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Our Supreme Court Holds

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OUR SUPREME COURT HOLDS

In State of North Dakota, Plt. and Resp., vs. James P. Colohan, Deft. and Appit.

That where no exceptions to the charge given the jury are taken and filed, specifications of error based thereon will not be considered on appeal.

That alleged prejudice to the rights of the defendant based upon the action of the court in receiving the verdict of a jury in another case during the trial of the case at bar will not be considered on appeal when the alleged error was never called to the attention of the trial court, no objection to the action of the court taken, and when it was not made the basis of motion for a new trial. Matters not shown by the record can not be considered.

That where, after entering a plea of "not guilty", the defendant requested and obtained leave of the court to withdraw the plea for the purpose of entering a demurrer, and thereafter, when the demurrer was overruled, proceeded to trial without re-entering a plea, and testimony was taken and the case submitted to the jury upon the evident theory that a plea of "not guilty" had been entered, the inadvertent omission of entry of plea is not reversible error when the accused is allowed to make his defense as fully and effectively as if issue had been joined over the overruling of the demurrer and no injury to the substantial rights of the defendant appears.

That the provisions of section 61 of the constitution of the state, to-wit:

"No bill shall embrace more than one subject, which shall be expressed in its title, but a bill which violates this provision shall be invalidated thereby only as to so much thereof as shall not be so expressed,"

are to be construed liberally. It is not intended that the title should be an index or a catalog of the details of the act, and these provisions are fully met when the various subjects embraced therein are germane and reasonably connected with the subject expressed in the title and when all the provisions of the act are consistent with its avowed purpose.

That Chapter 162 of the Session Laws of 1927, being "An Act Regulating the Operation of Vehicles on Highways * *" is not open to attack on the ground that the bill embraces more than one subject because the bill includes section 2 and section 62 legislating against operating a motor vehicle while under the influence of intoxicating liquors and providing punishment therefor. The statute is a comprehensive one, designed to control and regulate the operation of motor vehicles upon highways and to make uniform the law relating to the subject matter. The statute provides methods for the enforcement of the act and these features of enforcement are germane to the general subject.

That said chapter 162 of the Session Laws of 1927 is not open to attack on the ground that it contains the provisions of sections 2 and 62, without having the same expressed in the title when the title to the act states explicitly that the act provides for the enforcement of its provisions.

That chapter 162 of the Session Laws of 1927 is not repealed or annulled by chapter 175 of the Session Laws of 1933 authorizing a city to prohibit by ordinance the driving of a motor vehicle upon its streets by anyone under the influence of intoxicating liquor.

That section 62 of chapter 162 of the Session Laws of 1927 authorizes the trial court to sentence a person convicted of operating a motor vehicle on the public highways while under the influence of intoxicating liquors to pay a fine, or to be imprisoned in the county jail, or both, and in case the court sentences the defendant to imprisonment, the court may suspend the sentence of imprisonment or any part thereof and make its order that the person so sentenced shall be precluded from driving any automobile within this state for a period of not to exceed two years; but it is only in case the sentence of imprisonment is suspended that the court may enter such restraining order.

That where the trial court sentences a person convicted of the crime of operating a motor vehicle upon the highways of the state while under the influence of intoxicating liquors to pay a fine and to suffer imprisonment for a definite period stated in the sentence and judgment, and enters a restraining order precluding the defendant from operating a motor vehicle on the highways for a defined period without suspending the sentence of imprisonment, said sentence will be set aside and the case remanded to the trial court with instructions to pass sentence within the limits prescribed by statute.

Appeal from the County Court of Cass County with Increased Jurisdiction. Hon. P. M. Paulsen, Judge. CONVICTION AFFIRMED AND CASE REMANDED FOR RE-SENTENCE. Opinion of the Court by Burr, J.