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Our Supreme Court Holds

North Dakota State Bar Association

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for failure to make return of a writ of execution on the return day. "The recovery, though penal in its nature, is in no sense a fine, but merely the damages which the law adjudges to the individual as the consequence of the failure of an officer to discharge an official duty The liability is not a punishment for crime. It is a condition upon the holding of the office, and a penalty, not so much imposed, but agreed by the sheriff to be paid in the case of a failure of duty. . . .

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LICENSED ATTORNEYS LIST

The list of licensed attorneys for 1944 will be submitted to the printer on May 15th, and in order that attorneys names appear in the list the fee should be paid by that time.

REQUEST TO ALL MEMBERS

Please forward names of attorneys recently entering the Armed Forces, to J. H. Newton, Secretary State Bar Board, Bismarck, N. D.

OUR SUPREME COURT HOLDS

In State of North Dakota, Pltf. and Respt. vs Gabriel Tennyson, Deft. and Applt.

That Section 10522, C. L. 1913, fixing the period of limitation for the prosecution of a misdemeanor, is not a statute of repose but creates a bar to the prosecution and the time within which such an offense is committed thus becomes a jurisdictional fact.

That the state has the burden of proving affirmatively the commission of an offense charged within the period limited for its prosecution.

That where on the face of an information it appears that the offense charged was not committed within the period limited for its prosecution, a motion to vacate and set aside a judgment of conviction entered on a plea of guilty and for a new trial should be granted.

Appeal from the District Court of Mercer County, Berry, J. From an order denying his motion to vacate and set aside the judgment of conviction and order a new trial, defendant appeals. REVERSED. Opinion of the Court by Nuessle, J.

In State of North Dakota, Pltf. and Respt. vs Gabriel Tennyson, Deft. and Applt.

That a court has no jurisdiction in the first instance to try a charge of larceny made pursuant to section 9928, C. L. 1913 on account of the stealing of property in another country and bringing it into the State of North Dakota unless such property is brought into or through the county in which the prosecution is had.

That where a judgment of conviction is entered on his plea of guilty against a defendant who appears without counsel, and on his motion to vacate and set aside such judgment, order a new trial, and permit him to withdraw his plea, it appears that the court had no jurisdiction to try the offense charged, and such motion should be granted. Appeal from the District Court of Mercer County, Berry, J. From an order denying his motion to vacate and set aside the judgment of conviction and order a new trial, defendant appeals. REVERSED. Opinion of the court by Nuessle, J.