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Review of North Dakota Decisions

A E. Angus

efficiency of the Association the coming year will thereby be greatly increased. From the second district Fred T. Cuthbert of Devils Lake has been chosen. In addition to Mr. Cuthbert's experience, there are two things about him which render him an unusually useful member of this committee. In the first place, he is a dependable and tireless worker; in the second, he disagrees with me on almost every subject we have ever discussed. I know of nothing more calculated to promote efficiency and progress. From the third district I have selected Judge Geo. M. McKenna of Napoleon. I have long felt that judges ought to be an integral part of the Bar and the Association. Our judges in this State, in contrast to those in some other jurisdictions, have been splendid in this respect, and it is a tendency which should be encouraged. You all know Judge McKenna's outstanding work in the Association. From the fourth district we take P. W. Lanier of Jamestown. Mr. Lanier is a comparatively new man in the Association, and a man of whose ability it is well to make use. From the fifth district G. S. Wooledge of Minot is again chosen. Mr. Wooledge brings to the position both energy and experience. From the sixth district Thomas G. Johnson of Killdeer is selected. Mr. Johnson, also, is a comparatively new man in the work of the Association, who stands high among his colleagues.

While the Bar Association exists in one sense to promote the interests of the lawyers, in a larger and higher sense it exists to promote the interests of the public. We lawyers have no excuse for our existence but that of service. Unless we strive sincerely and earnestly to bring about justice between man and man, we are false to the high trust reposed in us. We should be leaders, not followers, in every movement for the public good, and particularly should we be leaders in movements for reforms within our particular sphere. There has been much popular criticism of our profession. Some of it is justified, as must always be the case with all professions and businesses; some of it, as we all know, is uninformed and unjust. I am by nature an optimist, and believe that more is gained by stressing successes than failures; but I also believe that we ought never to be satisfied with past accomplishments, but go steadily on trying to make the world better. The accumulated experience of centuries is behind us, and the boy who does not become a better man than his father ought to be ashamed of himself. Let us start the year with the motto "Service."—JOHN H. LEWIS, President.

REVIEW OF NORTH DAKOTA DECISIONS

A. E. ANGUS

Axelson vs. Jardine: Action for personal injury and property damage when plaintiff's car ran into excavation for culvert by defendants. Plaintiffs allege contributory negligence in defendants. Evidence showed dirt piled up in the road four feet high for protection of public, but evidence was conflicting about a lantern. Defendants contend that speed of plaintiff's auto contributed to the injury. Verdict for plaintiff. HELD: Affirmed. Statute regulating speed of auto on public highway is for protection of traveling public and only those for whose benefit it was enacted can plead violation. But all evidence of negligence may be considered by jury.

Berger vs. Morton County Board of Commissioners: Plaintiff owner of land brings this action to restrain defendants from trespassing in doing work to maintain a public highway. Facts showed an old trail before 1904 over plaintiff's land, then a highway until 1917 when it was relocated in part. Defendant alleged a highway by prescription, and plaintiff asserted that the trail had been changed. Verdict for defendant county. HELD: Affirmed. Common law rule with respect to establishment of highway by prescription is in force in North Dakota. Where an owner of land is aware that an old trail across his land is to be improved and when he desires the course changed in part, he will be precluded from asserting that the trail was not used continuously and did not follow a definite course.

Fuller vs. Fried: Action by buyer of tractor to recover purchase price because of alleged breach of warranty by seller. Contract was signed by plaintiff to buy from Minneapolis Steel & Machinery Co., but defendant acted as actual seller of the tractor. Plaintiff did not seek to recover on written contract but on oral evidence showing that such contract was represented to be only a description of the machinery and defendant was the real vendor. Court admitted evidence to show that the contract was not the real contract between the parties. Evidence was also admitted showing that plaintiff had rescinded the contract but later used the machinery. HELD: Admission of oral evidence does not come under parol evidence rule here because such rule is limited to parties to the contract. Here plaintiffs purchased from defendant under an oral contract. Plaintiff cannot recover on rescission of contract but can file amended brief asking for damages on breach of warranty.

Fox vs. Fox: Plaintiff's father owned land in 1918. In 1922 he died and defendant was appointed administrator, and the land listed in the inventory as part of the estate. In 1926 the plaintiff filed a "petition for conveyance of real estate sold under contract" and set forth that the father had contracted to sell this land to him in April, 1918. He asked the court to order the administrator to execute conveyance of said property. Other defendants answered, denying such contract and alleging that the land was part of the estate. Defendants appeared specially in county court setting up lack of jurisdiction. District Court held that County Court had jurisdiction to hear and determine the issues involved. HELD: Affirmed. When petition for such conveyance is presented to County Court, the court has jurisdiction to entertain the petition, provide for full hearing of facts, and if petitioner's right is free from doubt, execute a conveyance to petitioner. But if right of petitioner to specific performance is doubtful, court must dismiss without prejudice and petitioner can proceed to District Court for specific performance.

Schulenberg vs. Long: Action on a promissory note brought by receiver of bank upon note of defendant. Defense pleaded that note was without consideration and given for accommodation of the bank. Case tried to jury. Plaintiff moved for directed verdict, defendant objected but made no motion for directed verdict. Jury found for plaintiff. Defendant secured an extension of time and brought a mo-

ganizations of employers and responsible organizations of working men and/or women of contracts for the adjustment of their relations, through negotiation and arbitration, such contracts when freely and voluntarily made to be in all respects lawful and binding and the provisions for settlement of differences by arbitration to be irrevocable and enforcable in the manner hereinafter provided; it is declared to be part of said policy to encourage the peaceable and orderly ascertainment of the true facts in all industrial situations coming within Federal cognizance and thus to promote the use of rational and lawful methods in the settlement of controversies arising out of such industrial situations. To that end and with that objective, provision is herein made for the legal effectuation of agreements containing provisions for arbitration and for the establishment of a National Industrial Council constituted as hereinafter provided and having the powers and duties hereinafter enumerated."

The National Industrial Council is to be a fact-finding body, composed of experts, and it is the hope that a bill, making formal declaration of policy along the lines of the committee's formula, will have considerable influence in establishing industrial peace.

AMERICAN CITIZENSHIP COMMITTEE

Mr. O. B. Herigstad of Minot, as Chairman of the American Citizenship Committee of the State Bar Association, is doing a commendable piece of work this year. We had occasion to consult with Mr. Herigstad recently, and saw the record of his accomplishment as it has been thus far written. The demand upon the Chairman's time has been constant and considerable, but the generosity with which he has given of that time has resulted in hearty response on the part of members of his committee and also on the part of the public.

The essay contest is well under way, and the students of grade schools in thirty-two counties are competing, the subject assigned being "The Story of the Constitution of the United States."

In the printed rules sent out Chairman Herigstad announces, among other things: "It is the intention of the Committee that the essay should be of a historical nature, . . . dealing with the manner in which the Constitution was brought into being and why."

The essays will be judged on the basis of: (1) substance, thought and originality; (2) grammatical structure; (3) method of presentation; (4) neatness and form.

Judges, chosen in the various counties by the County Superintendent of Schools, will select the best essay in counties having less than 10,000 population, and the two best essays in counties having more than 10,000 population. The winning essays, so selected, will compete in the state contest, for which President Lawrence has appointed John Knauf of Jamestown, S. J. Doyle of Fargo, and C. J. Murphy of Grand Forks, as judges.

The prizes authorized by the State Bar Association for the state contest will be distributed as follows: First Prize, $50.00; Second Prize, $25.00; Third Prize, $10.00; Fourth and Fifth Prizes, $5.00 each; and Sixth to Tenth Prizes, $1.00 each. Some of the County Bar Associations are also offering prizes for the county contests.

FRANKLIN ON EXECUTIVE SALARIES

Arguing in the Constitutional Convention on behalf of a motion to provide no salary for the Executive of the Nation, Benjamin