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Our Supreme Court Holds

North Dakota State Bar Association

SERVICE BUREAU ENJOINED

On February 23, 1939, the Philadelphia Court of Common Pleas No. 6, in the case of W. Richardson Blair, Jr., et al, versus Motor Carriers Service Bureau, Inc., et al, issued a restraining order enjoining the Motor Carriers Service Bureau, Inc., Tax Service Company and James H. McGurk, doing business as the Motor Carriers Association, from engaging in the practice of the law.

LAYMAN FOUND GUILTY OF CONTEMPT

On January 18, 1939, one Frank Sevedin, was found guilty of contempt of court by the Circuit Court of Wayne County, Michigan, in case No. 64, 503, wherein the Respondent was found to have been acting as a "runner" for an attorney; occupying space in the attorney's office, paying no rental therefor, except that of procuring law business for the attorney.

From American Bar Association Committee on Unauthorized Practice.

OUR SUPREME COURT HOLDS

State of North Dakota, Pltf. and Resp., vs. Bertel Jacobson, Deft. and Applt.

That the person verifying by oath an accusation in writing presented to the district court, seeking to have an officer removed from office on the grounds of charging and collecting illegal fees for services rendered in his office, is not such "a party to the record of any civil action or proceeding, or a person for whose immediate benefit such action or proceeding is prosecuted or defended, * * described in section 7870 of the Compiled Laws, permitting such party to the record to "be examined upon the trial thereof as if under cross-examination * *."

That Section 10482 of the Compiled Laws, providing for the trial of an officer charged with "collecting illegal fees for services rendered or to be rendered in his office, * * " upon "an accusation in writing and verified by oath of any person * * " does not require the jury determining the case to specify in the verdict what one or more of a series of charges has been supported by the evidence, but permits the verdict of the jury to be either "guilty" or "not guilty".

That where removal from office is attempted by judicial proceedings under the provisions of article 2 of chapter 4 of the Code of Criminal procedure, an accusation in writing may be presented by the grand jury or may be made "in writing and verified by the oath of any person * * " and when the latter form of accusation is presented to the district court the offenses to be charged therein are limited to the allegation that the officer has charged and collected illegal fees for services rendered or to be rendered in his office or that the officer "has refused or neglected to perform the official duties pertaining to his office, or has rendered himself incompetent to perform his duties by reason of habitual drunkenness or other cause * * ".

That under the provisions of section 5 of the initiated measure approved June 29, 1932, the only recompense a county commissioner may recover for his services from a county having a population exceeding nine thousand is a per diem allowance of five dollars "and the actual amount necessarily expended by them (him) for expense of travel in the performance of official duty * * ", but such expense of travel recoverable may not exceed "the sum of Seven Cents (7c) per mile actually and necessarily traveled by motor vehicle or team, when such motor vehicle or team is not owned by the county or other political subdivision, and not exceeding the sum of Five Cents (5c) for each mile actually and necessarily traveled * * " when such travel is by rail or other common carrier.

That the amount expense recoverable is based upon the mileage traveled, is limited to the actual amount necessarily expended for expense of travel, but in no case can exceed a sum based upon the mileage traveled and at the rate of seven or five cents per mile respectively.

That the term "illegal fees" as used in section 10482 of the Compiled Laws includes excessive per diem charges.

That before a member of the board of county commissioners of any county is entitled to recover for per diem compensation and for his expenses recoverable from the county he must itemize and verify his bill as required by section 4226 of the Compiled Laws.

That where a county commissioner is accused of charging and collecting illegal fees for services, and this charge is based upon alleged excessive per diem charges and excessive expense accounts, the accused may show that he honestly and in good faith believed himself entitled to the amount charged and collected, and if such charges were made and collected under the honest belief that the amounts claimed were justly due and owing to him, and so claimed in good faith, then such honesty and good faith may be offered as a defense to the charge set forth in the accusation even though as a matter of fact the defendant may not have been entitled to the amount claimed.

State vs. Richardson et al, 16 N. D., 1, 109 N. W. 1026, distinguished.

That where the evidence introduced by the State in support of such an accusation is based upon the verified bills presented by the defendant, and it is shown that such bills contain a large number of items which are not claimed to be illegal charges, the consideration of the jury is to be confined to the specific items claimed to be illegal charges and upon which evidence thereof is offered, and only such portions thereof should go to the jury as exhibits in the case.

That for reasons stated in the opinion, it is held a new trial should be granted.

Appeal from the District Court of Ward County, Grimson, Dist. J. REVERSED AND NEW TRIAL GRANTED. Opinion of the Court by Burr, J. Berry, Dist. J. sitting.

Eleanor Bentley, Pltf. and Resp., v. Oldetyme Distillers, Inc., Deft. and Applt.

That an agent has no implied authority to invite a guest to ride in a motor vehicle in his charge. Erickson v. Foley et al., 65 N. D. 737, 262 N. W. 177, followed.

That when the sufficiency of the evidence has been challenged by motion for a directed verdict, a new trial should be granted on that ground where the evidence and the charge to the jury disclose two distinct inconsistent theories, the evidence being sufficient to indicate a right of recovery on the one but not on the other, and it is impossible to say on which theory the jury found, though no exception is taken to the instructions under which the cause is submitted.

That the record examined and it is held that the plaintiff cannot recover on the theory that she was the guest of the defendant in an automobile accident.

That though the record shows conclusively that the defendant was not liable to the plaintiff for injuries received by her as the guest of an alleged agent in a motor car driven by him while on the business of the defendant, yet where the pleadings and the testimony indicate the possibility that the plaintiff was an employee of the defendant at the time her injuries were received and as such was injured by defendant's agent in the course of his employment, a new trial will be granted on the theory that the lack of evidence necessary to sustain recovery in this respect may be supplied on the new trial.

Appeal from the District Court of Burleigh County, Hon. Fred Jansonius, Judge. REVERSED. Opinion of the Court by Burr, J. Englert, Dist. J. sitting.