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Review of North Dakota Decisions

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REVIEW OF NORTH DAKOTA DECISIONS

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Globe International Protective Bureau vs. Fitzgerald: Plaintiff sued in justice court to recover balance on merchandise purchased by defendant. Plaintiff claimed that it purchased the account which was assigned to it. Defendant admitted original indebtedness but denied that Plaintiff owned the account. Evidence showed that defendant had paid the account in full to a third party assignee before he had notice of plaintiff's alleged claim of ownership. HELD: For defendant. A person indebted to another upon a book account is not bound by an assignment of such account until he has notice of assignment or knowledge of facts concerning same which would put him on inquiry.

Wiliams vs. Soo: Plaintiff was struck by one of defendant's railway trains while he was attempting to cross the tracks with a team at a regular crossing. Plaintiff started this action to recover damages, alleging negligence of defendant. Verdict for plaintiff, and defendant moved for judgment non obstante veredicto on the ground that negligence in this case was a question of law. Upon denial of its motion, defendant appeals. HELD: Affirmed. Negligence is a question of fact to be determined by the jury and is a question of law only when reasonable men can draw but one conclusion from the evidence. In this case, the evidence was sufficient to sustain jury's finding regarding negligence and contributory negligence.

Rigler vs. North Dakota Construction Co. & Federal Surety Co.: Plaintiff sued for goods furnished by plaintiff to the defendant North Dakota Construction Co. during the construction by them of a highway. The N. Dak. Construction Co. had two projects under construction but defendant Federal Surety Co. was surety on the contract for but one of these. Plaintiff based its claim on general agency of one Tom Cline, based on his declarations to plaintiff. From judgment for plaintiff, defendant appeals. HELD: Reversed. New trial ordered. Acts and declarations of alleged agent cannot be used to establish agency in absence of evidence tending to show principal's knowledge of such acts or assent to them.

Breden vs. Johnson: Action in claim and delivery involving hay grown on land. Defendant made an arrangement whereby he was to plow certain land which had been plowed before and give owner one-fifth of flax crop. Subsequently, the plaintiff who wanted the hay crop on the adjoining unplowed land sent a check for it to owner of both tracts. Defendant thereupon cut the hay and took all except one load. HELD: For plaintiff. Defendant who wrongfully severed hay that is fructes naturales and put it in stacks is answerable in action of claim and delivery to a third party who has bought the hay from the owner of the land. Defendant cannot base his claim on adverse possession because tenant is precluded from setting up a right adverse to the landlord.

Northern Pacific Railway vs. State: Action to set aside tax liens claimed by the state on mineral reserves and to quiet title in plaintiff.

By statute of 1923, annual state tax of 3 cents per acre is levied on lignite coal deposits and all titles to minerals underlying lands the ownership of which have been severed from the overlying strata of the land. Plaintiff railway contended that said law was unconstitutional because it does not provide for assessment of mineral reserves in the county or township in which it is situated as provided for in the assessment of other real property, and because it is not a uniform tax in that it provides a flat tax per acre regardless of value. From a judgment for defendant, plaintiff appeals. HELD: Reversed. 1. Classification of property must insure reasonable uniformity within the territorial taxing district. 2. Under state constitution all real property not used directly or indirectly in carrying of persons or property must be assessed in the county, city or township in which it is situated.

Palaniuk vs. Allis Chalmers Manufacturing Co.: Plaintiff bought a gasoline tractor from defendant by written contract of sale which contained a provision that notice of defect must be furnished within 10 days after it was put into use and the sale might then be rescinded, and that failure to do this would be considered as conclusive evidence that the machine was reasonably fit. Plaintiff notified defendant after using the tractor that it was unsatisfactory, and defendants repaired it. After using the tractor 3 years plaintiff served on defendant a written notice of rescission of contract. Plaintiff then brought suit for damages and recovery of purchase price. From a verdict for plaintiff defendant appeals. HELD: Reversed. A seller warrants that a machine is reasonably fit for the purpose for which it is purchased. However, buyer of machinery may by express contract with seller stipulate that in case the machine bought is not so reasonably fit he shall have no remedy except by rescission, and where he does so contract no other remedies are open to him.

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WORKMEN'S COMPENSATION DECISIONS

The test of dependency is actual support, not the inability of the alleged dependent to earn a livelihood.—*Kitchikan Lumber Co. vs. Bishop, 24 Fed. (2nd) 63 (Alaska).*

Workman who, at employer's request, returned to a store after hours to admit an electrician and permit him to do repair work, remaining until work was finished, and was then injured on the way home, does not come within the "going and coming" rule, but is entitled to compensation.—*State Fund vs. Industrial Accident Commission, 264 Pac. 514 (Cal.).*

Driver of team hitched to coal wagon drove his team upon a ferry boat, and there fell asleep while lying full length on the wagon seat. A deckhand attempted to arouse him just as team started off the boat.