North Dakota Law Review

Volume 16 | Number 12 Article 5

1939

Our Supreme Court Holds

North Dakota State Bar Association

find anything to the contrary in the Nebraska case (General Motors Acceptance Corporation v. Hupfer, supra). In that case only the so-called trust receipt was under the consideration of the court. No promissory note attended the receipt in that case."

It would seem that from the growth of cases the courts are beginning to place the trust receipt in the category of a conditional sale or chattel mortgage in order that they be recorded to protect the rights of bona fide purchasers. Motor Banker's Corporation v. C. I. T. Corporation, supra; Burroughs Adding Machine Co. v. Wieselberg, 230 Mich., 15, 203 N. W. 160 (1925); Nelson v. Viergiver, 230 Mich. 38, 203 N. W. 164 (1925). "The question in this case is how far a serviceable nag may be ridden, or, less metaphorically, may the so-called 'trust receipt,' highly useful in certain kinds of commercial transactions, and which the courts have in consequence struggled to sustain, in spite of its apparent conflict with recording laws, be upheld when the principal, if not the sole, reason for resorting to it, is to escape from those very statutes." In re Cullen, 282 Fed. 902 (Md. 1922). Although most courts will enforce the trust receipt as to the original parties it is the intervention of a third party that causes the confusion. In our case there is no bona fide purchaser or creditor of the buyer concerned so the home court has as yet not put a definite label on this so-called trust receipt. Nevertheless, because of the conflicting law among the states, the uncertain law within the states, the highly complex and technical practice, a field steadily increasing in importance since 1880 and a field in which the trust receipt device performs a legitimate and needed function, and in which certainty and uniformity are badly needed, — the National Conference of Commissioners on Uniform State Laws adopted in 1933 the Uniform Trust Receipt Act which has since been adopted in California, Connecticut, Illinois, Indiana, Massachusetts, New Hampshire, New Jersey, New York, Oregon, and Tennessee. 9 U. L. A. '39 pp. 239, 241. Our conclusion in view of these decisions and statutes is that if we are to be in accord with the increasing modern trend should we not treat these commercial instruments as conditional sales or chattel mortgages and require that they be recorded? Or better still—adopt the Uniform Trust Receipt Act which requires that trust receipts be recorded.

ROY A. NESTE,
Third Year Law Student
University of North Dakota.

OUR SUPREME COURT HOLDS

In E. B. Isakson, Plft. and Applt., v. State of North Dakota and John Gray, State Tax Commissioner, Defts. and Respts.

That Chapter 249, Session Laws of North Dakota, 1937, as amended by Chapter 234, Session Laws of North Dakota, 1939, known as the Sales Tax Act, exempts from the sales tax retail sales of alcoholic beverages specified in the Liquor Control Act (an initiated measure approved November 5, 1936).

That the combining of nonalcoholic ingredients with alcoholic beverages that have been taxed under the Liquor Control Act, to form what are com-

monly known as "mixed drinks", does not amount to incorporating the nonalcoholic ingredients in or attaching them to tax exempt property within the meaning of section 1, subsection (c) of the Sales Tax Act.

That the exemption by the Sales Tax Act of the sale of alcoholic beverages specified in the Liquor Control Act does not follow those beverages after they have become ingredients of some other commodity, nor do such beverages impart exemption to the entire commodity of which they become ingredients.

That the complaint in this action which seeks to recover taxes paid under protest upon nonalcoholic contents of mixed drinks sold at retail is examined and held not to state a cause of action.

Appeal from an order sustaining demurrer from the District Court of Burleigh County, Hon. Fred Jansonius, Judge.

AFFIRMED.

Opinion of the Court by Morris, J. Burke and Christianson, JJ. dissent.

In J. E. Sandlie, Respt., v. North Dakota Workmen's Compensation Bureau, et al., Applts.

That the burden of proof is upon the plaintiff to show that the injury from which he was suffering was received in the course of his employment, before he is entitled to share in the Workmen's Compensation Fund.

That the evidence is examined and it is held, that for ten years or more prior to the employment of the plaintiff, he was suffering from high blood pressure; that the injury from which the plaintiff suffered was caused by this high blood pressure; and the evidence fails to show that anything which occurred in the course of his employment aggravated this condition so as to entitle the plaintiff to share in the Workmen's Compensation Fund.

Appeal from the District Court of Grand Forks County,(Hon. M. J. Englert, Judge.

REVERSED. Opinion of the Court by Burr, J.

In Augusta Gaschk, Peti., v. J. A. Kohler, Sheriff in and for Burleigh County, North Dakota, Respt.

That where, in a contempt proceeding, the district court finds the accused guilty of contempt in failing to make payments of money as required in an order for payment and, without assessing a penalty of fine or imprisonment because of such contempt, makes and enters a new order requiring the accused to make payments in accordance with the terms prescribed in this order and ordering that upon failure to do so, the accused be committed to the county jail, the accused can not be so committed for failure to make the payments at the time and in the manner required by this new order until an opportunity be given to her to show she has complied with the order, or has a valid excuse for noncompliance, and the court makes a subsequent finding of disobedience, showing disobedience, and orders commitment.

That under the circumstances hereinbefore related, the clerk of the district court has no authority to issue a commitment to the county jail without an order of the court to that effect.

That the petitioner having applied to this court for a writ of habeas corpus, and it being shown to this court that she is being held in custody under a commitment issued by the clerk of the district court, without an order of the district court to that effect based upon a finding that the accused has violated the order of the court made with reference to the payment of money at the times and at the place designated in the order, it is held; that the imprisonment of the petitioner is unlawful and she is entitled to be discharged from custody.

Application for Writ of Habeas Corpus.
WRIT GRANTED.
Opinion Per Curiam.

In First National Bank and Trust Company of Fargo, a Corporation, Peti., v. Fred J. Krogh and Hon. M. J. Englert, Judge of the District Court, Respts.

That Section 6, Chapter 165, Session Laws N. D. 1939, gives to the court, power to revise and alter the terms of an order extending the period of redemption.

That an order to show cause is in effect a notice of motion and a citation to appear at a stated time and place to show cause why a motion should not be granted.

That the power of the court to grant an extension of the period of redemption under Chapter 165, Session Laws N. D. 1939, is purely statutory, and the statute does not confer upon the court authority to extend the period of redemption without a hearing.

That after a period of redemption has expired and the title vested in the holder of the certificate of sale, the court is without power to further extend the period of redemption under the provisions of Chapter 165, Session Laws N. D. 1939.

Review by Writ of Certiorari of proceedings had in the District Court of Cass County, North Dakota, under Chapter 165, Session Laws of North Dakota for 1939, before Hon. M. J. Englert, Judge.

REVERSED.
Opinion of the Court by Morris, J.

In E. N. Olson, D. D. Riley, et al, Pltf. and Applts. v. E. A. Donnelly, H. J. Yuly, E. G. Pierson, et al., Defts. and Respts.

That where a proceeding or action is brought in the district court of a county in this state and a district judge from another judicial district is called to hear and determine the issue and orders judgment thereon, the judgment entered is the judgment of the district court in which this judge sits, and not of the district court of any county within his own judicial district.

That a judgment rendered by a court of general jurisdiction, having jurisdiction of the parties and subject-matter, imports absolute verity. As long as it stands, it can not be attacked collaterally by any of the parties thereto, or those in privity with them; and as long as it remains in force, neither party can maintain an action against the judgment on the ground that the judgment was obtained by fraud and deception. Tuttle v. Tuttle, 48 N. D. 10, 181 N. W. 888 followed.

That the county commissioners of a county have charge of the fiscal matters of the county, and as such are managers of a County Fair established by the county; and any judgment rendered in an action or proceeding brought by them is binding upon the taxpayers of the county unless set aside or reversed on a motion or in some proceeding in that case.

Appeal from an order sustaining a demurrer to the complaint, Hon. P. G. Swenson, Judge.

AFFIRMED. Opinion of the Court by Burr, J.