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Our Supreme Court Holds

North Dakota State Bar Association

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PROPOSE PLAN FOR WAR MEMORIALS

A plan for the erection of memorials to citizens who have given their lives for their country in World War II is being studied by the Executive Committee of the North Dakota Conference of Social Welfare, headed by Judge G. Grimson of Rugby, president of the organization.

The plan endorsed by the Conference of Social Welfare which met recently at Jamestown calls for the encouragement of the various communities of the state to consider the erection and maintenance of proper facilities for character building recreation, and handicraft on the part of the youth during their leisure time as lasting memorials to their honored citizens who gave their lives in World War II. It was suggested at the Conference that such memorials would be particularly fitting as they would afford more opportunities for the youth of tomorrow to develop better traits of citizenship through wholesome and proper use of leisure hours. That can be done by providing playgrounds, handicraft shops, recreation centers, gymnasiums, swimming pools, etc., each of which might bear the name of one or more of the heroes who died.

The Executive Committee of the Conference is also studying two other resolutions passed at the Conference. One deals with the regulations and licensing of homes for the aged in the state, and the other with the need for a home for neglected dependent or pre-delinquent boys and girls. It was explained to the Conference that there are no existing facilities for the care of youth who cannot be properly taken care of or disciplined in their own homes, and yet should not be classed as delinquents or sent to the Training School.

The Executive Committee, whose members, in addition to Judge Grimson are: Dr. A. C. Burr of Jamestown, Miss Clarisse Clementson and Mrs. Earl Shaw of Fargo, A. M. Allen of Thompson, Rev. L. O. Gjerde of Rugby, Miss Louise Guenther of Bismarck and Mrs. O. H. Lundquist of Adams, will meet in Bismarck in December to take action on its findings.

OUR SUPREME COURT HOLDS

In *George Cota, Pltf. and Applt., vs. Lula McDermott, Respt.*

That chapter 286, S. L. 1941, providing, among other things, for the giving of notice of expiration of the period of redemption on property sold to the county for delinquent taxes, applies to all tax deed proceedings initiated subsequent to its effective date.

That where land is sold on nonpayment of taxes any right of redemption given is wholly statutory, accorded as a matter of legislative favor and grace. And the right to notice of expiration of the period of redemption stands on no different ground, so, in the absence of statutory requirement, no notice need be given.

That a delinquent taxpayer has no vested right in any existing mode of collecting taxes. There is no contract between him and the taxing authority that the latter will not vary the mode of collection.

That where land is sold on nonpayment of taxes, the resulting relationship as between the taxpayer and the taxing authority is not contractual.

It results from the taxpayer's delinquency and the whole proceeding is a remedy for such delinquency.

That a statute providing for the manner of giving notice of expiration of the period of redemption different from that prescribed at the time of tax sale, is not subject to challenge on the ground that it impairs a vested right of the delinquent taxpayer.

That where the legislature prescribes the manner in which notice of expiration of the period of redemption shall be given, the requirement thus imposed must be strictly complied with.

That where the officer charged with the duty of giving notice of expiration of the period of redemption to the delinquent taxpayer follows the letter of the statute in doing so, the requirement as to service of notice is satisfied though the taxpayer does not receive such notice.

Appeal from the District Court of Rollete County, Kneeshaw, J. Action to quiet title. From a judgment for the defendant, plaintiff appeals. REVERSED. Opinion of the court by Nuessle J.

In W. J. McDonald, Plf. and Respt., vs. Mae McDonald Milier, Deft. and Applt., Merchants Nat. Bank, Fargo, Deft. and Respt.

That a constructive trust will be imposed by the courts in order to do equity and prevent unjust enrichment when title to property is acquired by fraud, duress, ur.due influence, or is acquired or retained in violation of a fiduciary duty.

That an express trust in real property cannot be created by parol.

That the existence of a constructive or resulting trust in real property may be established by parol evidence that is clear, convincing, and satisfactory.

That where it is sought to impose a constructive trust upon a conveyance of real estate the existence of a confidential relationship between the grantor and grantee is of major importance to be considered in connection with other facts and circumstances on the case.

That where a grantor parts with all control over a deed by delivering to a third person to be delivered to the grantee on the death of the grantor such delivery to the third person divests the grantor of title.

That in an action to establish a constructive trust in connection with the conveyance of real estate, declarations of the grantor made prior to or contemporaneously with the execution and delivery of the conveyance are admissible in support of the trust made subsequent to the conveyance and not in the presence of the grantee are not admissible.

That where a deed has been delivered to a third person to be delivered to the grantee on the death of the grantor, and thus has become operative to divest the grantor of title, subsequent declarations of the grantor tending to impeach the deed are inadmissible.

That subdivision 2, of sec. 7871, C. L. 1913, may not be extended by interpretation but its application is confined to the letter thereof.

That in an action between the son and daughter of a deceased grantor to impress a conveyance of real estate with a trust in property which never became a part of the grantor's estate, and neither party appears in the action in the capacity of executor, administrator, personal representative, or heir of the decedent, the parties are not prohibited by subdv 2 of sec. 7871, C. L. 1913, from testifying to transactions between themselves and the deceased.

Appeal from the District Court of Cass County, Swenson, J. REVERSED AND NEW TRIAL ORDERED. Opinion of the Court by Morris, Ch. J.

In Russell Bryan and Waldo Bryan, Pltfs. and Respts., vs. Abe Miller, Deft. and Applt.

That the requirement that the appellant on appeal to the district court from a judgment of the justice court must serve and file an undertaking, or

make a deposit and serve notice of the making of such deposit, is mandatory and compliance therewith is a prerequisite to the transfer of jurisdiction to the district court by the appeal.

That appellate jurisdiction is derived from constitutional or statutory provisions, can be acquired and exercised only as prescribed by the law, and cannot be conferred by consent of the parties.

That in North Dakota, district courts are vested by the constitution with original jurisdiction of all causes both at law and equity, except as otherwise provided in the constitution, and such appellate jurisdiction as may be conferred by law. Sec. 103, Const.

That the legislature has provided that appeals may be taken to a district court from the judgment of a justice court either (1) on question of law alone, or (2) on question both of law and fact, and a new trial had in the district court. C. L. 1913, sec. 9164, 9172.

That it is the essential criterion of appellate jurisdiction that it revises and corrects the proceedings in a cause already instituted, and does not create that cause.

That an appeal from a justice court to a district court for a new trial of the case in the district court does not involve solely an exercise of appellate jurisdiction by the district court. The appellate functions are at an end when the case has been transferred to the district court pursuant to the prescribed appellate procedure and brought within the jurisdiction of the district court for trial. The trial of the case anew by the district court does not involve the exercise of the appellate jurisdiction of the district court, but involves the exercise of the original jurisdiction vested in the court by the constitution to try and determine civil actions.

That where a court has jurisdiction of the subject matter of an action, general appearance, without objection to jurisdiction, and the invoking of the power of the court in a matter pertaining to and directly affecting the proceedings to be had in the action, give jurisdiction of the person.

That jurisdiction of the subject-matter is the power to deal with the general subject involved in the action; it is the power of the court to hear and determine causes of the general class to which the particular cause belongs.

That where a judgment has been rendered in an action within the jurisdiction of the justice court and a defendant appeals therefrom demanding a trial anew in the district court, but fails to serve and file a sufficient undertaking on appeal or make timely deposit in lieu of an undertaking and, as a result, the appeal is rendered defective in a jurisdictional matter; but the case is docketed and placed upon the calendar of the district court and at the time appointed for trial both parties appear without objection, and the plaintiff submits a written stipulation, entitled in the action as pending in the district court, providing that an amendment be made by adding another party plaintiff, and upon such stipulation moves that the papers in the action be amended accordingly, and the court thereafter grants the motion and directs the amendment to be made, the action is brought within the original jurisdiction of the court and it has the same power to try and determine the action as though it had been commenced originally in the district court. *Deardoff vs. Thorstensen*, 16 N. D. 355, 113 N. W. 616, and *Aneta Mercantile Company vs. Groseth*, 20 N. D. 137, 127 N. W. 718, distinguished.

That when the jurisdiction of the court over the subject-matter and parties has attached by such general appearance and invoking of jurisdiction, the jurisdiction may not thereafter be capriciously terminated by a party who made such appearance and invoked such jurisdiction; and such jurisdiction continues until the issues have been finally determined, or the action has been disposed of otherwise according to law.

Appeal from a judgment of the district court of Burleigh County, McFarland, J., by the defendant. REVERSED. Opinion of the court by Christianson, J.