North Dakota Law Review

Volume 15 | Number 6 Article 6

1938

Our Supreme Court Holds

North Dakota State Bar Association

the sources of its greatness and let us pay it the sincerest flattery—imitation.

We have an obligation placed upon us—the obligation of restoring oratory to its rightful place among the fine arts.

And in carrying out that obligation let us turn to a rich past for guidance and inspiration. Then may future generations say of us as we say of those who preceded us:

"Lives of great men all remind us
We can make our lives sublime;
And departing leave behind us,
Footprints in the sands of time."
—The Speakers Library.

OUR SUPREME COURT HOLDS:

IN THE MATTER OF THE PETITION OF CLIFFORD CHAMBERS FOR A WRIT OF HABEAS CORPUS

That the enactment of a statute which extinguishes any sentence of imprisonment that has been imposed by reason of a repealed criminal statute as an exercise of the pardoning power by the legislature.

That the exclusive power to grant commutations and pardons after conviction for all offenses except treason and cases of impeachment is vested by section 76 of the Constitution of North Dakota as amended by Article 3 of Amendments to the Constitution in the Governor in conjunction with the Board of Pardons.

That the enactment of a statute which had the effect of extinguishing petitioner's prison sentence almost two years after the sentence was pronounced against him upon a verdict of guilty in the trial court, was, in so far as petitioner's case is concerned, an exercise by the legislature of the power to pardon "after conviction", notwithstanding the fact that petitioner's appeal from the judgment of conviction may have been pending at the time such statute was enacted and approved.

That House Bill 259, enacted by the Twenty-sixth Legislative Assembly of North Dakota, in so far as it has the effect of extinguishing the prison sentences of persons against whom judgment of conviction had been had in the trial court prior to the effective date of such act is in conflict with section 76 of the Constitution of North Dakota as amended by Article 3 of Amendments to the Constitution and to that extent is invalid.

(Sybbabus by the Court)

Original petition for writ of habeas corpus. WRIT DENIED.
Opinion of the Court by Burke, J. Christianson, J., disqualified.

In Elmer F. C. Tank, Pltf. and Applt., vs. Gladys Tank, Deft. and Respt.

That the evidence is examined and it is held; the allegations of desertion and extreme cruelty stated in the complaint as grounds for divorce are not sustained by the evidence.

That under the express provisions of Section 4401, Compiled Laws of N. D., 1913, the Court may, in an action for divorce, provide for the maintenance of a wife and her children, though a judgment of divorce is denied.

That where in an action for divorce, an injunction is decreed, enjoining the husband from selling or encumbering his property, there being no prayer for such relief in the pleadings and no evidence in the record tending to establish the need for such relief, the injunction will be set aside.

Appeal from the District Court of Ward County, Hon. John C. Lowe, Judge. MODIFIED AND AFFIRMED. Opinion of the Court by Burke, J.

In State of North Dakota, Pltf. and Respt., v. John Hopperstad, Deft. and Applt.

That witnesses whose names are not endorsed upon the information may be examined by the State when it is shown such witnesses are necessary, and in the absence of any showing of prejudice to the defendant.

That where a defendant is charged with driving an automobile on the public roads while intoxicated and he is taken into custody immediately, there is no error in permitting witnesses to testify as to his condition with reference to intoxication at the time he is arrested.

That evidence examined and it is held: the evidence is sufficient to sustain the verdict of conviction. Appeal from the District Court of Walsh County. Hon. W. J. Kneeshaw, Judge. AFFIRMED. Opinion of the court by Burr, J.

In Mrs. William Stockfeld, Pltf. and Applt., v. Josiah L. Sayre, Deft. and Respt.

That under the provisions of Chapter 184 of the Session Laws of 1931, commonly known as the "guest statute" a guest who accepts a ride in any vehicle on the highways of the State, and while riding as such guests sustains an injury, has no right of recovery against the owner or driver or person responsible for the operation of such vehicle, nor does the estate or the legal representative or heir of such guest; unless the injury or death sustained proximately results from the intoxication, wilful misconduct, or gross negligence of the owner or person responsible for the operation of the vehicle, and in such case the burden is upon the plaintiff to establish that such delict was the proximate cause of the death or injury.

That where the injury to such a guest is caused by the concurrent act of negligence on the part of the host and negligence on the part of a third person for whose act neither the plaintiff nor the defendant is responsible and would not have happened in the absence of either, the concurring acts are the proximate cause of the injury, and each delinquent is answerable for the result.

That in such an action to recover damages for the death of a guest brought against the host and a third person for whose act neither the plaintiff nor the host is responsible, the host is not responsible in damages unless the plaintiff prove his concurring act of negligence was gross negligence, and the fact that the plaintiff has joined this third person as a joint tort feasor does not permit the plaintiff to recover against the host for ordinary negligence.

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

In John H. Issendorf, Pltf. and Respt., v. The State of North Dakota, doing business as the State Hail Insurance Department, and Oscar E. Erickson, as Commissioner of Insurance of the State of North Dakota, Defts. and Applts.

That in determining the intention of the legislature courts will take into consideration the object sought to be accomplished by the law.

That Section 2 of Chapter 137, Session Laws N. D. 1933, is examined, and held not to render uninsurable crops upon which hail has fallen without doing material damage, prior to the receipt of an application for insurance by the State Hail Department.

Appeal from the District Court of Bottineau County, Hon. G. Grimson, Judge. AFFIRMED. Opinion of the Court by Morris, J. Sathre, J., disqualified, Swenson, Dist. J., sitting.

In Leon Bryan, Pltf. and Rspt., vs. Northwest Beverage Inc., a corporation, Deft. and Applt.

That a contract is extinguished by its rescission.

That rescission of an express contract does not affect the rights growing out of it thereafter as implied obligations.

That where a party to a contract is prevented by the wrongful act of the other party from performing it, he may treat the contract as rescinded, and sue to recover the value of services performed, or he may bring an action on the contract for a breach thereof, and recover the contract price, less the necessary expense of completing the same.

That individuals promoting and organizing a corporation have no authority to obligate the corporation by any contract made prior to its coming into existence as a corporation.

That where a corporation with knowledge of a preincorporation contract that it might itself make, accepts the benefits therefrom, it does so subject to the burdens that go with such contract.

That where all the stockholders and officers of a corporation are present and agree to accept and do adopt a promoter's preincorporation contract, it becomes binding upon the corporation, although there is no formal vote either of the stockholders or of the directors taken or recorded.

That stock of a corporation issued in violation of section 138 of the Constitution, and section 4528, C. L. 1913, is null and void.

That services performed by the plaintiff in bringing to the defendant some 190 customers accounts, with an annual volume of business amounting to $200,000 and the good will of an established business may be regarded as "labor done or * * * property actually received," within the meaning of section 138 of the Constitution and section 4528, C. L. 1913, and were a sufficient consideration for $16,000 worth of stock to be issued to the plaintiff.

That the evidence objected to was material to the issues as framed by the pleadings, and the objections were, for reasons stated in the opinion, properly overruled.

That a witness who has knowledge of the business in which services have been rendered for, and of the business accounts and good will brought to, a corporation, and of their value, may, in the sound discretion of the trial court, be permitted to give his opinion as to the value thereof.

That the trial court, in its instructions, submitted the case to the jury, upon the theory that "the plaintiff is entitled to recover, if at all, for the reasonable worth and value of contributions made in service and accounts which enriched and benefited the defendant, brought to and conferred upon the defendant" by the plaintiff. This was the proper theory of the case on the issues framed by the pleadings.

The evidence is examined and, for reasons stated in the opinion, is held sufficient to sustain the verdict.

Appeal from the District Court of Burleigh County. Hon. R. G. McFarland, Judge. Action upon quantum meruit. Judgment for the plaintiff. Defendant appeals.

AFFIRMED. Opinion of the Court by Englert, Dist. J. Burke, J., did not participate, Englert, Dist. J., sitting in his stead.

In George Snyder, Pltf. and Resp., vs. Northern Pacific Railway Company, Deft. and Applt.

That Section 4644 of the Compiled Laws "makes the killing of animals by a railway company presumptive evidence of negligence; but when as in this case, the facts in regard to the killing are all put in evidence, the presumption of the statute does not apply. The proved facts clear away and supersede all presumptions". (Stoeber v. Mpls.-St. Paul & Saulte St. Marie Ry. Co. 40 N. D. 121, 168 N. W. 562) followed.

That there being no proof whatever of negligence on the part of the defendant in the killing of livestock on its right of way, a verdict against the defendant for damages because of the loss of such livestock can not be sustained.

That the defendant having made a proper motion for judgment notwithstanding the verdict, such motion should have been granted because of the total lack of evidence showing negligence on the part of defendant. Appeal from Dist. Court, Burleigh County. McFarland, J. REVERSED. Opinion by Burr, J.