North Dakota Law Review

Volume 7 | Number 4 Article 4

1930

Actions in Tort - Assignability - Subrogation

North Dakota Law Review

"This quotation might well serve as a text for a long sermon. President Kvello is one of the bar leaders whose opinions and expressions indicate that the profession is entering upon a new era. Too long lawyers have all but gloated over alleged unpopularity of their profession. They have felt so strongly entrenched in the governmental and economic situation that they could afford to ignore criticism. Perhaps it would be more true to say that they have not possessed the organic unity that would permit of affirmative replies to criticism. But as soon as some measure of unity and power is acquired the sense of responsibility awakens. The disposition then is not to waive aside popular disapproval, not to attempt to disprove it, but to face it squarely and make plans for removing the causes for criticism and distrust. In other words, constructive ideals and programs come to the fore.

"There is surely no more wholesome attitude than that of having a bar program and of seeking publicity for it. The dealer in honest goods has no better ally than publicity. Experience has already shown conclusively that the public is quick to appreciate a will on the part of a strong bar to take its part in the great work of government. In the field of administering justice the bar can take the lead and achieve universal approval. It is virtually without competition in its own field. The public will be prompt to recognize a constructive attitude and will ungrudgingly enlarge the public powers of the profession of law when they are consecrated to the welfare of the state."

ACTIONS IN TORT—ASSIGNABILITY—SUBROGATION

We have noted the rather interesting discussion of the subject of assignability of actions in tort by Student-editor Carroll E. Day in the February issue of the Dakota Law Review, as related to the case of *Grabow vs. Bergeth*, 229 *N. W.* 282 (*N. D.*)

The decision, the author points out, is clearly contra that of the South Dakota case of *Sherman vs. Harris*, 153 *N. W.* 925. To some it may seem that it is also contra *Tandsetter vs. Oscarson*, 217 *N. W.* 660 (*N. D.*).

The Tandsetter case, however, dealt with the right of subrogation in case of liability of a third party for an injury sustained by a workman in the course of his employment. Yet, it might be argued, that, even without the statutory provision, it is not certain that the Bureau would not be subrogated to claimant's rights after paying for his injury (37*Cyc*, 394, *B*80); and, if so, what difference would there be between the Bureau's situation and that of one who had received an assignment of the right of action? Is the right to subrogation the same in both instances?

In one case, Grabow's right to be subrogated depended upon the specific assignment, for which he must have given a valid consideration. In the other, the Bureau's right to subrogation depended upon the operation of a rule of law, either statutory or common.

Whether one agrees with the reasoning which prevented Tandsetter from prosecuting his claim against Oscarson, is immaterial. The point is, that in both cases (Grabow and Tandsetter) there was "a thing in action, arising out of an obligation," which was transferred

from the original holder or owner of the "thing in action"—in the Grabow case by a contract entered into between the parties through the meeting of their own minds, in the Tandsetter case by a contract made for the parties by the legislature.

In the latter case the transfer of the "thing in action, arising out of an obligation" is sustained by the Court, in the former it is not. Is our Court's solution correct in both cases, in only one, or in neither? We offer the question to some volunteer lawyer or student for analytical discussion.

EMERGENCY MEASURES

Through the courtesy of Chas. Liessman, of the Secretary of State's office, we are enabled to list the emergency measures passed by the 1931 Legislative Assembly, as follows:

H. B. No. 6—Transfer by Emergency Commission from one fund to another. Approved 1-31-31.

H. B. No. 79—Construction Capitol Building Approved 2-23-31.

H. B. No. 145—Legalization and validation real estate mortgage foreclosure sales made prior to the taking effect of this act where the power of attorney to foreclosure was executed and filed prior to the sale, but was not executed prior to the beginning of foreclosure proceedings. Approved 3-2-31.

S. B. No. 4—Establishment of Standard Time for North Dakota. Approved 1-31-31.

S. B. No. 28—Taking, Trapping, Killing of Beaver. Approved 2-9-31.

S. B. No. 31—Premium and Contingent Liability domestic mutual Insurance companies. Approved 3-2-31.

S. B. No. 84—Appropriation Maintenance temporary quarters legislative Assembly. Approved 2-9-31.

S. B. No. 91—Tax levy limitations cities, villages & school district. Approved 2-24-31.

S. B. No. 71—Legalization Deeds, Judgments, Decrees. Approved 3-6-31.

S. B. No. 72—Limitation Action Foreclosure Real Estate Mortgages. Approved 3-6-31.

S. B. No. 103—Right of way Telephone, Electric Light, Gas and Oil Pipe Line Systems. Approved 3-6-31.

S. B. No. 71—An act to legalize certain deeds, judgments, decrees, mortgage foreclosures and other transfers of real property.

S. B. No. 72—An act to limit the time in which action may be commenced or defense interposed involving certain actions or proceedings for the foreclosure of real estate mortgages.

MINOT DISTRICT MEETING

C. E. Brace, Secretary of the Northwestern District Association, reports a very fine meeting at Minot, February 10th. While the afternoon meeting was not as well attended as it should have been, in