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Review of North Dakota Decisions

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REVIEW OF NORTH DAKOTA DECISIONS

Scott vs. City of Jamestown. Suit was brought to enjoin the city from employing and paying counsel to assist the regular city attorney in the defense of lawsuits, pending and contemplated, for damages alleged to have been sustained by the system of sewage disposal into the James River, the aggregate sums claimed being over \$84,000. No special appropriation of money was made by the city council, but the city's budget carried an item of "miscellaneous" which contained some \$6,000. At the instance of the city attorney, the council made an agreement with one attorney from Jamestown and one from Fargo to assist in the defense of these damage suits for a fee not to exceed \$1,000 for each of such assistants. HELD: (Construing Sections 3684a-1 to 3684a-13 and Section 3677) Such expenditures come within the term "contingent expenses" contemplated in Section 3677 of the Code, and the power of the city council is not limited to the employment of resident lawyers.

Baird as Receiver of Bank of Beulah vs. Provident Life Insurance Co. Plaintiff brought action to quiet title to real estate. Facts were stipulated to be as follows: Defendant Life Insurance Co. obtained the first mortgage on the premises in 1916. One month later the Plaintiff Bank took the second mortgage. Neither mortgage was paid. In 1918 the land was sold for taxes to one S. Defendant foreclosed its mortgage by advertisement early in 1923. There was no redemption from this sale, and deed was issued in 1924. Shortly after the foreclosure sale Plaintiff bought the tax certificate from S. and obtained an assignment. Notice of expiration of period of redemption was given, and, there being no redemption, tax deed was issued to the Bank. HELD: (Construing Sections 2196 and 2211 C. L. 1913) That, even after foreclosure and during the year of redemption, one mortgagee may not acquire, assert or strengthen title under a tax deed as against another mortgagee for taxes falling due while both mortgages were unpaid. Plaintiff is given sixty days to redeem from the foreclosure, and if he elects not to do so, Defendant must refund amount of taxes paid.

State vs. Darrow. Appeal from conviction for murder in second degree. During the argument of counsel to the jury the Court retired to an adjoining room for the purpose of attending to other business, but returned a number of times and was ready for immediate call. No call was made, and no objections entered to statements of counsel until motion in arrest of judgment or for new trial. The following instruction (after instructing that the burden was upon the State to show that an illegal operation was not necessary to save life,) was given: "There is no presumption in law that it is necessary to produce a miscarriage upon a pregnant woman to save her life. If such necessity exists in the case of a pregnant woman, the same must be brought into view under all circumstances and conditions surrounding the person upon whom the miscarriage is produced and the condition of the person herself." HELD: The quoted instruction should not have been given. It was confusing and probably misleading. The argument of counsel is part of a trial, and the presence of the Court is required at

all times in order to control and superintend the conduct of counsel, jurors and spectators. New trial granted.

Tandsetter vs. Oscarson. Plaintiff, while working for the City of Fargo as a motorcycle policeman, was run into by the defendant and quite seriously injured. Application was made to the Workmen's Compensation Bureau by the plaintiff, the claim was approved, and an award made by the Bureau, covering medical and hospital care and compensation for both temporary and permanent disability. As between the City and the plaintiff, the Compensation Act and the award disposed of all questions of liability. The liability of the defendant, however, was one in tort, and plaintiff claimed the right to bring suit for damages. Under Section 20 of the Compensation Act, the Bureau is subrogated to the rights of the injured employee, but should the Bureau sue and recover more than the amount paid out, including costs of suit, the injured person is entitled to the overage. The Bureau investigated, and, being of the opinion that it might not be able to prove the defendant's negligence, or, if successful in that, might not be able to collect upon a judgment recovered, decided not to bring suit. Plaintiff then started his action, and subsequently obtained an assignment from the Bureau, in turn indemnifying the Bureau against costs and stipulating that any judgment recovered should be applied: first, to the costs of suit, secondly, to the amount paid the plaintiff out of the Workmen's Compensation Fund, any balance then left to go to the plaintiff. The defendant entered a demurrer to the complaint. HELD: Application for and acceptance of compensation under the Workmen's Compensation Act operates as an election, and the injured workman can not, thereafter, sue a negligent third party; that right was transferred to the Bureau by the election to take under the Act. (Note: The question of whether or not an injured person could compel the Bureau to bring action against a negligent third party was not involved, and was, therefore, not passed upon. It is clear, of course, that the theoretical liability of a negligent third party is greater than that of the Compensation Fund, as, for example, under the tort action, recovery could be had for pain and suffering.)

JUDICIAL COUNCIL IN OPERATION

Pursuant to the Act of the 1927 Legislature, providing for its establishment, the Judicial Council held its first meeting on the 15th day of December, 1927, at the Chambers of the Supreme Court in Bismarck. The following members of the Council were in attendance: Supreme Court Judges L. E. Birdzell, John Burke, A. G. Burr, A. M. Christianson and W. L. Nuessle; District Judges H. L. Berry, C. W. Buttz, J. A. Coffey, G. Grimson, W. J. Kneeshaw, F. T. Lembke, J. C. Lowe, Geo. M. McKenna, Geo. H. Moelling and Thos. H. Pugh; County Judge J. L. Johnston; Attorneys B. H. Bradford, W. D. Lynch, W. A. McIntyre, Wm. G. Owens and C. L. Young; Attorney General Geo. F. Shafer; visitors, E. R. Sinkler and L. R. Baird. Chief Justice Birdzell presided.

Judge Christianson was first called upon to outline the activities of the Council prior to the formal establishment by legislative act. He