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Our Supreme Court Holds

North Dakota State Bar Association

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OUR SUPREME COURT HOLDS

In Rosina Sinerius, Pltf. and Applt. vs Carl Anderson, State Treasurer, Deft. and Respt.

That in an action to determine adverse claims brought pursuant to the provisions of sections 8144, et seq. C. L. 1913, the record is examined and it is held for reasons stated in the opinion, that the findings of fact as made by the trial court are sustained by the evidence and will not be overturned.

That where a case is tried to the court and on appeal a trial de novo in this court is demanded and had, the judgment of the trial court upon the facts must still have weight and influence with this court especially when based upon the testimony of witnesses who appeared in persons before that court. *Christianson v. Far. Ware. Assn.*, 5 N. D. 438, 67 N. W. 300, 32 L. R. A. 730. Appeal from the District Court of Mercer County, Miller, J. Action to determine adverse claims. From a judgment for the defendant, plaintiff appeals. **AFFIRMED.** Opinion of the Court by Nuessle, J.

In Edwin M. Bonde et al., Pltfs. and Respts., vs. William Stern and B. G. Tenneson, Defts. and Applt.

That this is a representative action brought by the named plaintiffs in their own behalf and in behalf of all others similarly situated who may come in and apply for judgment, to recover several money judgments against the defendants on account of their failure to carry out a contract to refinance certain mortgage obligations which the defendants owed the plaintiffs. Defendants demurred to the complaint on the ground that several causes of action are improperly united therein;

HELD, for reasons stated in the opinion, that the provisions of the Code of Civil Procedure, notably sections 7355, 7403, 7406, 7439, 7466 and 7679, C. L. 1913, relating to the forms of civil actions, the parties thereto, the joinder thereof, and the giving of judgments therein, are, in substance, enactments of rules of equity pleading and practice, and are applicable in all actions whether at law or in equity and when a question arises as to their construction or effect, equitable precedents may be looked to for guidance;

And **HELD**, further, for reason stated in the opinion, that there is such a community of interest among all of the parties in the questions at issue and in the relief sought in the instant case as warrants the named plaintiffs in bringing the action in their own behalf and in behalf of all others similarly situated pursuant to the provisions of section 7406, C. L. 1913, providing that "When the question (in an action) is one of a common or general interest of many persons, or when the parties are very numerous, and it may be impracticable to bring them all before the court, one or more may sue or defend for the benefit of the whole."

Appeal from the District Court of Cass County, Swenson, J. Action to recover money. From an order overruling a demurrer to the complaint, defendants appeal. **AFFIRMED.** Opinion of the Court by Nuessle, J. Morris, Ch. J. and Christianson, J. dissenting.

In Elmer Siewert, Pltf. and Respt., vs. Leo Norgart, Deft. and Applt.

That this case presents only questions of fact and law identical with those presented and determined by the case of *Verner Campbell, vs. Leo Norgart*, —, N. D.—, — N. W.—, currently decided and is governed by the decision in that case.

Appeal from the District Court of Cavalier County, Grimson, J. **REVERSED.** Opinion of the Court by Morris, Ch. J. Burr, J. dissenting.