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Our Supreme Court Holds

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tended or not, certainly the constitution, by this clause, was proclaimed as law, and by force of logic this power was given — to declare of no effect an act of Congress contrary to the law of the land.

The delegates at Philadelphia knew this would be the effect of that declaration because state constitutions previously were regarded as law by their courts, and just at the time of their assembly in convention at Philadelphia, the superior court of North Carolina distinctly asserted that the legislature could not by passing any act "Repeal or alter the constitution, because if they could do this, they would at the same instant of time, destroy their own existence as a legislature, and dissolve the government thereby established."

There lies the answer aligned with the force of logic, they knew, and they did intend the Constitution to be indeed the "Supreme Law of the Land."

Nothing new, no novel or unfamiliar machinery was needed to put it in effect — no new and strange principle; just the familiar courts acting as courts have always acted in the distribution of justice to litigants, were to declare the law, and decide cases according to the well known principles of English and American jurisprudence; they were simply expected in all controversies to apply, when need be, **the Constitution as the supreme law of the land.**

OUR SUPREME COURT HOLDS

In Elsie Peterson, vs. R. H. Points and Emma Cudhie,

That in reviewing proceedings in the District Court upon a writ of certiorari, the Supreme Court will consider only those matters and objections presented to the court below.

That the District Court having acquired jurisdiction of a proceeding involving the extension of a period of redemption under Chapter 161, Session Laws of North Dakota for 1937, did not lose jurisdiction by continuing the hearing to a date more than twenty days from the service of the order to show cause.

That in a review upon certiorari, of proceedings in the District Court had pursuant to Chapter 161, Session Laws of North Dakota for 1937, the Supreme Court will determine whether there is any substantial competent evidence to sustain the findings of the trial court.

In William Froemke, vs. Otter Tail Power Company, a Corporation.

That when there is conflicting evidence on an issue vital to the case, the trial court must submit the question to the jury for its determination, and therefore commits no error in denying a motion to dismiss the action, or a motion for directed verdict, or a motion for judgment notwithstanding the verdict.

That evidence examined and it is determined the trial court did not abuse its discretion in denying a motion for a new trial.

In Theo. B. Torkelson, vs. M. S. Byrne, In an Election Contest.

That ballots which have not been endorsed as required by Section 985, Compiled Laws 1913, are void whether they be absent voters ballots or regular ballots.

That ballots which are not endorsed by the official stamp and initials until after they have been deposited in the ballot box are void.

That a United States postmaster is not an officer authorized to administer the oath to an absent voter within the meaning of Sections 998, Compiled Laws 1913 and 833, Compiled Laws 1913, as amended by Chapter 183, Session Laws of 1929; and if it appears from the jurat that such oath was administered by a postmaster the ballot of such absent voter must be rejected as defective and void. Section 1001, Compiled Laws 1913.

That on a trial de novo the findings of the trial judge who saw and heard the witnesses are entitled to appreciable weight.

That the burden of proof is on the contestant to prove the grounds of his contest.

That a qualified elector cannot be compelled to disclose for whom he voted. However, this privilege of secrecy is entirely a personal one and a voter himself may waive his privilege and testify for whom he voted.

That even though the district court erroneously denies a qualified elector's claim of privilege and thereafter the elector testifies that he voted for one of the parties to the contest, such evidence is not to be excluded from the contest inasmuch as the privilege is purely personal to the elector and neither party to the contest has the right to exclude such evidence.

That the testimony of a voter that his ballot was not endorsed is not rendered inadmissible by the statute (Section 1042, Compiled Laws 1913) prohibiting a voter from identifying his ballot.

That while the original ballots are the best evidence when their identity has been established, if such identity cannot be established the ballots lose their character as primary evidence and then secondary evidence is admissible. In such a case the testimony of the voter is admissible as to, (1) whether or not his ballot was endorsed and, (2) if not, for whom he cast such void ballot.

That a motion to reopen a case for the purpose of cross examining a witness for impeachment purposes is addressed to the sound judicial discretion of the trial court and that court's ruling thereon will not be disturbed in the absence of a manifest abuse of such discretion.

That an objection that the cross examination of a witness exceeded its proper scope cannot be raised for the first time on appeal.

That an election will not be set aside because of irregularity on the part of the precinct inspector, unless it appears that such irregularity affected the result.