North Dakota Law Review

Volume 16 | Number 11 Article 5

1939

Our Supreme Court Holds

North Dakota State Bar Association

and of the experience with those proposals where they have been tried; and, more than all, the will to meet the issue.

To that end, in every state and city, the organized bar should sponsor organized study and discussion of the actual workings of the Law, of the causes of popular dissatisfaction, of the possibilities of improvement; and so activate the profession, arouse it to a full sense of its responsibilities and spur it on to do what must be done. Not sometime, now; for the sands run out.

As the Chief Justice has recently admonished: "You can not maintain democratic institutions by mere forms of words, or by occasional patriotic vows. You maintain them by making the institutions of our Republic work as they are intended to work. Here lies your responsibility with respect to this sphere of democratic action in translating the law of the land into the decision of particular controversies so that every citizen may be assured of equal justice according to law."

By JOSEPH O'MEARA, JR.*
Journal of the American Judicature Society.

*Of the Cincinnati Bar.

OUR SUPREME COURT HOLDS

In William Martin, Pltf. and Respt., vs. F. L. Anders, Receiver of the Lucky Strike Coal Company, a Corporation, Deft. and Applt. Henry Hecht, Pltf. and Respt., vs. F. L. Anders, Receiver of the Lucky Strike Coal Company, a Corporation, Deft. and Applt.

That a judgment which has been entered against a defendant who has had no opportunity to present his case on the merits, will be set aside. (Martin v. Anders.)

That the evidence is examined and it is held: the finding of fact of the trial court that plaintiff had received no payment on account of wages earned while working for the defendant is contrary to the evidence. Evidence shows that plaintiff received $145.50 on account of such wages and defendant should have been allowed credit in that amount upon the $199.50 which was found to be the total amount earned by the plaintiff. The judgment is modified accordingly. (Hecht v. Anders.)

Appeal from the District Court of Mercer County, Hon. H. L. Berry, Judge.

Opinion of the Court by Burke, J.

Martin v. Anders, REVERSED.

Hecht v. Anders, MODIFIED AND AFFIRMED.

In E. Delafield Smith, Pltf. and Applt., v. Victor Hanson, et al, Defts. and Respts.

That a statement in a return on an execution that the reason for returning the same wholly unsatisfied is that the property levied upon was mortgaged and that the judgment creditor failed on demand to furnish security or bond for the sale of such property, does not estop the officer who made the return, under proper pleading, from showing in addition to the ground stated in the return for returning the execution unsatisfied (1) that the judgment creditor failed o advance moneys required to pay the cost of printing the notice of execution sale, upon the demand of the officer that such moneys be advanced; and, or, (2) that the judgment creditor directed the officer to abandon the levy and not advertise or sell the property levied upon.

That in absence of statute providing to the contrary, a judgment creditor at whose instance an execution is issued is entitled to exercise a considerable

degree of control over the execution thereof, and may give reasonable directions to the officer as to the time and manner of executing the same and the particular property to be subjected to levy and sale.

That in an action by an execution creditor against a Sheriff for failure to sell propery levied upon under the execution, it is a good defense that such execution creditor failed to advance moneys sufficient to discharge the fees of the printer for publishing the notice of sale upon the demand therefor by the Sheriff. (Sec. 7767, C. L. 1913).

That where the party for whose benefit an execution is issued instructs the officer charged with the duty of executing the same to abandon a levy that has been made under the execution, the officer is warranted in releasing such levy and he cannot be held liable in an action for damages for releasing the levy and not making sale of the property.

That certain assignments of error predicated upon rulings on evidence and instructions to the jury, examined and held to be without merit.

Appeal from the District Court of Burleigh County, Hon. R. G. McFarland, J.

Plaintiff appeals from the judgment and from an order denying his motion for a new trial.

AFFIRMED.

Opinion of the Court by Christianson, J.

In Hans Hanson, Respt., v. Ray Cool, Applt.

That when a motion is made to dismiss an action for the failure on the part of a non-resident plaintiff to give security for costs, the trial court may give the plaintiff an opportunity to procure the requisite surety.

That courts are vested with wide discretionary power in the matter of granting amendments to pleadings in furtherance of justice.

That a deed executed under a mutual mistake or ignorance of a material fact may be cancelled by a court of equity where the court is in a position to render a judgment that places the parties substantially in status quo.

Appeal from the District Court of Bottineau County, Hon. C. W. Buttz, Judge.

AFFIRMED. Opinion of the Court by Morris, J.

In Leo J. Wagner, Applt., v. Sophie Stroh, Respt.

That an action to quiet title to land is essentially an equitable one.

That he who comes into a court of equity must do equity.

That where the vendes brings such action in equity to obtain a judgment declaring that his vendor has no lien on the land for the unpaid purchase price, a court of equity will not entertain his claim until he offers to do equity in paying the amount of the installments of the purchase price already due.

Appeal from the District Court of Barnes County, Hon. P. G. Swenson, Judge.

MODIFIED AND AFFIRMED.
Opinion of the Court by Burr, J.

In L. R. Baird, as Receiver of the Farmers Bank in Leonard, Pltf. and Respt., v. C. J. Bartholomay, et al., Defts. and Applts.

That the statute of limitations on an action to foreclose a chattel mortgage, executed under the provisions of section 6762 of the Compiled Laws of 1913, as amended by chapter 175 of the Session Laws of 1927, does not begin to run until ten years after the cause of action has accrued

Appeal from the District Court of Cass County, Hon. P. G. Swenson, Judge.
AFFIRMED. Opinion of the Court by Burr, J.