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Our Supreme Court Holds

North Dakota State Bar Association

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munity has great significance in the choice of location in which to build a career in the law.

The Metropolis. For the purpose of this analysis areas with more than 100,000 population are regarded as metropolitan. In these cities the lawyer can anticipate the largest and most varied sources on business attended by the greatest competition for professional employment, the highest costs of living and office maintenance, and the most complicated, hectic pressure of daily life. If he practices in the center of business activity, he will live miles from his office and the courts. If he offices in the suburbs, he will have to be content with smaller items of business that do not reach the city lawyer.

His home and family life will be that of the apartment tenant or suburban commuter. His opportunities for cultural advancement and social diversion will be great, but, unless he is outstanding in his profession, his personal recognition will be most limited. If he has been reared in such an environment, however, he is usually well content and would probably feel ill at ease elsewhere.

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OUR SUPREME COURT HOLDS

In the Matter of the Estate of Ingimar Gislason, Incompetent. J. D. Gislason, Guardian, Petr. and Aespt., vs. Gudrun Gislason, et al., Respts., and United States Veterans Administration, Fargo, North Dakota, Appt.

That North Dakota Revised Code of 1943, 30-2313, (which provides:—"The compensation payable to guardians under the provisions of this chapter shall not exceed five percent of the income of the ward during any year. If extraordinary services are rendered by such guardian, the county court, upon petition and after hearing thereon, may authorize additional compensation therefor payable from the estate of the ward."), does not make authorization by the court before the services are rendered a condition precedent to allowance by the court of compensation for extraordinary services.

That the term "extraordinary services" was used by the Legislature in contradistinction to "ordinary services." By "extraordinary services" the lawmakers meant services other than, and in addition to, such usual, customary and regular services as a guardian ordinarily is required to render in any or in every case.

That for reasons stated in the opinion it is held that in this case the court was authorized to approve payment to the guardian of compensation, for extraordinary services performed by him, and by others at his request, for the benefit of the ward and his estate.

BAR BRIEFS

Appeal from the district court of Grand Forks County, Englert, J. United States Veterans Administration, appeals from a judgment, which affirmed an order of the county court of Grand Forks County approving the annual report and accounting of a guardian. **AFFIRMED.** Opinion by Christianson, C. J.

In Otto C. Bormann, Pltf. and Respt., vs. Wilhelm Beckman, Deft. and Applt.

That where, in a suit on a promissory note, the court submits to the jury only the question of the execution and delivery of the note and the jury brings in a verdict for approximately one-third of the principal, it is error for the trial court to amend the verdict, after the discharge of the jury, by striking out the amount found by them and inserting the full amount due, calculated according to the terms of the note.

That where the plaintiff is entitled to prevail upon a motion for judgment notwithstanding the verdict, an error of the trial court in amending the verdict and directing entry of judgment in accordance therewith is non-prejudicial when the judgment rendered is the same as that to which the plaintiff was entitled upon his motion.

That as a general rule in an action for the recovery of money the determination of the amount of the recovery is for the jury.

That a motion for judgment notwithstanding the verdict, in effect, reviews the trial court's ruling in denying a motion for directed verdict.

That in passing upon a motion for judgment notwithstanding the verdict the evidence must be considered in the light most favorable to the verdict.

That a wide discretion is reposed in the trial court in allowing or rejecting amendments to pleadings during the trial and under the circumstances disclosed by the record in this case it is held that the court did not abuse its discretion in refusing to allow an amendment to the defendant's answer after the evidence was all in.

That where there is no dispute in the evidence as to the facts the question as to whether the statute of limitations has run is for the court and not for the jury.

That as a general rule a defense not raised in the trial court will not be considered for the first time by the appellate court.

That one who acquiesces without objection in the order in which a trial is conducted cannot predicate error thereon on appeal.

Appeal from the District Court of Adams County, Hon. Harvey J. Miller, Judge. **AFFIRMED.** Opinion of the Court by Morris, J.

In John Maher, Contst. and Applt., vs. Emil Jahnel, Cont. and Respt.

That a contest of an election for an offense mentioned in Chapter 16-20, Rev. Codes 1943 (the Corrupt Practice Act), must be commenced within the time prescribed therein after the return of the election at which the offense was committed. If it be not commenced within that time there is no case and the court has no jurisdiction in the matter.

That failure to file a statement of expenses incurred by a successful candidate for nomination at a primary election, is an act of omission in or about such nomination and is committed at such election rather than at the succeeding general election.

Appeal from the District Court of Sioux County, Hon. L. C. Broderick, Judge. Proceeding to contest an election. From a judgment for the defendant and contestee, the plaintiff and contestant appeals. **AFFIRMED.** Opinion of the Court by Nuessle, J.