North Dakota Law Review

Volume 6 | Number 5 Article 3

1929

Review of North Dakota Decisions

A E. Angus

District Committee at Minot is committed to a program of selling the Association to its membership, not only through public meetings, but through the Press, and also to sell the Association to the public by the same methods.

When we ask ourselves the question, "What can I do for the Association?", and, in answer to the question, give to the Association our best thought and service, we will then be discharging a large part of our responsibility. Our voice will then be something more than a cry in the wilderness. It will be as the voice of authority. There will be no reason or necessity, then, for asking the question, "What is the Association doing for me?", because it will have been answered in constructive benefits to the lawyers of the State and to the public whom we serve.—A. M. KVELLO, President.

REVIEW OF NORTH DAKOTA DECISIONS

A. E. ANGUS

Smith vs. Langmaack: Action on a joint and several promissory note made by defendants to plaintiff. The promissory note was executed after adjudication in bankruptcy, and before discharge, in recognition of an indebtedness listed in the bankruptcy proceedings. Bankrupt's wife signed the note, which was given to the creditor on his promise not to make any further opposition to a discharge in bankruptcy and not to take for collection any claim against the bankrupt. From a judgment for defendant bankrupt in the trial court, plaintiff appeals. HELD: Reversed. A promise to pay a pre-existing debt made by a bankrupt, after his adjudication as such but before his discharge, will not be impaired by a subsequent discharge. The moral obligation is sufficient to support a new promise to pay the debt.

Schulkey vs. Brown: Action for personal injury as the result of a collision between horse and auto, in which facts showed that plaintiff was driving a horse without a bridle, that the horse became frightened a considerable time before defendant's automobile passed it, and got in the center of the road, that the defendant did not apply the brakes. HELD: Affirmed. An instruction to the effect that if the jury find that a signal to stop was given and the driver of the auto saw the signal and it appeared that the horse was unmanageable and running away then it was the duty of the driver of the car to prevent collision between horse and auto, is not error. Questions of negligence and contributory negligence are for the jury, and verdict thereon is conclusive.

Baird vs. Eidsvig: A bank was closed and plaintiff took charge as receiver. On his petition an assessment was levied by court order for full amount of added statutory liability on capital stock. Later the directors made application for reopening to Guaranty Fund Commission, which was granted on condition that they put the bank in a solvent condition. The bank then operated for three years and was again closed, the court levying another assessment on the same stockholders. The stockholders refused to pay the second assessment and this action is for its recovery. HELD: Payment of assessment by stockholders for the purpose of liquidating their bank ends the stockholders' liability. Here, however, the payment of the first assessment was not for liquidation of the bank but to enable it to re-open, therefore, such payment did not discharge the double liability.

Merchants Bank vs. Schatz: Defendant was cashier of plaintiff bank. M., defendant's father-in-law, deposited $1500 in plaintiff bank to the defendant's credit, for the specific purpose of enabling defendant to build a house. Defendant gave M. a note secured by mortgage on the house, which mortgage was recorded. The bank closed in 1926. Previous to the bank's closing defendant had used the money so deposited for other purposes, and used the bank's money to build his house. After the bank closed defendant sold the house to one I., who was a bona fide purchaser. The plaintiff bank re-opened and then started action to impress a trust on the property and alleging it superior to the claim of I. HELD: M. was a bona fide holder of a mortgage for value and has first lien on the property. The bank is liable to him for misappropriation of money deposited for a specific purpose. The bank is entitled to impress a trust on the property, but must take it subject to M's mortgage to the extent for which it is responsible for misappropriation of funds.

Ottertail Power vs. Clark: Plaintiff and defendant entered into a written agreement whereby defendant gave plaintiff an option to purchase the electric distribution system in city of A. Plaintiff exercised the option, paid the purchase price, and defendant executed and delivered a bill of sale, warranting present right to sell and quiet enjoyment of the property. Sale was made without defendant's obtaining permission from the Board of Railroad Commissioners in accordance with Public Utilities Act. Upon defendant's subsequent refusal to make such application, plaintiff instituted the action to compel defendant to perform his contract, plaintiff now operating the property. HELD: Lower court is correct in granting injunctive relief against the defendant, but specific performance will not lie. The primary duty to apply to the Railroad Commission for an order authorizing a proposed sale is on the vendor, but after contract for sale has been entered into, the vendee is vested with sufficient interest to make such application.

HOW CAN WE GET BETTER JURIES THAN WE DO?

Many fine addresses have been delivered, and fine articles written, by able jurists on the subject of jury trials, and many substantial changes have been made in some of our states; but all, or most all of them, have been along the line of reducing the size of the trial jury, fixing it so that unanimity is not necessary to the finding of a verdict, and the doing away with the jury in certain classes of cases. I am limiting my remarks to one simple phase of the case: how can we get better persons on the juries?

The need of the changes which I feel should be made should first be shown, and I know of no better way of showing it than by citing some cases. In an action brought for malpractice a juror of the kind who has his opinion and can't be changed, held out for a long time for a verdict in favor of the plaintiff, giving as his only reason that he had the doctor once and was pretty sure "he give me that wrong mediseen."

A few terms after the same juror, in a case involving many thousands of dollars, got on the jury because it was impossible to keep him off. The evidence was such that the Court directed a verdict for the defendant, who appeared to be unpopular because he was a rich and successful banker. The Supreme Court afterwards sustained the ruling of the trial court. At the end of that case, this same juror and two other members of the jury met the defendant's attorneys, abused them,