



1928

Recent Supreme Court Decisions

North Dakota Law Review

Follow this and additional works at: <https://commons.und.edu/ndlr>

[How does access to this work benefit you? Let us know!](#)

Recommended Citation

North Dakota Law Review (1928) "Recent Supreme Court Decisions," *North Dakota Law Review*: Vol. 5: No. 9, Article 6.

Available at: <https://commons.und.edu/ndlr/vol5/iss9/6>

This Decision is brought to you for free and open access by the School of Law at UND Scholarly Commons. It has been accepted for inclusion in North Dakota Law Review by an authorized editor of UND Scholarly Commons. For more information, please contact und.common@library.und.edu.

the road, figured the cost of reproduction as of 1914, plus subsequent investments, with proper deductions for depreciation. The railroad, on the other hand, claimed that the valuation should be based on the present prices and cost of replacement. In other words, the Commission adhered to the so-called "prudent investment" theory of valuation; while the railroad contended for a valuation based upon the reproduction cost principle. The lower court refused to interfere with the findings of the Commission; but the Supreme Court reversed the case and held that the Commission, in ascertaining the value of the railroad property, had not given proper consideration to the present cost of construction or reproduction.

While rates were not directly involved in the O'Fallon case, yet that decision becomes a precedent not only for railroad valuation but for railroad rates. What effect will that decision have on public utility valuation and taxation? Will it become a material factor in determining utility rates? When we consider the fact that nearly \$25,000,000,000 are now invested in public utilities of the United States, the importance of the O'Fallon decision becomes at once apparent.

There is another important question in this connection that might profitably be discussed by the attorneys of the Association, and that is the matter of taxation of public utilities. But the subject of taxation is a very complicated and difficult problem. It requires months of study and solution. So we shall not in this report even express our views in regard to it.

In conclusion, this committee, so far as the chairman is individually concerned, has no recommendations to make to the Bar Association.

N. J. BOTHNE, Chairman.

RECENT SUPREME COURT DECISIONS

State of N. Dak. v. Schock: Defendant was charged with violating Section 9971a1-a3 of the Supplement, which reads:

Sec. 1. Every person, firm, company, copartnership or corporation who makes or draws or utters or delivers to any person any check or draft upon a bank, banker or depository for the payment of money, and at the time of such making, drawing, uttering or delivery, has not sufficient funds in or credit with such bank, banker or depository to meet such check or draft in full upon its presentation, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not to exceed \$100 or by imprisonment in the county jail for not to exceed 30 days, or by both such fine and imprisonment.

Sec. 2. The word "credit" as used herein shall be construed to be an arrangement or understanding with the bank, banker or depository for the payment of such check or draft.

Sec. 3. Whereas, an emergency exists in the fact that There is no adequate provision under the laws of North Dakota for protection against those who issue checks without having funds or without having a reasonable expectation of having funds in the bank when the checks shall be presented for payment, this act shall take effect and be in force from and after its passage and approval. (Chap. 52, Laws 1915.)

Defense of defendant was that at the time he delivered the check he told the payee that he had no money in the bank, but would put it

there after threshing, and defendant agreed to hold it. Court instructed the jury that this did not constitute a defense, that the crime was complete upon delivery of the check without funds, that defendant had failed to establish any defense and to return a verdict of guilty. From such verdict and order denying a new trial, defendant appeals.

HELD: Reversed. 1. Where defendant in criminal action has interposed plea of not guilty, this puts in issue every essential element of offense charged. Trial court has no authority to advise jury to return verdict of guilty, and such an instruction is prejudicial error. 2. Person who makes and delivers check does not violate statute cited above (a) If he has sufficient funds in the bank upon its presentation, or; (b) If he has an arrangement or understanding with the bank that the check will be paid, or; (c) If he has reasonable expectations of having funds in the bank when check shall be presented for payment.

Hoover Grain Co. v. State Tax Commissioner: Plaintiff corporation filed an income tax return, a tax was assessed on that basis, and paid. Later plaintiff corporation made a complaint that it was not subject to any tax notwithstanding its return. At the request of tax commissioner that proof be submitted, plaintiff filed an affidavit in support of its claim. In November, the tax commissioner notified plaintiff company that the final decision was that he was without power to compromise the tax. In February, plaintiff made written application for refund, with formal request to fix dates for hearing in accord with provisions of Sec. 2346a37, 1925 Supplement. Request was denied and this complaint served within 30 days. In the answer, defendant tax commissioner relied on statute which provides that a hearing before the tax commission may be reviewed by the court provided that the taxpayer files complaint within 30 days. Defendant alleged that in the instant case the hearing referred to the November decision and that more than 30 days elapsed thereafter before the commencement of this action. From a judgment dismissing the proceedings, plaintiff appeals.

HELD: Affirmed. Court cannot pass on the merits of the complaint. Where a statutory remedy is sought the one seeking to avail himself of it must bring himself within terms of the statute. Thirty day limit is mandatory and failure to bring the proceeding within the prescribed time is fatal. The statute does not contemplate successive applications and hearings.

ARE SOME OF US TAKING NOTE OF THIS?

Section 9660 C. L. 1913 reads: "A lottery is any scheme for the disposal or distribution of property by chance among persons who have paid or promised or agreed to pay any valuable consideration for the chance of obtaining such property or a portion of it, or for any share of or interest in such property, upon any agreement, understanding or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, a raffle or a gift enterprise, or by whatever name the same may be known."

BOOK NOTES

The Bar Association offers, at a bargain figure, about 150 volumes of L. R. A. (old and new series). Books in perfect condition.