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Our Supreme Court Holds

North Dakota State Bar Association

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Law, University of Illinois, who will speak on "The Evolution of the Lawyer."

NORTH DAKOTA ATTORNEYS WITH ARMED FORCES

At page fifteen of the Licensed Attorneys List for 1944 there appears the names and home addresses of seventy-eight members of the North Dakota Bar who are with the Armed Forces. This is nearly twenty per cent of the total membership of our association.

OUR SUPREME COURT HOLDS

In *Helena E. Cunningham, Admx. of the estate of William Burton Cunningham, Pltff., vs. G. N. Ry. Company, a corporation, Deft.*

That where the party against whom verdict has been rendered makes timely motion in the alternative for judgment notwithstanding a verdict or for a new trial, and it appears from the record that the evidence does not sustain the verdict and that the moving party was entitled to a verdict, that there is no reasonable probability that the defects in the proofs may be remedied upon another trial and that on the record as a whole the moving party is entitled to verdict and judgment as a matter of law, it is error for the trial court to deny a motion for judgment notwithstanding the verdict and order a new trial. Laws 1935, ch. 245.

That in actions under the Federal Employers' Liability Act, 45 USCA, Sections 51-59, 10A F C A title 45, Sections 51-59, wherever brought, the rights and obligations of the parties depend upon such Act and applicable principles of common law as interpreted and applied in the federal courts.

That negligence of the employer is the basis of recovery under the Federal Employers' Liability Act. Without negligence there is no right of action.

That in actions under the Federal Employers' Act, as in other actions at law for injury to employees, the burden is cast upon the plaintiff to show negligent conduct on the part of the employer constituting ground for recovery. The plaintiff must establish a breach of duty on the part of the defendant and show that such misconduct was in fact the proximate cause of his injury.

That the question of negligence is generally one of fact for the jury, it becomes a question of law only when the evidence is such that fair-minded men cannot reasonably draw different conclusions as to the facts or the inferences to be drawn therefrom. But when the state of the evidence is such that fair-minded men in the exercise of reason and judgment could not have reached the conclusion that the person whom the jury by its verdict found to have been negligent in fact had been negligent, then the verdict will be set aside.

That in the instant case it is held, for reasons stated in the opinion, that there is no evidence from which the inference may reasonably be drawn that the defendant was negligent, and that the injuries sustained by plaintiff's intestate were caused by any breach of duty of the defendant; and that upon the record as a whole the defendant is entitled to judgment as a matter of law.

Appeal from the District Court of Ramsey County, Kneeshaw, J. Action for damages for death of plaintiff's intestate. There was a verdict for plaintiff. Defendant moved in the alternative for judgment notwithstanding the verdict or for a new trial. The court denied the motion for judgment, and ordered a new trial. Both parties appeal. Reversed and action ordered dismissed. Opinion of the Court by Christianson, J.

In Consolidated Freightways, Inc., Pltf. and Applt., vs. J. S. Lamb, Highway Commissioner, et al., Defts. and Respts.

That Chapter 194 (sec. 1, subdv (c), S. L. 1941 which provides:
 "No vehicle, including the load thereon, shall exceed a length of thirty-five (35) feet. No combination of vehicles including the load thereon, shall exceed a length of forty (40) feet. No more than two units shall be used in a combination. A tractor truck and semi-trailer shall be considered as two units. The provision hereof shall not apply to carriage of equipment of the Army or the defense forces of the United States Government or the National Guard of the State of North Dakota; * * *"

is construed, and for reasons stated in the opinion, it is HELD that the restrictions upon the size of vehicles that may be used in transporting persons or property upon the highways of North Dakota as stated in the first three sentences of such statutory provision, apply to the transportation of all kinds of property upon the highways of this State, excepting only "equipment of the Army or the defense forces of the United States Government or the National Guard of the State of North Dakota," the carriage of which is in no manner subject to such restrictions.

That a demurrer admits all the allegations in the pleading to which it is addressed which are issuable, relevant, and material, and which are well pleaded; but it does not admit conclusions of the pleader except when they are supported by, and necessarily result from, the facts stated in the pleading. A demurrer does not admit mere expressions of opinion, nor theories or arguments of the pleader as to the effect of the facts; neither does a demurrer admit allegations which the pleading demurred to itself contradicts. Appeal from the District Court of Burleigh County, Jansonius, J. Plaintiff appeals from an order sustaining a demurrer to its complaint and dissolving a temporary injunction. AFFIRMED. Opinion of the Court by Christianson, J.

In Lewis Rosenstein,, Pltf. and Applt., vs. Williams County, North Dakota, Deft. and Respt.

That an owner of land that has been forfeited to the county under tax deed proceedings, who exercises the right to repurchase such land, makes payment therefor and receives a deed from the county pursuant to Laws 1941, ch. 286, sec. 19, becomes vested with all the interest, right and title held by the county in and to such land.

That the deed from the county to such former owner operates to vest in the grantee in such deed all interest and right of the county in and to crops then growing on the land as well as title to any unaccrued rent for use of the land.

Appeal from the District Court of Williams County, Gronna, J. Plaintiff appeals from an order sustaining a demurrer to his complaint. REVERSED. Opinion of the court by Christianson, J.