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Review of North Dakota Decisions

A E. Angus

REVIEW OF NORTH DAKOTA DECISIONS

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Bessel v. Bethke: Plaintiff and defendant, majority stockholders in a furniture company, entered into a contract whereby defendant agreed to sell his stock to plaintiff, and further stipulated that he would not engage in similar business in that vicinity for a specified period of time. Later defendant hired out to another firm. The case comes up on an appeal from an order overruling a demurrer to the complaint and from an order granting a restraining order. HELD: Affirmed. Contract not to engage in a certain business in the territory for a limited period of time, although in restraint of trade, is within the exception stated in Sec. 5925, C. L. 1913, as accompanying the sale of good will.

School District v. Towner County: Plaintiff School District sued defendant County to recover all taxes which had been collected by the County for the said school district. Statute provides that penalties and taxes due organized townships, etc., shall be paid to the townships for which they were levied. Defendant county had retained such money in the County treasury. Defendant pleaded unconstitutionality of the statute and statute of limitations. From a judgment for defendant, the plaintiff appeals. HELD: Reversed. An obligation arose on the part of the county to return the penalties and interest so received by the county. Counties and school districts are amenable to the statute of limitations.

Marken v. Grain Co.: Plaintiff orally leased land to a tenant from year to year, making no mention of the usual agreement which prevailed in that vicinity that the owner of the land was to retain title to all the crop until tenant had performed all covenants. During a number of years tenant took his share of the crop, and in 1925 mortgaged it to a bank. The crop was stored in defendant's grain elevator and tickets issued in the name of plaintiff and tenant jointly. In an action by the plaintiff for conversion of the grain, defendant sets up the mortgage executed by plaintiff's tenant as constituting a first lien on the grain in question. The case comes up on appeal from a decision in favor of defendant. HELD: Affirmed. Usual crop share agreement as to division of crop between owner and tenant is held to prevail here, in absense of showing that parties intended title to remain in owner of land.

Rosenau et al v. Bank: The payee of a certificate of deposit issued by defendant bank, a few days before his death and while very ill, gave the key to the suitcase where the certificate of deposit was kept to a third party, instructing him to keep it for his daughters. After his death, the third party accordingly delivered the certificate of deposit to the payee's daughters, the plaintiffs herein. Plaintiffs sue defendant bank, and the administrator of deceased estate intervenes and files a separate answer, alleging that the certificate of deposit constitutes a part of the assets of the estate. The certificate of deposit had not been endorsed by payee. Lower court ordered a dismissal and the plaintiffs appeal. HELD: Reversed. Where the owner of a certificate of deposit under fear of imminent death, delivers to a third party a key which enables such party to take into his possession

the subject matter of a gift, and instructs him to give it to his daughters, there is sufficient manifestation of intention to make a gift causa mortis, and delivery is complete.

WORKMEN'S COMPENSATION DECISIONS

An employee, engaged in blasting, was injured while using a fuse extending out of the hole only two inches, which was contrary to statute. Compensation was denied on the theory that the injury was self-inflicted, or through wilful misconduct. In construing the term "wilful" as applied to compensation cases of that character, the Supreme Court of Virginia said: "The term imports something more than mere exercise of the will in doing the act; that is, a wrongful intention, or an intention to do an act that he knows, or ought to know, is wrongful, or forbidden by law. It involves the idea of premeditation and determination to do the act, though known to be forbidden. An employee who is injured in the course of employment is not barred from recovery by the fact that, at the time of the accident, he was engaged in doing an act forbidden and penalized by a general statute of the state, unless the employer can show that he had knowledge of the statute, or that reasonable steps had been taken to bring notice of it to him."—*King v. Empire Collieries Co.*, 139 *S. E.* 478.

AMERICAN LAW INSTITUTE

Hon. Geo. M. McKenna was delegated to represent North Dakota at the recent meeting of the American Law Institute, and he makes the following comprehensive report:

An exceedingly interesting meeting of delegates and guests interested in the work of the American Law Institute was held in Chicago, October 27, 28 and 29, 1927.

The meetings were presided over by Hon. George W. Wickersham, President of the Institute work, and Dr. William Draper Lewis, Director.

Invitations had been sent out to the various State Bar Associations, members of the Federal Judiciary of the Sixth, Seventh and Eighth Circuits, members of the highest courts, and other Judges in the Northwestern and Central States. The response was very gratifying. The State Bar Association or Supreme Courts of the States of Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, New York, North Dakota, Ohio, Pennsylvania and Wisconsin were represented.

The object of the meeting was two-fold: First, to analyze and discuss critically the tentative drafts of the re-statements on Conflict of Laws, numbers 1, 2 and 3; Contracts, numbers 1, 2 and 3; and Torts, numbers 1 and 2; secondly, to discuss ways and means by which these tentative drafts might be placed in the hands of the practicing Bar of the country as a whole.

The writer had the honor of being the sole representative of the State of North Dakota present at the meeting. In his opinion, the meeting was more successful and more advantageous than the larger meetings which are held annually at Washington, D. C., for the reason that the group was smaller and the delegates apparently felt more free to voice their criticisms, to ask questions, and to enter into the various discussions.