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North Dakota Decisions

North Dakota Law Review Associate Editors

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THE RECOVERY PROGRAM

We use, as editorial expression this month, the language of Dean Clark of the Yale Law School. It is the closing paragraph to a very fine statement by Dean Clark in the May issue of the American Bar Association Journal. In that same issue will be found three other articles dealing with the legal aspects underlying the national recovery legislation, expressing various points of view. The other articles are by Hal H. Smith, general counsel of the Michigan Manufacturers Association, David L. Podell, co-author of the National Recovery Act, and Frederick H. Wood, member of the New York Bar.

Dean Clark, after leaving the impression that he may not be in sympathy with such legislation, from the standpoint of its desirability, takes the ground that questions of constitutional validity should not be clouded by one's personal inclinations. We agree, not only on that point, but with the whole attitude of the Dean's article. It expresses, in more forceful, logical and finely reasoned order, what we have endeavored to express on several occasions when writing of the recovery legislation for these columns.

NORTH DAKOTA DECISIONS

Burrows vs. Paulson: (Mortgages, Deficiency, Remedy). In 1933 plaintiff agreed to sell and convey a quarter of land to defendant for \$4,000. \$500 was paid in cash, the remainder being evidenced by promissory notes, secured by mortgage on the conveyed premises. A clause in the mortgage made the mortgagor personally liable to the mortgagee and his assigns for the debt, a clause specifying same to be enforceable "by all remedies of law applicable to the collection of debt without respect to the sufficiency of the mortgage security to pay and discharge" the debt. The parties being in doubt as to the meaning and effect of N. D. mortgage laws, then on the books or to be enacted, added this further provision: that, in case the mortgagor could not be held personally liable, or held for the deficiency, the contract might be cancelled. With the passage of Chapter 155, 1933 Laws, which states, "and the court shall have no power to render a deficiency judgment . . . Nothing herein shall be construed to postpone or affect any remedy the creditor may have against any party personally liable for the mortgage debt other than the mortgagors and their grantees," plaintiff construed this to exempt the mortgagor from personal liability, gave notice of cancellation, tendered back the purchase money, and refused to accept the note and mortgage. HELD: This (Chapter 155) is a procedural statute; its whole effect is to relegate a mortgagee foreclosing to an action at law to recover any deficiency after sale; a mortgage is merely a lien; Chapter 155 refers only to the foreclosure proceedings; it does not affect the mortgagor's personal liability, nor the remedies of the mortgagee for any deficiency.

Baird, as Receiver, vs. Herr: (Notes, Extension, Waiver, Statute of Limitations). Defendant and one C. G. H. made a promissory note to the Bank in 1923, in sum of \$1,500. The note stated, "The several makers, signers, guarantors, and endorsers hereof hereby waive presentment, demand, notice of dishonor and protest, and consent that the time of payment may be extended or this note renewed without affecting their liability thereon." Defendant made no payments, but C. G. H. did, such payments continuing until some time in 1927. Thereafter C. G. H. died, and his administrators gave a new note for the balance due,

amounting to \$400. The original note was retained by the Bank, marked "collateral." The new note was given in 1929. Defendant invoked the statute of limitations. HELD: Payment by one of two or more joint makers does not of itself suspend the running of the statute of limitations. This was an agreement between the payee and the makers, and between the makers, that the note could be renewed without notice to the other maker. There was no agreement that extraneous parties (administrators) could extend the time of payment or renew. An accommodation maker is a co-maker, liable as principal, and mere extensions of time of payment do not release him. The extension of time, however, does not carry the note past the period of the statute of limitations. Defendant not having signed any extension agreement, or renewed the note, directly or through his co-maker, the defense of the statute of limitations is good.

"STOP, LOOK AND LISTEN" MODIFIED

Pokora vs. Wabash Ry. Co., 54 *Sup. Ct. Rep.* 580 (U. S.), apparently, is a modification of the "stop, look and listen" doctrine as related to accidents at railroad crossings. Proceeding over a street grade crossing, where defendant had four tracks, plaintiff looked and listened for approaching trains, but did not get out of his truck cab. His view being obstructed by a string of box cars, he did not see an approaching train. Justice Cardozo, writing the opinion, said: "It was his (plaintiff's) duty to look along the track from his seat, if looking would avail to warn him of the danger. This does not mean, however, that if vision was cut off by obstacles, there was negligence in going on, any more than there would have been in trusting to his ears if vision had been cut off by the darkness of the night. . . A jury, but not the court, might say that with faculties thus limited he should have found some other means of assuring himself of safety before venturing to cross. . . In default of the guide of customary conduct, what is suitable may not wisely or fairly be subjected to tests or regulations that are fitting for the common-place or normal. In default of the guide of customary conduct, what is suitable for the traveler caught in a mesh where the ordinary safeguards fail him is for the judgment of a jury. . . The opinion in *Goodman's case* (*B. & O. vs. Goodman*, 275 U. S. 66), has been a source of confusion in the federal courts to the extent that it imposes a standard for application by the judge, and has had only wavering support in the courts of the state. We limit it accordingly."

BELIEVE IT OR NOT

In this, our fourth year of Depression, America's inventory discloses 76,000,000 life insurance policies and savings accounts, totaling \$92,000,000,000, one-third of the railway mileage of the world, 73% of the automobiles, 58% of the telephones, 32% of the coal produced, 62% of the petroleum pumped, 35% of the copper mined, 34% of the pig iron and 37% of the steel produced, 52% of the world's corn and 62% of its cotton, more public schools per population, more institutions of higher learning, more libraries, more hospitals, more free clinics, more asylums, more institutions for the defective, more newspapers, more periodicals, more books, more and better music, more theatres, more movies, more radios, more electric appliances, more homes, more things to make life livable than any other corner of the globe, and yet more heated minds to make us lose faith in ourselves and our institu-