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## Our Supreme Court Holds

North Dakota State Bar Association

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## OUR SUPREME COURT HOLDS

In Ben Gilbertson as Receiver of the Progressive Printing Company, a Body Corporate, Pltf. and Respt., v. H. C. Helle, As Sheriff in and for Williams County, North Dakota, and The State Bonding Fund, a legally created department of the State of North Dakota, Defts. and Appls.

That when a writ of execution, regular on its face, is issued by a court of competent jurisdiction and delivered to the sheriff with orders to execute the same, it is the duty of the sheriff to execute the same in accordance with law, and in doing so he can not be held personally liable for obeying the order of the court.

That were an action to foreclose a mortgage on personal property within the territorial jurisdiction of the district court is commenced in the district court, and it appears in said action that it will become necessary for the court, in enforcing a judgment based upon that complaint, to charge the said personal property with a lien and to order a sale, the said district court acquires jurisdiction of said specific property and withdraws that property from the jurisdiction of every other court which may attempt thereafter to exercise similar dominion over the property. The court which first acquires the jurisdiction has such authority over said property as is free from the interference of every other tribunal of concurrent jurisdiction.

That where a district court obtains prior jurisdiction over such personal property, and thereafter another district court in this state appoints a receiver to take charge of said property, the powers of said receiver as the representative of the court appointing him are limited by the superior power of the court that first obtained jurisdiction, and the appointment of a receiver can not be permitted to interfere with the jurisdiction of the first court.

Appeal from the District Court of Burleigh County, Hon. Fred Jansonius, Judge.

**JUDGMENT REVERSED AND THE CASE DISMISSED.**  
Opinion of the Court by Burr, J.

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In Lena Olson, Pltf. Respt., v. Edward Carlson, doing business as Triangle Transportation Company, Deft. and Applt.

That a motion for a new trial on the ground of newly discovered evidence is addressed to the sound judicial discretion of the trial court and the appellate court will not interfere unless it appears that there has been a manifest abuse of such discretion.

That appellate courts are more reluctant to interfere when a new trial has been granted than where a new trial has been denied.

That the record is examined and it is held that it does not show an abuse of judicial discretion by the trial court in granting a new trial.

Appeal from the District Court of Cass County, Hon. Daniel B. Holt, Judge.

**AFFIRMED.**

Opinion of the Court by Morris, J.

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In Mary Gran, Pltf. and Respt., v. Carrie Gran, Deft. and Applt.

That where a case in which both legal and equitable issues have arisen is tried as a jury case and submitted to the jury as such, it is reversible error for the court thereafter, in the absence of and without notice to the parties and before the jury has agreed upon a verdict, to recall the jury and direct a verdict on the ground that the decisive issue is equitable and, in any event, for the determination of the court.

Appeal from the District Court of Ward County, Hon. John C. Lowe, Judge. Action to recover possession of real property. From a judgment for the plaintiff, defendant appeals.

**REVERSED AND NEW TRIAL ORDERED.**

Opinion of the Court by Nuessle, Ch. J.