North Dakota Law Review

Volume 15 | Number 2 Article 3

1938

Our Supreme Court Holds

North Dakota State Bar Association

is figuring that furnished by the farm at market prices and not production cost.

That the territory served by these farms comprises territory containing a population of about a third of that of the state of North Dakota, and that the inmates consist of offenders whose term does not exceed one year. That the farm of St. Louis county contains about 600 acres which is adequate for their purposes.

That the steady out door work and labor of various kinds is an important factor in the rehabilitation of the inmates, and greatly superior to the county jail system of confinement for short term prisoners, where they sit in idleness, and also at the entire expense of their counties.

(Continued in February number)

OUR SUPREME COURT HOLDS

In Howard A. Wood, Pltf. and Respdt., vs. John Homelvig, Deft. and Applt.

That no particular language is necessary to create a tenancy. Any words that show an intention of the lessor to divest himself of the possession and confer it upon another, but in subordination of his own title, is sufficient.

That where defendant wrote letters to plaintiff recognizing him as owner of land and offered to pay taxes for the use thereof, and plaintiff accepts such offer and the defendant goes into possession, the relation of landlord and tenant is created.

That where a tenant agreed to pay taxes for the use of land, but neglected to pay such taxes and permitted the land to be sold to the county for taxes and a tax deed to issue thereon, and immediately thereafter purchased said land from the county and took title in himself without giving notice to the landlord, such tenant is guilty of breach of faith; and where plaintiff after discovery of the circumstances seasonably brought action to have title vested in himself, the defendant cannot take advantage of his own wrongful acts and charge the plaintiff with laches.

That a tenant is estopped to deny his landlord's title during the continuance of the relation of landlord and tenant, and the latter may not avail himself of acts of his own or any act hostile to the landlord's title as a ground for refusal to surrender his possession under the lease.

That a tenant who is required by the terms of his lease to pay taxes on the property leased, cannot acquire tax title as against his landlord.

That the plaintiff having brought this action within six years after the wrongful act on the part of the defendant, such action is not barred by the statute of limitations.

APPEAL from the District Court of Slope County, Hon. H. L. Berry, J. AFFIRMED. Opinion of the Court by Sathre, J.

In John Gray, State Treasurer, as Trustee for the State of North Dakota, Pltf. and Applt., vs. M. G. Moylan, County Auditor of Towner County, North Dakota, et al, Defts. and Respdts.

That where in his complaint, the plaintiff shows he has a valid and subsisting lien on real property described therein, and alleges that a defendant claims liens superior to his, setting forth the defendant's liens in full so as to establish their existence, but denying their superiority or validity, such complaint is not subject to demurrer on the ground that it fails to state a cause of action, even though the defendants may argue that on the face of the complaint plaintiff concedes the equality or superiority of defendant's liens, as the plaintiff has a right to have a judicial determination of all the liens involved and their relationship to each other.

That a demurrer is not a substitute for a motion for judgment on the pleadings or a motion to make a pleading more certain.

APPEAL from the District Court of Towner County, Hon. G. Grimson, J. REVERSED. Opinion of the Court by Burr, J.

In Golden Valley County, a municipal corporation, Pltf. and Appt., vs. Estate of N. Greengard, Deceased, et al, Defts. and Respts.

That Chapter 198, Laws 1925, as amended by Chapter 280, Laws 1931, does not authorize a County Auditor to assess again, or revalue, personal property that has been listed and assessed by the assessor. The power conferred by that statute upon a County Auditor to assess such property arises only when some property has in fact been omitted from the assessment made by the assessor.

That where a merchant, in the statement given to the assessor, lists correctly a stock of merchandise and fixtures, but understates the value thereof with the result that the assessment is made too low, there is "no false statement of personal property" within the purview of Chapter 198, Laws 1925, as amended by Chapter 280, Laws 1931 so as to authorize the County Auditor to again assess such stock of merchandise and fixtures and increase the value thereof over that made by the assessor.

APPEAL from the District Court of Golden Valley County, Hon. Harvey J. Miller, J. Plaintiff appeals from an order sustaining a demurrer to the complaint. AFFIRMED. Opinion of the Court by Christianson, Ch. J. Morris and Burr, JJ. dissenting.