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Our Supreme Court Holds

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judgment, the right to reclaim the property is not defeated. Canadian Typograph Co. v. Macguran, 119 Mich. 533, 78 N. W. 542 (1899).

So we have on one side the view that as the remedies of the seller to retake possession or sue for the purchase price are inconsistent, one bars the other; on the other side, we have the view that the contract provides that the seller shall have both remedies until he receives his money. However, without deciding which is the most logical, or which is the weight of authority, it would seem that the principal case has reached the result which is the most just to the seller under a conditional sale contract.

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OUR SUPREME COURT HOLDS

In J. K. Murray, Petr. and Applt., vs. Fred Mutschelknaus, et al., Defts. and Applts.,and State of North Dakota doing business as Bank of North Dakota, Intrs. and Applts.

That an assessment becomes final within the contemplation of section 2, chapter 225, S. L. N. D. 1939 when the state board of equalization causes an abstract of its proceedings to be certified to the county auditor pursuant to the provisions of section 2142, C. L. 1913.

That the period for instituting proceedings under chapter 225, S. L. 1939, is limited to one year from the date of certification by the state board of equalization to the county auditor.

That it is presumed that the legislature intends a statute to operate prospectively only unless it clearly manifests a contrary intention.

That where a statute is susceptible of two constructions by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided it is the duty of courts to adopt the latter construction.

That Chapter 225, S. L. 1939 is construed to operate prospectively and to apply only to tax assessments made subsequent to the effective date of the act.

Appeal from the District Court of Hettinger County, Hon. R. G. McFarland, Special Judge. AFFIRMED IN PART, REVERSED IN PART.

Opinion of the Court by Morris, J.

In The State of North Dakota ex rel Alvin C. Strutz, Attorney General, Petr., vs. A. J. Huber, Auditor of Grant County, Respt.

That the duties of the county auditor in calculating the rate per cent of tax levies and in spreading and extending the tax charges on the tax lists against real property subject to taxation pursuant to the provisions of the Initiated Measure, adopted June 29, 1932 (S. L. 1933, p. 493) section 2143 C. L. 1913 and chapter 241, S. L. 1929, are ministerial and their performance may be compelled by mandamus.

That Chapter 225, S. L. 1939 entitled "An act declaring all tax charges based on original final values of property assessed by local assessors, in excess of amount that would have been charged had said original final value been limited to the full and true value in money, null and void providing remedy to the taxpayer; and repealing all laws or parts of laws in conflict therewith," is considered and construed, and it is held, for reasons stated in the opinion, that said chapter 225 does not modify or repeal the provisions of

the Initiated Measure adopted June 29, 1932 (Session Laws 1933, p. 493) section 2143, Comp. Laws 1913 and chapter 241, Session Laws 1929.

Appeal from the District Court of Grant County, Hon. H. L. Berry, Judge. Petitioner for peremptory writ of mandamus. From a judgment denying the writ, petitioner appears. REVERSED. Opinion of the court by Nuessle, Ch. J.

In The City of Dickinson, Pltf. and Applt., vs. George Thress, Deft. and Respt.

That under the police power, the Legislature may regulate the keeping of dogs.

That the Legislature may delegate to cities the right to exercise such part of the police power concerning dogs as it may deem proper.

That a city has, and can exercise, only such powers as are conferred upon it, either expressly or by fair implication by the law which created it, or by other laws, constitutional or statutory, applicable to it.

That the sole object of statutory construction is to ascertain and give effect to the purpose and intent of the lawmakers, and all rules of statutory construction are subservient to, and intended to effectuate such object.

That the legislative intent must be ascertained from the statute and must be sought first in the language thereof, the statute being construed as a whole.

That where the language of a statute is vague, ambiguous, uncertain or of doubtful meaning, the court must consider such pertinent external facts as may throw light upon the intent and purpose of the lawmakers, and thus ascertain the true meaning of the language employed.

That where it is manifest upon the fact of a statute that an error has been made in words, numbers, grammar or punctuation, the court, in construing and applying the statute, will correct the error in order that the intention of the legislature as gathered from the entire act may be given effect.

That Punctuation marks do not have the same controlling force as evidence of legislative intention as do words; punctuation is subordinate to context.

That a city in North Dakota operating under the commission system of government has power to enact an ordinance providing for the registration of, and imposing a license tax upon, all dogs kept or harbored within the city, and the power to require such registration and impose such license tax is not restricted to dogs running at large.

From a judgment of the District Court of Stark County, Miller, J., plaintiff appeals.

REVERSED. Opinion of the Court by Christianson, J.

In Federal Farm Mortgage Corporation, a corporation, Pltf. and Applt., vs. George Berzel and Mary Berzel, his wife, et al, Defts., The State of North Daokta, Deft. and Resp.

That whenever the meaning of a word or phrase is defined in any statute, such definition is applicable to the same words or phrase wherever it occurs, except, when a contrary intention clearly appears (Section 7279 Comp. Laws of North Dakota 1913).

That by a statutory definition the word "liens" includes "mortgages." (Section 6699, 6704, 6725 Comp. Laws of North Dakota 1913).

That the phrase "all other judgments and liens" as used in Section 8, Chapter 162, Laws of North Dakota, 1919, as amended by Chapter 315, Laws of North Dakota 1931, includes "mortgage."

That a regulation in aid of a proper exercise of the police power may not be manifestly arbitrary or unreasonable.

That Section 8, Chapter 162, Laws of North Dakota 1919 as amended by Chapter 315, Laws of North Dakota 1931, would subordinate the lien of plain-

tiff's mortgage to the lien of the State's judgment, without notice to the plaintiff at the time he accepted his mortgage that it might be so subordinated, and insofar as it permits such a result, it deprives the plaintiff of his property without due process of law, in violation of both the Constitution of North Dakota and the Constitution of the United States.

Appeal from the District Court of Stark County, Hon. Harvey J. Miller, Judge.

REVERSED. Opinion of the court by Burke, J.

In O. M. Johnson, Respt., vs. Armour & Company, a corporation, Applt.

That an agreement between an upper and a lower riparian owner by the terms of which the latter conveys to the former the right to discharge waste products, sewage and refuse matter into the stream, and to permit the same to be carried off by the flow of the stream through the premises of the lower riparian owner, creates an easement on the land of the lower riparian owner.

That where such an agreement provides that in consideration of the furnishing of electric power and other valuable consideration the lower riparian owner releases th upper riparian owner from all damages which may accrue to the lower riparian owner because of such discharge of waste material, such release covers all damages which may accrue because of the pollution of the stream.

That when under such contract, the lower riparian owner binds himself, his heirs, administrators, successors, and assigns, and such contract is placed on record, subsequent purchasers of any portion of the land affected thereby are bound by the agreement.

That in such event, such contract, when duly executed, is a complete defense against any action for recovery of damages to the said premises, incident to the discharge of such sewage brought by a subsequent purchaser.

Appeal from an order of the District Court of Cass County sustaining a demurrer to the answer of the Defendant, Hon. Daniel B. Holt, Judge.

REVERSED. Opinion of the Court by Burr, J.

In Herman Holien, Administrator of the Estate of Ole Holien, Deceased. Respt., vs. Cecelia Staveteig, Applt.

That where a creditor and debtor, in an attempt to adjust their financial relations enter into an agreement to the effect that if the creditor will scale down his indebtedness from $14,000.00 to $11,000.00, the debtor will pay the creditor $7,400.00, the proceeds of a loan made through the Farm Credit Administration of the Federal Government, $2,400.00 additional in cash and execute and deliver a promissory note in the sum of $1,200.00, and thereafter this agreement is fully executed according to its terms, the fact that some time thereafter the creditor signs and delivers to the Farm Credit Administration, through various agencies, a "Creditor's Agreement", wherein the creditor purports to accept the proceeds of the loan in full satisfaction of the $11,000.00, does not release the debtor from the payment of the note given, there being no evidence showing that at the time the scale down agreement was made and fully executed, the execution of such agreement was one of the terms of settlement, or even was contemplated. So far as this case is concerned, there was no consideration for the execution of said Creditor's Agreement.

That evidence examined, and it is held; that the appellant is the owner of the note involved in this transaction, and is entitled to have the same paid in the due process of administration of the estate of the maker.

Appeal from a judgment of the District Court of Grand Forks County, Hon. P. G. Swenson, Judge.

REVERSED AND JUDGMENT ORDERED FOR APPELLANT.

Opinion of the Court by Burr, J.