



1937

## Our Supreme Court Holds

North Dakota State Bar Association

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## FIRST MOTION

It was moved by Kvello, that we recommend to the Executive Committee of the State Bar Association, that, prior to the State meeting at Devils Lake, it appoint a Committee to prepare a Bill for Revision of the Laws of the State of North Dakota, along the general lines of the Bill lately passed by the South Dakota Legislature; that this Bill provide that the Committee on Revision shall be appointed by the Supreme Court and that the Supreme Court shall have complete supervision of said committee until the completion of its work.

(Motion seconded by Remington and carried).

## SECOND MOTION

It was moved by Kvello that the committee to be appointed either by the Executive Committee or the State Bar Association prepare the Bill in complete detail and submit it to the lawyers of the State not later than November 1st, 1938, and thereafter to make arrangements to have the same introduced into the Legislature on the first day for the receipt of Bills.

(Motion seconded by Judge McKenna and carried).

## OUR SUPREME COURT HOLDS

State of North Dakota, Resp't., vs. Ross Johnson, App't.,

That when appellant complains of portions of the charge he must file exceptions thereto in the office of the Clerk of the District Court within the time required by statute, if he desires a review thereof and unless exceptions are so filed he cannot be heard upon appeal. *State v. Shoars*, 59 N. D. 67, 228 N. W. 413, followed:

That the record is examined and it is held; the evidence is sufficient to sustain the conviction of the defendant.

Appeal from the District Court of Stutsman County, Hon. Fred Jansonius, Judge. Affirmed.

Northern States Power Company, a Minnesota Corporation, Appl't, vs. The Board of Railroad Commissioners of the State of North Dakota, et al, Resp.

That under the provisions of Chapter 192 of the Session Laws of 1919, being Sections 4609c1 to 4609c56 of the supplement, inclusive, no appeal from an order of the board of railroad commissioners can be taken directly to this court.

That where the statute does not confer upon this court jurisdiction to entertain an appeal direct from an order of the board of railroad commissioners the consent of litigants cannot confer such jurisdiction.

That whether, in view of the provisions of Section 86 of the constitution, which provides "the supreme court, except as otherwise provided in this constitution, shall have appellate jurisdiction only, \* \* \*" the legislature of this state may provide for direct appeal to this court from an order of the board of railroad commissioners is not determined. APPEAL FROM the decision and order of the state board of railroad commissioners. APPEAL DISMISSED.

Maurice Peterson, Pltf. and Respt., vs. Otto Wolff, Def. and Appelt.

That in a case tried to the court without a jury, where the statement of the case and specifications of error are sufficient to justify a trial de novo on appeal to the supreme court, it is unnecessary to move for a new trial in the court below in order to secure a review of the sufficiency of the evidence.

That foreclosure of a chattel mortgage by action must be commenced within a reasonable time after the mortgagee takes possession of the property under the terms of the mortgage. A mortgagee who delays foreclosure an unreasonable time after taking possession and in the meantime treats such property as his own, converts the property.

That proof of demand and refusal is merely evidence of conversion, and if conversion has actually taken place, it may be otherwise shown.

That conversion by a person holding a chattel mortgage of a substantial part of the mortgaged property extinguishes the lien upon the property converted.

That where a mortgagor sets up as a defense to an action to foreclose a chattel mortgage that all of the mortgaged property has been converted by the mortgagee, and it appears from evidence introduced at the trial that part of the mortgaged property was destroyed without the fault of either party, part of it is unaccounted for, and a substantial part has been converted by the mortgagee, the mortgagee is entitled to a judgment for the amount of the debt and a decree for foreclosure on the property unaccounted for.

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

The Bismarck Hospital and Deaconesses Home, Pltf. and Resp. vs. Gordon T. Harris, Def. and Applt.

That under Section 4431 of the Compiled Laws of North Dakota, where a parent or child is in necessitous circumstances, and by reason of indigence is unable to provide for himself, it is the duty of the other to furnish relief according to his ability.

That under Section 4431, Compiled Laws of North Dakota, a parent or child is liable for actual necessities furnished to the other, when the person to whom the necessities are furnished is indigent and unable to care for himself, and the other has the ability to so do.

That for reasons stated in the opinion, it is held that Section 4431 is not a part of the Poor Laws of the state but was intended to create a legal obligation as between parent and child.

APPEAL from the District Court of Burleigh County, Hon. Fred Jansonius, Judge, Affirmed. Morris, J. dissenting.

Don't forget that the Annual Meeting will be held at Devils Lake, N. D., on July 15th and 16th, 1938.