statute that the purpose of it was to wake up the person to his rights when he was hurt, namely, the sustaining of the damages. Otherwise, he would be caught in a trap because he would not know of the defect in the abstract until he was consciously hurt. This decision holds that the cause of action accrues when the abstractor actually makes the defective abstract, namely the date of the certificate to the abstract.

It is also difficult to reconcile this decision with our statute, defining an indemnity contract, and when the right of action accrues on an indemnity contract.

See Section 22-0201 and Section 22-0207 of R. C. 1943.

It would appear that these indemnity statutes fits an abstractor and fixes the time when his liability accrues, namely when the person relying on the abstract actually sustains damages, and not before.

Undoubtedly, the legislature at its next session will come to the rescue of persons buying property and investing money on the strength of abstract of titles by enacting legislation to the effect that a cause of action against an abstract company never outlaws.

AMERICAN BAR ASSOCIATION URGES STRENGTHENING OF DUMBARTON OAKS PROPOSALS

Through the unanimous action of the Board of Governors in Chicago on April 5, the American Bar Association has adopted Recommendations which urge the strengthening of the Dumbarton Oaks Proposals in several vital respects, when embodied in the Charter of the new international Organization for peace, justice and law.