North Dakota Law Review

Volume 21 | Number 10 Article 4

1944

Our Supreme Court Holds

North Dakota State Bar Association

the United States will retain such conquered islands as are necessary to our future protection. Being perhaps a little more civilized, or a little more sensitive of the right of self-determination of other peoples, we shall probably retain only infinitesimal bits of territory and such as are suitable for air and naval bases. Some of our allies, seeing no virtue in such self-restraint, will consider it appropriate to retain whole countries or parts of countries, either on the assertion of military or economic necessity or on that other delusion which has caused so much grief to the world, that at some ancient time the newly-acquired territory was part of the fatherland. And such lack of restraint on their part will sow seeds which in due time will mature into causes for another world war, unless education in national self-restraint and national generosity toward lesser nations develops through the organization now projected. Whether the peace which follows this war will be a real peace or merely another long armistice will depend primarily on the will for peace among the people of Russia, Britain and the United States, for I assume this time we will be realistic enough not to furnish our present enemies with the means to re-arm.

(Continued in next issue)

OUR SUPREME COURT HOLDS

In John Bredeson, Administrator of the Estate of Roselle Bredeson, Deceased, Pltf. and Applt., vs. Truesdell Warren, Deft. and Respt.

That where the the Supreme Court deems such course necessary to the accomplishment of justice, it will remand the case for retrial in the district court, even though a trial de novo is demanded in the Supreme Court.

That for reasons stated in the opinion, this case is remanded for a new trial in the district court.

From a judgment of the District Court of Grank Forks County, Englert, J., Plaintiff appeals. REMANDED FOR A NEW TRIAL. Opinion of the Court by Broderick, District Judge, sitting in the place of Morris, J., disqualified.

In Emelie Muhlhauser, et al., Applts., vs. Selma Becker and George Gappert, Apps.

That where parties claim to be entitled to the estate of an intestate decedent, under a contract made by the decedent to adopt them as his children and where no statutory adoption proceedings were had, the remedy of said parties to establish their right to the estate is in a court of equity in an action to determine the validity and extent of the contract.

That where, during settlement of the estate of an intestate decedent, claimants appear in the county court asserting their right to the estate under such a contract made for their benefit by the decedent, it is error for the county court to attempt to determine the rights arising under such contract, as the county court has no jurisdiction to hear and determine actions or proceedings inequity.

That where an appeal is taken to the district court from the judgment of the county court in a matter not within the jurisdiction of that court to hear and determine, and on the appeal appellants specifically raise this want of jurisdiction of the county court over the subject matter, it is error for the district court to overrule the objection of the appellants to the jurisdiction of the county court. In such case it is the duty of the district court to sustain the appeal and reverse the decision of the county court.

That where an appeal is taken to this court from a judgment of the district court, which appeal is based solely on the claim that the judgment of the district court is not sustained by the findings of the trial court, the record will be examined to determine the issue raised, and when the record shows the judgment rendered is based on erroneous conclusions drawn from the findings of the trial court, the judgment will be reversed.

Appeal from the District Court of Morton County, Hon. R. G. McFarland, Special, Judge. REVERSED. Opinion of the Court by Burr, J. Burke and Nuessle, J. concur specially.

In Emelie Muhlhauser, et al, Applts., vs. Selma Becker and George Gappert, Applts.

That the county court has no power to remove a duly appointed administrator and to substitute another in his place without due notice to the administrator and to those interested in the estate.

That on the trial of an action in the district court, where the district court is required to make findings of fact, such findings are to be stated separately from the conclusions of law, should include in the one document all of the facts found by the court and should not attempt to include facts determined in another document, such as the memorandum opinion, by mere reference thereto and in this manner make the memorandum opinion a part of the findings of fact. Appeal from the District Court of Morton County, Hon. R. G. McFarland, Special Judge. MODIFIED AND AFFIRMED. Opinion of the Court by Burr, J.

In State of North Dakota ex rel. Nels G. Johnson, Attorney General, Pltf. and Peter. vs. C. J. Myers, Deft. and Respt.

That the Supreme Court will exercise the original jurisdiction conferred on it by Section 87 of the Constitution in cases where the sovereignty of the state, its franchises and prerogatives are involved, judging for itself in each case whether that particular case is within its jurisdiction.

That the issues involved in this proceeding affect the sovereignty and prerogatives of the state and an immediate determination of the controversy is necessary for the maintenance of the ordinary processes of government. Accordingly it is a proper case for the exercise of the Supreme Court's original jurisdiction to issue writs of quo warranto.

That a public office is a public position to which a portion of the sovereignty of the country attaches for the time being, and which is exercised for the benefit of the public.

That the office of Manager of the State Hail Insurance Department is a public office.

That the statutory provision that "the commissioner of insurance, with the approval of the governor, shall appoint a manager" of the State Hail Insurance Department is not an unconstitutional limitation upon the appointive powers of the Commissioner of Insurance nor does it confer powers other than executive powers upon the Governor.

That an officer appointed to serve at the will of the appointing power, or an officer appointed for a fixed term who continues to serve after the expiration of his term without a reappointment is in the absence of any constitutional or statutory provision to the contrary, subject to summary removal from office by the appointing power without notice and without cause.

That impeached officer, prohibited by the constitution and statutes from exercising the duties of his office after impeachment and before acquittal is temporarily stripped of all of the powers of his office.

That officer appointed in accordance with the provisions of Sec. 44-0908, R. C. 1943, to perform the duties of an impeached officer until the close of the impeachment trial is, during his tenure, vested with all of the powers of the office.

Original proceeding upon a writ of quo warranto. JUDGMENT OF OUSTER ORDERED. Opinion of the Court by Burke, J. Morris, J., dissents.

In Pierce Township of Barnes County, North Dakota, a public corporation, Pltf. and Applt., vs. Alfred Ernie, Deft. and Respt.

That a township does not possess powers not specifically provided by law except those necessary to the exercise of powers enumerated in or granted by the statutes.

That townships are bodies corporate and the rights of townships which flow from the powers granted by statue are determined according to the rules of law applicable to municipal corporations.

That where a township board has purchased real estate for the township by a consummated transaction which exceeded authority of the board, the fact that the transaction was ultra vires does not prevent title from passing to the township.

That where a public corporation has power to acquire and hold real estate a stranger may not attach collaterally a transaction by which such property was acquired on the ground that it was ultra vires.

That a purchaser of real property who has brought to his attention facts which should have put him on inquiry which, if pursued with due diligence, would have led to knowledge of a prior purchase of the same property by another, is not a purchaser in good faith within the meaning of Sec. 47-1941, R. C. 1943.

That in an action to quiet title to real estate the plaintiff must rely upon the strength of his own title and not upon the weakness of that of his adversary but such an action will not be defeated by showing that the plaintiff's interest, otherwise sufficient to support the action, is subject to possibly superior rights of other parties who are not parties to the suit.

Appeal from the District Court of Barnes County, Hon. Daniel B. Holt, Judge. REVERSED. Opinion of the Court by Morris, J.

In Olaf Braatelien, Pltf. and Applt. vs. Emma Burns and J. H. Burns, Hans K. Haugland, Inter. and Respt.

That Section 7413, Comp. Laws 1913 (Sections 28-0219, 28-0220, 1943 Rev. Codes) providing that "Any person may before the trial intervene in an action or proceeding, who has an interest in the matter in litigation, in the success of either party, or an interest against both * * is to be liberally construed.

That intervention may be resorted to in any and all actions and at every stage in the action prior to the commencement of the trial. But as to whether an application for leave to intervene is timely made, is a matter within the discretion of the court. If it be timely, the applicant, providing he can show the requisite interest to come within the terms of the statute, is entitled to it as a matter of right.

That where a grantee in a deed agrees to assume and pay a mortgage indebedness on the land conveyed as a part of the purchase price thereof, the relation of principal and surety as between himself and his grantor is created.

That where a grantee in a deed has discharged an indebtedness secured by mortgage upon the land conveyed which he had agreed to assume and pay as part of the purchase price, and suit is thereafter brought against the grantor to recover on account of the indebtedness, the grantee has such an interest in the matter in litigation as will entitle him to intervene. Appeal from the District Court of Divide County. Gronna, J. Action on a promissory note. From an order granting leave to a third party to intervene, plaintiff appeals. AFFIRMED. Opinion of the Court by Nuessle, J.