North Dakota Law Review

Volume 5 | Number 2 Article 5

1928

Presumptions

North Dakota Law Review

appeal papers. The city may now proceed with its improvements without any of the embarrassment and without any of the delay which would have been encountered if the remedy of declaration of right had not been available."

It has seemed to us, during the past two years, that the remedy could and should have been resorted to in order to obtain judicial construction of the meaning of the term "loss" as contained in the 1927 amendment of the compensation law, to avoid the delay which has occurred in payments to claimants whose permanent injuries have resulted in stiffness of joints instead of severance, and to avoid numerous separate appeals.

PRESUMPTIONS

How frequently one reads the following in the opinion of a court of last resort: "The findings of the trial court are presumed to be correct," or "There is some evidence to support the judgment of the trial court, hence it must be affirmed."

Undoubtedly a long line of decisions support the position taken. Even where the reviewing court might have arrived at a different result if originally tried before it, yet if there is not a clear preponderance of the evidence against the findings, the judgment will not be disturbed. The reason for such a rule is set out in *Ott vs. Boring,* 121 *N. W.* 126, as follows: "It is recognized that there are many things which cannot be spread upon the printed record, but may properly be considered by a trial court and are of great, and often controlling, significance in determining the truth as between conflicts from the mouths of witnesses. As experience shows, and from the very nature of things, justice is much more likely to be done by leaning pretty strongly upon the initial determination than by endeavoring to treat a disputed matter from an original standpoint. Hence the rule that there must not only be a preponderance of evidence against such determination, but there must be a clear preponderance. The significance of the word 'clear' is not always fully appreciated. Manifestly, that requires the preponderance to be so apparent as to manifestly outweigh any probable legitimate influence upon the triers of those advantages for discovering the truth which the reviewing tribunal cannot have."

Yet, judging by what we occasionally hear, the thing that seems to impress lawyers as well as laymen is the alleged fact that, in the everyday consideration of questions by human beings acting in the capacity of trial judges, final judgments occasionally may be entered upon the basis of a bad breakfast, or an uncanny ability to determine political ground tremors, as well as upon fair and equitable application and consideration of fundamental legal principles as related to evidentiary facts; and as these things can no more appear in the record than some other matters, they come away from the court of last resort with a feeling that the real issues involved in their particular case are virtually left unsolved, and the fact that "justice is more likely to be done by leaning pretty strongly upon the initial determination than by endeavoring to treat a disputed matter from an original standpoint" makes little or no appeal to them. It is easy enough to make a broad application of law and legal principles, so long as they affect the other lawyer or the other lawyer's clients, but it isn't so easy to make the application or to acknowledge its correctness when our own interests or those of our clients are adversely affected.