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Our Supreme Court Holds

North Dakota State Bar Association

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fluence on the liberal majority. There was need to have pointed out to the people the possible dangers to their liberties who might lurk in the views of the majority. A swing too far to the left may be as fateful as one too far to the right. Just as Justice Holmes placed his weight on the side of governmental power when a majority of the Court was inclined to broaden individual liberty, so Justice Butler put his weight on the side of individual liberty when the Court was inclined to broaden governmental power. The preservative effect of each was and will be the same: To prevent the beam from tipping too far out of true balance between the two opposed and vital components of democratic rule—governmental power and individual liberty.

Had Justice Butler been mediocre, the loss were different. No current is affected by a bending reed on river edge, but by the granite boulder in midstream. He stood immovable against the flow of what he saw as dangers to those liberties of the individual under our fundamental law. Of all the men I have known, none more perfectly typified strength. Massive and rugged in face and form, great in mind and pure in heart, lover of truth and basic things, he was strength in its best human personification.

He brought this superior strength into full use at a time when his country needed it. One result was that those efforts threw into bold relief the outlines of his noble character and of his fine ability where all who looked must see. His high place in the history of the Court and in the history of the Nation is secure. He was a great Justice and he was a great American.

OUR SUPREME COURT HOLDS

In *Jewel Tea Company, Incorporated, a corporation, Pltf. and Applt., vs. State Tax Commissioner of the State of North Dakota, Deft. and Respt.*

That taxation is neither a penalty imposed on the taxpayer, nor a liability which he assumes by contract. It is an apportionment of the cost of government among those who in some measure are privileged to enjoy its benefits and must bear its burdens.

That Chapter 249 of the Session Laws of 1937, known as the "Sales Tax Act" imposes the tax upon the consumer in this state, and not upon the retailer, even though the retailer is required to add the tax, or its average equivalent, to the sales price or charge, and to collect the same and remit the tax to the tax commissioner.

That such law is applicable to a foreign retailer doing a retail business in this state when the goods purchased are forwarded by such retailer to himself in this state, the original package opened, the contents thereof assembled by his agents resident in this state, and by such agents delivered to the customers, who have previously ordered the goods and who pay for them upon delivery. Such law does not impose an unconstitutional burden upon interstate commerce, nor is the tax levied a tax upon interstate commerce.

That where such retailer, for a period of two and one-half years, filed with the tax commissioner the quarterly reports required by the Sales Tax Act, showing the gross sales of the retailer in this state during such quarter, and at the same time, in good faith, claimed the statutory exemption permitted on "gross receipts from sales of tangible personal property which this

state is prohibited from taxing under the Constitution or laws of the United States", and for that reason failed to collect and remit any sales tax, the fact that the tax commissioner took no issue with the retailer on his claim of exemption and without objection permitted the filing of the subsequent quarterly statements under the same circumstances, justified the retailer in believing the tax commissioner had acquiesced in the claim of exemption; and when, at the end of that period, the tax commissioner disallowed the claim of exemption and so notified the retailer, the statutory penalty for nonpayment of the tax prior to the time of disallowance of the claim should not be inflicted.

Appeal from the District Court of Burleigh County, Hon. Fred Jansonius, Judge. **MODIFIED AND AFFIRMED.** Opinion of the Court by Burr, J. Burke, J. concurs in result.

In Dominik Weisgerber, Sr., Pltf. and Respt., vs. The Workmen's Compensation Bureau, Deft. and Applt.

That under the Workmen's Compensation Act an appeal from the final action of the Bureau may be taken only in those cases where the Bureau denies the claimant the right to participate at all in the fund on the ground that the injury was self-inflicted, that the accident did not arise in the course of employment, or any ground going to the basis of the claimant's right.

That rights of claimants to participate in the fund because of dependency upon a deceased insured employee are individual rights, and claims asserting such rights are separate claims within the meaning of the Workmen's Compensation Act.

That the claim of parents against the Workmen's Compensation Fund, based upon dependency, are separate claims upon which each parent may have a separate right of appeal to the district court.

That where a son was instantly killed by an accident in the course of his employment, and the Bureau made an emergency allowance for medical services, ambulance services, and funeral expenses of the deceased employee, such allowance does not constitute such an action upon a parent's claim for dependency as to bar his right of appeal as a dependent claimant.

That the question of dependency is generally a question of fact.

That the evidence examined and it is held, that partial dependency by the father upon his deceased son is established.

Appeal from the District Court of Stark County, Hon. Harvey J. Miller, Judge. **AFFIRMED.** Opinion of the Court by Morris, J.

In Ray C. Richmond, Fred Lyons and B. V. Hanson, as members of the State Board of Barber Examiners or the State of North Dakota, Pltfs. and Appls., vs. Peter Miller, Deft. and Respt.

That a court of equity has no criminal jurisdiction, and it may not restrain the commission of criminal acts, unconnected with violation of legal rights.

That where a state of facts is presented, which, according to established principles, calls for the interposition of equity to protect legal rights against invasion, the equitable jurisdiction is not destroyed because the acts sought to be enjoined are criminal in their nature, and punishable under penal laws.

That injunction will not lie at the suit of the members of the State Board of Barber Examiners to restrain the practice of barbering by a person who has not obtained the certificate of registration prescribed by Chapter 101, Laws of 1927.

That barbering without the certificate of registration required by law does not constitute a public nuisance, abatable by equitable action.

From a judgment of the District Court of Stark County, Miller, J., plaintiffs appeal. **AFFIRMED.** Opinion of the Court by Christianson, J.