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Our Supreme Court Holds

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LEGAL INSTITUTES

Our State Bar Association should and does desire to be of practical benefit to the members. To do so it should select some activity that will be of useful service to the membership, and then carry it forward, and as it succeeds in furnishing such service to its members it gathers strength for the whole organization.

From the records of other Bar Associations many instances of successful activities can be gleaned. For us this selection must be one which we can pay for from the limited funds at our command. Legal Clinics or Legal Institutes, so called, which give genuine instruction by experts in matters which lawyers ought to know about is growing in popularity all over the country. The movement is taking three main channels, legal institutes, practicing law courses which are being given in the larger cities, and district clinics which are serving the lawyers of smaller communities.

And while the first two might not be possible or feasible in this state, it would seem that the last could be fitted to our needs, as our bar is nearly all located in the smaller communities. This method brings the advantage of the legal institute to the lawyer in the small community. It would feature for discussion the subjects of the lawyer's everyday practice. We have many lawyers in this state with the experience and the ability to turn out the kind of lectures that would deal interestingly with the ordinary problems of the practicing lawyer; and would be conceived with the idea that not only does the younger lawyer need training in the procedural aspects of the law, but that the older ones who are a little rusty in these matters would be just as much benefited.

The central town in each judicial district would most likely be the best place for the meeting. At least one clinic in each for the first year. Many district associations in other states have as many as three of these meetings each year in the country districts.

These clinics would serve a double purpose. In the first place they would enable the bar to give a fuller and better service to the public, and they would also give our state association a stronger grip upon the membership through practical benefits conferred which cannot be attained in any other way.

LIBRARY FOR SALE

Harley S. Grover of Lisbon, N. D., administrator of the estate of the late C. O. Heckle of Lisbon, has his entire library for sale. Anyone desiring to purchase law books, reporter state, Northwestern, L R A or A L R, write him.

OUR SUPREME COURT HOLDS

In Albert Meyer, Pltf. and Respt., vs. The National Fire Insurance Company of Hartford, Conn., a corporation, Deft. and Applt.

That ostensible authority is such as the principal intentionally or by want of ordinary care causes or allows a third person to believe the agent possesses. Section 6338, Comp. Laws 1913.

That the record is examined, and it is held, for reasons stated in the opinion, that the evidence does not sustain a finding that the defendant's agent had ostensible authority to grant an extension of the time of payment of the note given by the plaintiff to the defendant and thus reinstate the plaintiff's policy of insurance, and so is insufficient to sustain a verdict for the plaintiff.

Appeal from the District Court of Grant County, Honorable H. L. Berry, Judge. Action to recover on a policy of fire insurance. From a judgment for the plaintiff, defendant appeals.

Reversed and judgment ordered for the defendant. Opinion by Nuessle, Ch. J.

In J. A. Thielen, Pltf. and Respt., vs. William Kostelecky, et al, as members of the City Commission of the City of Dickinson, Stark County, North Dakota, Defts. and Applts.

That the power to regulate a business implies authority to prescribe reasonable rules and regulations and conditions upon which such business may be conducted or permitted.

That the power "to regulate the retail sale of alcohol and alocholic beverages", which the Liquor Control Act. (Ch. 259, Laws 1937) confers upon the governing body of a City, vests authority in such governing body to prescribe reasonable rules concerning the premises where a retail liquor store is to be operated, and such body may refuse to issue a license where the premises described in the application for the license does not comply with, and falls below, the prescribed standard.

That the power "to regulate the retail sale of alcohol and alcoholic beverages", which the Liquor Control Act confers upon the governing body of a City, vests such governing body with power to fix, by ordinance, a reasonable limit on the number of retail liquor licenses to be issued, and thus limit the number of retail liquor stores that may be operated in the City at any one time.

Appeal from the District Court of Stark County, Hon. Harvey J. Miller, Judge.

Application by J. A. Thielen for a writ of mandamus to compel the City Commission of the City of Dickinson to issue a license to J. A. Thielen, for the retail sale of alcohol and alcoholic beverages. From a judgment directing the issuance of a peremptory writ, defendants appeal.

REVERSED. Opinion of the Court by Christianson, J.

In the County of Hettinger, a Municipal Corporation of North Dakota, Pltf. and Applt., vs. R. E. Trousdale and E. H. Trousdale, Defts. and Respts.

That in a case triable de novo in the Supreme Court under the provisions of Chapter 208, Session Laws N. D. 1933, a new trial in the court below will be ordered where the Supreme Court deems such course necessary in the accomplishment of justice.

That for reasons stated in the opinion, this case is remanded to the District Court for a new trial.

Appeal from the District Court of Hettinger County, Hon. Daniel B. Holt, Special Judge.

NEW TRIAL ORDERED. Opinion of the Court by Morris, J.

In Frank Royal, Pltf. and Resp., vs. Morris Aubol, individually and Morris Aubol, Elgin Peterson and August Meyers, as co-partners under the firm name and style of Sanish Implement Co., Defts. and Applts.

That where a statute is reasonably subject to two constructions, one of which will raise grave doubts as to its constitutional validity and the other of which will render it valid, the latter construction will be adopted.

That creditors and subsequent encumbrances in good faith, under the provisions of Section 6762, Compiled Laws of North Dakota, 1913, and Chapter 175, Laws of North Dakota, 1927, include only those persons who have extended credit or altered their position as to their debtor to their detriment subsequent to the three-year period provided by these statutes.

That an affidavit to renew a mortgage under the provisions of Chapter 175, Laws of North Dakota, 1927, is of no effect unless filed within ninety days next preceeding the expiration of three years from the filing of the mortgage or a previous valid renewal.

That in determining what property has been transferred by a bill of sale under a description by general classification, the intent of the parties controls, and such intent may be gathered by reference to the circumstances under which it was executed.

That for reasons stated in the opinion it is held: that plaintiff's bill of sale is a conveyance of the property which is sought to be recovered in this action and is valid as against the defendants' bill of sale to the same property.

Appeal from the District Court of Mountrail County, Hon. A. J. Gronna, Judge.

MODIFIED AND AFFIRMED. Opinion of the Court by Burke, J.

In the State of North Dakota, Pltf. and Respt., vs. Lee Dellage, Deft. and Applt.

That when defendant in a criminal action complains of a portion of the charge to the jury, he must file exceptions thereto within the time required by statute if he desires a review thereof, and unless exceptions are so filed he can not be heard upon appeal.

That upon a motion for a new trial, where complaint is made of the rulings of the trial court in the introduction of testimony, the specific rulings must be presented to the trial court for review; otherwise, they are deemed to be waived.

That recent, unexplained possession of stolen property is a circumstance from which the jury may infer that the one in possession is the thief, and where the record shows: recent possession of such property in the defendant, that the jury were charged that the possession must be personal, recent, unexplained, and must involve a conscious assertion of claim to the property, and that if the explanation raised a reasonable doubt in the minds of the jury the defendant was entitled to an acquittal; and the record shows further that the explanation of such possession as given by the defendant was not satisfactory to the jury, as shown by the verdict; the verdict of the jury is a finding of fact on such matter and is binding on this court.

That upon a complaint that the evidence does not sustain the verdict of the jury, the record is examined and it is found that the verdict is amply sustained by the record.

That a motion for a new trial on the ground of newly discovered evidence is addressed to the sound judicial discretion of the trial court, and the appelate court will not interfere unless manifest abuse of such discretion is shown.

Appeal from the District Court of Mountrail County, Hon. A. J. Gronna, Judge.

AFFIRMED. Opinion of the Court by Burr, J.