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Our Supreme Court Holds

North Dakota State Bar Association

Lt. Col. G. A. Lindell, 45, husband of Mrs. Norma Lindell of Washburn, was killed in France, Aug. 18, 1944. A member of the law firm of Williams and Lindell, in Washburn, he was graduated from NDU in 1922, and was commissioned second lieutenant in the ROTC after graduation. He remained active in the reserves and held the rank of major when war was declared. He went into active service, Jan. 28, 1942, and was stationed at Fort Benning, Ga., and Camp Roberts, Calif. He was promoted to lieutenant colonel in July, 1943. He went oveseras the summer of 1944, and after a few weeks in England he went to France. He also leaves a son, William, and two daughters, Rita and Kathryn Ann.

October 6th a letter of congratulations and good wishes came from Aubrey Lawrence now, and for years, with the Department of Justice, Washington, D. C. Aubrey was president of the State Bar Association 1927-28 when he was prominent in the practice of law at Fargo. He states in his letter "I have very happy memories of my connection with the North Dakota State Bar Association and of the lawyers of the state."

Surely good to have the cheering message from our past president. We thank you Mr. Past President. Come and see us.

At least one member of our Bar is asking questions about the authority of alleged attorneys attached as counsel to government agencies, to practice law in North Dakota without a license from our State Board. A good lead for others of you. We need that ten bucks in the fund and we need to know th names of the fellows authorized to practice in our state. Some more of you might help the Bar by asking Secretary Newton of the Bar Board about the license of that fellow doing law work in your territory.

Every member of our North Dakota Bar should be interested in a Bill now before the Congress entitled "Administrative Procedure Act." It is intended by the Act, if it is passed by the Congress, to improve the Administration of Justice by Prescribing Fair Administration Procedure. You should ask your Senator or Congressman for a printed copy, then write your comments to him. The purpose is to have some fair procedure before Boards and Bureaus, which are making their own rules of procedure when they haul your client before it without a right of appeal. Every lawyers should be interested in that proposed Bill.

OUR SUPREME COURT HOLDS

In William Langer, Respt., vs. John Gray, State Tax Commissioner, Applt.

That an order made by the State Tax Commissioner pursuant to sec. 2, ch. 240, S. L. 1929, revising a former order making an additional assessment of income tax, is appealable under the provisions of sec. 15, chap. 240, S. L. 1941.

That under the provisions of ch. 284, S. L. 1931, the State Tax Commissioner is empowered to assess any additional income tax found to be due and notify the taxpayer thereof not later than three years after the due date of the taxpayer's return.

That where a taxpayer has, prior to the time fixed by sec. 5, ch. 241, S. L. 1937, for filing his income tax return, applied to and obtained from the State Tax Commissioner an extension of time within which to file his return, the due date of the return is the time appointed or required by the order for the filing thereof, and the period provided by ch. 284, S. L. 1931, within which the tax commissioner may assess an additional tax against the taxpayer begins to run as of the date to which the time for filing has been extended.

Appeal from the District court of Burleigh County, McFarland, J. REVERSED AND REMANDED. Opinion of the court by Morris, J.

In Helen Maloney, Pltf. and Respt., vs. City of Grand Forks, Deft. and Applt.

That there is a duty incumbent upon a city to maintain its sidewalks in a reasonably safe condition for travel in the ordinary modes, by day or by night. Anderson v. City of Jamestown, 50 N. D 531, 196 N. W. 753, followed.

That a city is answerable in damages for the lack of ordinary and reasonable care, and is held to the same rule of negligence which is expected of private persons in the conduct of their business involving a like danger to others.

That the question of negligence is a question of fact, never of law, unless the established or conceded facts from which the inference must be drawn admit of but one conclusion by reasonable men.

That where a city permits a cement slab in one of its sidewalks, and approximately eighteen inches square, to remain from an inch to an inch and a quarter, or slightly higher, elevated above an adjoining one for such a period of time as to constitute constructive notice to the city of the continuance of such defect, the question of whether the city in permitting the continuance of such defect is guilty of negligence is a question for the jury primarily, to be determined from a review of all of the circumstances in the case.

Appeal from the judgment of the district court of Grand Forks County, Holt, Judge, and from an order denying a motion for judgment notwithstanding the verdict or a new trial.

AFFIRMED. Opinion of the Court by Burr, J.

In T. A. Swiggum, Pltf. and Applt., vs. Valley Investment Company, a corporation, Deft., and Respt., T. A. Swiggum, Pltf. and Applt., vs. Valley Investment Company, a corporation, Northwestern Trust Company, a corporation; and Fred L. Goodman, Defts .and Respts.

That orders directing that a special term of the Supreme Court to be held on July 6, 1944, and setting certain cases for argument on that day are, for reasons stated in the opinion, held to have been issued in accordance with the provisions of sec. 715 and 716, Supp. To Comp. Laws and Rule 2 of the Rules of Practice of this court.

That an order denying a motion to consolidate two actions at law is not appealable under sec. 7841. Comp. Laws N. D. 1913.

Appeal from the District Court Grand Forks County, Swenson, Judge. APPEALS DISMISSED. Opinion of the Court by Morris, C. J.

In H. L. Verry, Pltf. and Aplt. vs Herbert J. Yuly and Ethel M. Yuly, Dft. and res.

Where a case tried to the court without a jury is in the supreme court for trial de novo on appeal, the trial court's findings of fact are entitled to appreciable weight in considering the record; but the supreme court is not concluded by the findings of the trial court and if they are not well sustained by the evidence will reverse or modify the judgment as the record may warrant.

That the record in the instant case is examined, and it is HELD for reasons stated in the opinion, that the findings of the trial court as to the

compromise and payment of the mortgage debt involved are not sustained by the evidence.

Appeal from the district court of Ward County, Hon. A. J. Gronna, Judge. Action to foreclose a mortgage. From a judgment for the defendants, the plaintiff appeals.

REVERSED. Opinion of the Court by Nuessle, J.

In Ada S. Stutsman, et al, Pltf. and Applt., vs. S. E. Arthur, et al, and Grand Lodge of the Ancient Order of United Workmen, Defts and Respts.

That chap. 196, S. L. 1927 as amended by chap. 170, S. L. 1929, permits municipalities to issue funding bonds for the purpose of refunding public improvement warrants to the extent of deficiencies resulting from the failure to collect special assessments due the funds on which the warrants are drawn.

That section 3716, C. L. 1913, prior to the amendment thereof did not authorize a municipality to assume general liability on special improvement warrants where such liability resulted from deficiencies in special assessment funds due to the failure of property owners to pay assessments.

That where the appropriation of public funds or the creation of a public debt is primarily for public purposes it is not necessarily rendered violative of constitutional provisions against gifts and loans of public credit by an incidental result which may be of private benefit; but if the result is chiefly that of private benefit an incidental or even ostensible public purpose will not save its constitutionality.

That purchasers of municipal bonds are presumed to know the law and to be informed with respect to statutory authority under which the bonds were issued.

That chap. 196, S. L. 1927 as amended by chap. 170, S. L. 1929, insofar as it permits the issuance of bonds to refund special improvement warrants issued prior to the time municipalities were permitted to become generally liable for improvement fund deficiencies is violative of section 185 of the N. D. Constitutiton.

That as a general rule recitals in municipal bonds in the hands of a bona fide purchaser are conclusive on the municipality as to facts contained in recitals made by officers having authority to make such recitals in behalf of a municipality that has power to issue bonds in the nature of those in question, unless the constitution or statute under which the bonds are are issued prescribes some public record as a test of the existence of those facts.

That where there exists a statute constitutionally empowering cities to issue bonds for the purpose of funding deficiencies in special assessment funds under certain conditions, recitals in bonds that they are issued for the purpose of funding special assessment deficiencies pursuant to and in full conformity with the Constitution and Laws of the State of North Dakota including such statute and amendments thereon the city and its taxpayers are estopped from challenging the validity of the bonds in the hands of bona fide purchasers on the ground that the deficiencies thus funded were not obligations of the city and the issuance of bonds to fund them was violative of sec. 185 of the state constitution.

SYLLABUS. Appeal from the district court of Morton County Hon. W. H. Hutchinson, Spec. Judge. AFFIRMED.

Opinion of the Court by Morris, Ch. J. Nuessle, J. and Jansonius, Dist. J. dissenting (JJ. Burr and Christianson disq. Dist. J. Jansonius and Englert sitting in their stead).