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Our Supreme Court Holds

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OUR SUPREME COURT HOLDS

In State of North Dakota, Pltf. and Applt., vs. T. H. McEnroe, Deft. and Respt.

That the State has only such right of appeal in a criminal action as is expressly conferred by law.

That an order made by the district court setting aside an information pursuant to section 10728-10730, C. L. 1913, is non-appealable.

Appeal from the District Court of Cass County, Hon. Daniel B. Holt, Judge. The State appeals from an order setting aside the information.

APPEAL DISMISSED. Opinion of the Court by Christianson, J.

In Gordon W. LaBree, Pltf. and Applt., vs. Dakota Tractor & Equipment Company, Deft. and Respt.

That judgment notwithstanding the verdict may not be ordered when there is evidence on the issues in dispute requiring a submission of the matter to the jury. It is only when there is no evidence to the contrary, so that the moving party is entitled to judgment as a matter of law, that a judgment notwithstanding the verdict may be ordered.

That when a motion for judgment notwithstanding the verdict is accompanied by a motion for a new trial and the trial court orders judgment notwithstanding the verdict without passing upon the motion for the new trial, and it is found that the court erred in ordering such judgment, the order granting the judgment will be set aside and the case remanded to the trial court for a determination of the motion for a new trial.

Appeal from the District Court of Cass County, Hon. Daniel B. Holt, J. REVERSED AND REMANDED. Opinion of the Court by Burr, J.

In Elizabeth H. Anderson and Laura Anderson, Pltfs. and Respts., vs. Northern & Dakota Trust Company, et al., Defts. and Applts.

That following Cohen v. Gordon Ferguson, 56 N. D. 545, 218 N. W. 209, it is held that section 8719, Compiled Laws of North Dakota, 1913, as amended by chapter 225, Laws of North Dakota, 1927, and chapter 149, Laws of North Dakota, 1929, applies only to policies of life insurance which, by the terms used in such policies to designate beneficiaries, are "made payable to the deceased, the personal representatives of the deceased, his heirs or estate."

Appeal from the District Court of Cass County, Hon. Daniel B. Holt, Judge. MODIFIED AND AFFIRMED. Opinion of the Court by Burke, J.

In State of North Dakota ex rel, Nelson A. Mason, Realtor, vs. Berta E. Baker, as State Auditor of the State of North Dakota, and John R. Omland, as State Treasurer of the State of North Dakota, Respts.

That under the North Dakota Constitution, the essential functions of government are divided among three departments, the legislative, executive and judicial, these grants are in their nature exclusive, and neither department, as such, can rightfully exercise any of the functions necessarily belonging to another, but this prohibition does not prevent the legislature from authorizing the Supreme Court to exercise such minor executive and ministerial functions as may be necessary or incidental to the performance of its judicial duties.

That Chapter 110 of the 1939 Session Laws, authorized and requires the Supreme Court to select and employ a Code Revision Commission to annotate the Constitution, to prepare, annotate and index a set of rules of practice and procedure for all courts of the state and to revise, annotate and index the laws of the state. Held, that the duties imposed upon the Supreme Court are of a judicial nature and are not prohibited by section 96 of the State Constitution. Held, further, that the selection and employment by the Supreme Court of members to serve on such Code Commission do not constitute such

an appointment as is prohibited by said section 96 of the Constitution. Such commissioners, after qualifying, become agents or officers of the court. (Per Miller and Gronna, JJ.)

That the Recodification Act provides that the proposed code shall become effective when enacted by the legislature and that the rules for admission to and disbarment from the practice of law shall become effective when promulgated by the Supreme Court. Held, that reservation of the power of enactment in the legislature indicates an intention on its part to impose upon the Supreme Court judicial duties only. (Per Miller and Gronna, JJ.)

That every reasonable presumption is in favor of the constitutionality of a statute by the legislature. This presumption is conclusive unless it is clearly shown that the enactment is prohibited by the Constitution of the State or of the United States.

That Section 9 of Chapter 110, of the 1939 Session Laws, also imposes upon the Code Commission the duty to determine upon the style of printing and binding to be used in the code and to advertise for bids for printing and binding thereof, when adopted by the legislature. Held, that when the Code Commission, as officers of the court. has submitted its report and proposed code to the legislature for adoption, it has performed all the duties of a judicial nature imposed upon it under such act, which it may legally do. (Per Miller and Gronna, JJ.)

That inasmuch as two of the judges of the Supreme Court are of the opinion that that portion of the act not embraced in section 9 thereof does not violate any provision of the State Constitution, it cannot be said that the act is unconstitutional as violative of the State Constitution in view of section 89 of the Constitution, as amended (Laws 1919, Article 25, p. 503); which provides that in no case shall any legislative enactment or law of the State of North Dakota be declared unconstitutional unless at least four of the judges of the Supreme Court so decide.

Original proceedings in the Supreme Court by the state on the relation of Nelson A. Mason for the issuance of a writ of injunction to restrain defendants from expending any part of the appropriation provided for in chapter 110 of the 1939 Session Laws.

WRIT GRANTED IN PART.

In Mark F. Williams, Pltf., vs. Hon. Wm. H. Hutchinson as District Judge in and for the County of Emmons, State of North Dakota, Deft. and Respt.

That in settling a statement of the case to be used on appeal to this court the trial court may not impose any conditions as prerequisite to the settlement of the statement, except such as are required by the provisions of section 7655 of the Compiled Laws.

APPLICATION FOR WRIT OF MANDAMUS. WRIT GRANTED.
Opinion of the Court by Burr, J.

In Edith M. Keefe, Pltf. and Applt., vs. Michael Fitzgerald, as Administrator of the Estate of John J. Fitzgerald, et al., Defts. and Respdts.

That a deed is of no effect unless it is delivered.

That delivery of a deed may be accomplished by words, or acts, or both combined.

That if a deed has once been delivered its return to the grantor for some specific purpose such as for safe keeping, does not destroy the effect of delivery.

That if the grantor makes a manual delivery to the grantee of a deed absolute in form, intending to part with all authority and dominion over the insrument, the delivery is absolute and title passes immediately in accordance with the terms of the deed notwithstanding any intention or understanding that its operation be delayed until the happening of a contingency.

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

In Oscar E. Erickson, Commissioner of Insurance in and for the State of North Dakota, Petr. and Respt., vs. A. E. Thompson, Superintendent of Public Instruction et al., Defts. and Appls.

That Chapters 29, 209 and 41, Session Laws N. D. 1939, construed, and, for reasons stated in the opinion, it is held: that the appropriations made by chapters 29 and 209 take precedence over the appropriation made by chapter 41; and that by specific legislative declaration no money is available in the State Equalization Fund for the payment of the appropriation made by chapter 41 to the Hail Insurance Fund until the appropriations for various school purposes, as provided for in chapters 29 and 209, have been paid in full.

Appeal from the District Court of Burleigh County, Hon. R. G. McFarland, Judge. REVERSED. Opinion of the Court by Morris, J.

In Robert E. Lee, Pltf. and Applt., vs. John Shide, Deft. and Applt.

That a question, presented on appeal from a judgment denying an injunction, held not moot because of expiration of time within which the remedy of injunction might be granted, where the judgment also determines rights over which an actual controversy still exists.

That a purchaser under a contract for sale of real estate is not entitled to possession until full performance unless the contract so provides.

That where a purchaser under a contract for sale of real estate, who is not entitled to possession, leases the property and later rescinds his contract to purchase, the lease is void as to subsequent purchasers of the real estate.

AFFIRMED. Appeal from the District Court of Grand Forks County, Hon. M. J. Englert, Judge. Opinion of the Court by Burke, J.

In Philip Matt, Pltf. and Respt., vs. Truman Nomland, et al, Defts., and Andrew Nomland et al doing business as Nomland Motor Company, Defts. and Applts.

That where at the close of the plaintiff's case the trial court grants a motion to dismiss over the objection of the plaintiff, such dismissal is equivalent to an involuntary non-suit, and if erroneous may be made the basis of a motion for a new trial.

That error cannot be predicated on the refusal of the trial court to permit a witness to volunteer irresponsive testimony, even though an objection is not made upon the ground of irresponsiveness.

That proposed newly discovered evidence examined and is held not to present a sufficient showing to warrant the granting of a new trial.

Syllabus by the Court. Appeal from the District Court of Grand Forks County, Hon. M. J. Englert, Judge. REVERSED. Opinion of the Court by Morris, J.

In Ward County, a Municipal Corporation, Pltf., vs. Bertel Jacobsen, E. A. Donnelly, H. J. July, E. G. Pierson and L. W. Toftner as Members of the Board of County Commissioners of Ward Cunty, et al., Defts.

That the authority of a judge of the District Court to appoint an attorney to institute a civil action in behalf of the county in lieu of the state's attorney emanates solely from the provisions of section 3376, Compiled Laws N. D. 1913, and is limited to the provisions of the statute.

That the District Court is not empowered under the provisions of section 3376, Compiled Laws N. D., 1913, to appoint an attorney to bring an action for a declaratory judgment in behalf of a county and the court has no jurisdiction to make such an appointment.

Certified question of law from District Court of Ward County, Hon. G. Grimson, Special Judge.

Opinion of the Court by Morris, J.