



1928

## Are Some Of Us Taking Note Of This?/Book Notes

North Dakota Law Review

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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.

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*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.

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#### 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."

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