North Dakota Law Review

Volume 4
Number 9 *Annual Meeting - Minot - September 5th and 6th*

Article 4

1927

Review of North Dakota Decisions

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REVIEW OF NORTH DAKOTA DECISIONS

Golden Valley County vs. Miller: Action to quiet title to town property for which tax deed had issued to County. Notice of expiration of period of redemption had previously been served personally on defendant, but though the notice read: "I, Wm. G. McConkey, County Auditor, give notice," the only signature was the printed line, "County Auditor." HELD: Notice was insufficient, not being signed, and the "prima facie evidence" rule will not support the deed issued. Deed is void, but tax lien is not destroyed.

Hazlett as Receiver vs. Mathieu: Action to foreclose mortgage of dwelling house occupied by family of defendant except for short period of time in 1923. The husband evidently intended to move to Minnesota, and did open a business there, but the wife and children did not go until later and only remained a few months, also testifying that they never intended to leave permanently. No attempt was made to rent or sell the dwelling. The husband returned to North Dakota, cleaned and repaired the dwelling for occupancy. The evidence discloses that the wife never appeared before a Notary at the time of execution of the mortgage, and in no manner acknowledged such execution. HELD: To constitute an acknowledgment by the wife of a mortgage upon the homestead she must appear before the officer and in some manner make admission to such officer of the fact that she executed the instrument; and that mere temporary absence from a homestead will not forfeit the right of homestead exemption where there is a constant abiding intention to return.

Allis-Chalmers Co. vs. Frank: Defendant purchased a tractor and set of plows from Plaintiff, paying part and giving chattel mortgage. The contract contained certain warranties, said nothing about the goods being reasonably fit for the required purpose, but contained provisions that the number and date of purchase should be recorded with the company within ten days and that retention for six days after first day's use should be construed as fulfillment of warranties. The tractor did not work to satisfaction of defendant, but he continued to use it, and there was no evidence of attempt at rescission until action to foreclose was commenced. HELD: Aside from the statute (Sec. 5991a, Supp.) there was an implied warranty that the goods were reasonably fit for the purpose; that the six-day provision was not binding, but that a reasonable time after delivery must be allowed for inspection and testing; that there was no rescission or offer to return the goods, and the offer to return must include all of the goods where the contract is an entire one. Case remanded for further proceedings, in which other remedies specified in Section 6002a69 may be made available by amendment of pleadings.

Ravely vs. Isensee: Construes Sections 7550, 7555 and 7556 of Compiled Laws. One K. sold personal property for printing plant to G. Company. No reservation of title was made. R. was employed as printer, and took a chattel mortgage for back pay amounting to $1,245.13. After sale, K. gave a mortgage to S. Bank. R. started foreclosure by advertisement, but prior to date of sale, K. took the property under warrant of attachment in suit for balance of purchase price. R. then began foreclosure by action, and obtained a warrant for

seizure. All parties were made defendants. Defendants applied for discharge of warrant of seizure and gave bond for immediate return of the property. Defendants I. and A. were sureties on such bond. R. obtained money judgment against G. Company and for foreclosure against all defendants. On appeal this was affirmed. Meanwhile the property was sold in case of K. vs. G. Company. Suit is on the bond given, the contention being that the only remedy R. had was available under Section 7550 Compiled Laws, and the bond given had no binding force. HELD: That Section 7550 is for benefit of Sheriff and is not applicable to this cause. Defendants did not litigate validity of warrant obtained by R., but gave bond for immediate restitution of property, and agreed to pay the amount of any judgment recovered, as provided in the second part of Section 7556. The bond became security for any judgment that might be rendered in favor of R., and the obligation of the sureties to pay became absolute with the entry of such judgment.

SEEMS "PHUNNY" NOW

One Berry was arrested for violation of an ordinance prohibiting the use of automobiles between sunset of one day and sunrise of the next. He applied for a writ of habeas corpus, which was discharged. The learned judge (147 Cal. 523) said, in part:

"In the case at bar there is nothing to show the unreasonableness of the ordinance, and the burden is on petitioner to show that it is unreasonable. There is nothing which shows with any particularity what an automobile is, and, of course, a court could not declare unreasonable a regulation about something of which it has no knowledge. . . We may assume to have what is common or current knowledge about an automobile. It's use as a vehicle for traveling is comparatively recent. It makes an unusual noise. It can be and usually is made to go at great velocity—at a speed many times greater than that of ordinary vehicles hauled by animals—and beyond doubt it is highly dangerous when used on country roads, putting to great hazard the safety and lives of the mass of the people who travel in vehicles drawn by horses. Fearful accidents to persons driving animals which are frightened into unmanageable terror are of common occurrence; and while there are usually laws regulating and limiting the speed at which they may be driven, it is a matter of common knowledge that these laws are frequently violated, and that it is exceedingly difficult for officers, even in the day-time, to stop them when going at forbidden speed and arrest the drivers. This would be much more difficult in the night-time. Moreover, in the night-time even those drivers of automobiles who might be considerate of the safety of others would not be able to see an approaching team in time to take the proper precautions. . . Of course, if the use of automobiles gradually becomes more common, there may come a time when an ordinance like the one in question would be unreasonable. As country horses are frequently driven into cities and towns many of them will gradually become accustomed to the sight of automobiles, and the danger of their use will grow less . . but we are not prepared to say judicially that under present conditions the ordinance is so unreasonable as to be void."

NEW YORK'S NEW PAROLE LAW

The New State Parole Law of New York went into effect July 1st, but applies only to those sentenced after that date. The Panel, monthly