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Review of North Dakota Decisions

R E. W

REVIEW OF NORTH DAKOTA DECISIONS

R. E. W.

Vorachek vs Anderson.. The defendants were president and secretary of a voluntary baseball association. A promissory note was signed: "Baseball Association by J. C. Anderson, President and Fred P. Flury, secretary." It was given to cover account drawn at the bank by the baseball association. Other facts, somewhat disputed, enter into the matter, but not materially. HELD: Defendants were acting officers of the association. The association's debts were their debts. The making of the note did not create the liability. They were already liable.

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Ellingson vs Cherry Lake School District. The directors of defendant school district, after notice published, let a contract for certain improvements to the higher of two bidders. No vote of the electors of the district was had. HELD: The board had power to enter into contract, and that "lowest responsible bidder" means something more than mere financial responsibility; it "means responsibility as regards the duty to be assumed by the contractor under the particular contract, and includes all the various elements that bear on that question, such as the integrity of the bidder, his skill, ability and capacity to perform the particular work."

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State of North Dakota vs John J. Hastings. The defendant was charged with the crime of violating the "Blue-Sky Law." The question of the sufficiency of the information to state an offense was raised for the first time on motion in arrest of judgment, the contention being that the information was (1) duplicitous, (2) failed to negative certain exceptions in the statute, and (3) failed to define certain terms used. HELD: That rule of construction in such case is less strict than where issues are raised on demurrer, and that the information, though not a model of pleading, was sufficient. (We find nothing in the opinion to cover the question answered by the first paragraph of the syllabus, relating to the refusal of the trial Court to permit a change of plea, but this may have been covered on a rehearing.)

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Patterson vs Burleigh County. Plaintiff's property was assessed for taxes in and for 1919, 1920, 1921, 1922 and 1923. Taxes were not paid and on sale property bid in by the County. In 1925 plaintiff applied to County Commissioners for compromise which was agreed to by the Commissioners and the State Tax Commissioner approved the action of the Board. The State's Attorney, on petition of Taxpayers, appealed to District Court, which dismissed the appeal on special appearance for that purpose by plaintiff. HELD: Section 2165 of 1913 Laws as amended by Chapter 227 of 1917 Session Laws is intended to give relief where same could not have been afforded or was not afforded by the County Commissioners sitting as board of equalization; that the action of the County Commissioners under such Section becomes effective without approval of the State Tax Commissioner and is final in absence of appeal; that an appeal lies from a decision of the Board of County Commissioners under Section 3298 of the Laws of 1913.

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Langer vs Nultemeier.. Plaintiff held mortgages on certain personal property, capable of manual delivery, signed by one F. On same

day mortgages were given execution issued on judgment in favor of X. Two days later defendant sheriff attempted to make a levy under execution, but failed to take the property (cattle) into his actual custody. He did give judgment debtor F. copy of execution and notice of attempted levy. Plaintiff then took a bill of sale from F. and on September 10th loaded the cattle for shipment. Defendant seized the cattle, unloaded them, and took complete possession, showing the conductor of the train the execution, but delivering no copy thereof or notice of levy. Plaintiff brought action in claim and delivery against defendant sheriff. HELD: No levy was completed on either occasion, and where levy is void sheriff is mere trespasser and cannot defend on the ground that the transfer to plaintiff was in fraud of creditors.

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Bank of North Dakota vs Hanson. Defendants borrowed money of Bank R. to engage in business. Some payments were made, and demand note was finally given for balance due. Twelve days later the R. Bank, having borrowed largely from plaintiff bank, delivered this note as part of collateral security for its indebtedness to plaintiff. Subsequently plaintiff returned the note, at various times, to Bank R., endorsed for collection and remittance. Defendant paid up said note while it was in the hands of Bank R. for collection, but payment was not in cash; it was in the form of merchandise, services, etc. No endorsement of payment was made, and defendant took no precaution to inspect the note, discover possible endorsements, payments, etc., nor demand return of the note. Bank R. returned the note to plaintiff. Subsequently Bank R. went into the hands of the receiver, and suit against defendants was brought. HELD: Transmittal to original payee for collection and remittance does not estop plaintiff from setting up ownership to defeat unauthorized agreement between the agent for collection and the makers of the note. Unless specially authorized the agent has no authority to receive anything but money in payment.

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State of North Dakota vs Burleigh County. The Bank of North Dakota took a mortgage on land of R. as security for a loan, later assigning said mortgage in regular course to the Treasurer of North Dakota. R. did not pay the taxes, and the land was sold to the county at a tax sale and a tax certificate issued. Subsequently, R. being in default, the Treasurer of North Dakota as Trustee for the State of North Dakota, bid in the property at a mortgage foreclosure sale. There was no redemption and a sheriff's deed was issued to the Treasurer of North Dakota. The board of county commissioners refused to cancel taxes for the years prior to the date of the sheriff's deed. Plaintiff Treasurer brought action to quiet title, contending that, under Section 9, Chapter 292, Laws of 1923, which provides for the cancellation of unpaid taxes of land acquired by the State through the foreclosure of certain mortgages, it is the mandatory duty of the county commissioners to cancel taxes for land sold prior to date of issuance of sheriff's deed. Defendant county contends that section is unconstitutional and void when construed in connection with Section 176 of the Constitution, which provides that taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax. HELD: Taxes which had become delinquent before date of issuance of sheriff's deed should not be cancelled; acquisition of property by the State or its departments, through the

foreclosure of a mortgage taken as security for a loan, does not operate to cancel outstanding liens based upon tax sales. Dissenting opinion: The legislative intent of Section 9, Chapter 292, Laws of 1923, "all taxes then remaining unpaid shall be cancelled," was to clear the record of all unpaid taxes regardless of dates when they were levied or might have come due.—Alice Angus.

REVIEW OF WORKMEN'S COMPENSATION DECISIONS

R. E. W.

Refusal of claimant to submit to operation for hernia, found to be necessary by Industrial Commission, justifies discontinuance of compensation.—*Whittika vs Industrial Commission, (Ill., Oct* 1926.)

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The defense that an employee was violating a city ordinance when injured must be set up affirmatively by the employer; otherwise it is waived.—*Grace Constr. Co. vs Fowler,* 153 *N. E.* 819 (*Ind.*)

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One who is employed as a carpenter to patch a roof, is a "casual" employee of one engaged as a Florist, and does not come within the terms of the compensation law.—*Zeidler vs Prueher,* 154 *N. E.* 35 (*Ind.*)

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Dependency of mother upon son is not established by showing that parent received money from the son and expended it, the necessity for the contributions must also be shown.—*Sigalove vs Penzel* 218 *N. Y. Supp.* 85 (*N. Y.*)

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Note—The case of *De Caprio vs General Electric Co.,* 218 *N. Y.* Supp. 213, is an important one covering application of Snellen test to determine percentage loss of vision. The facts are too long and complicated to report here.

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An employee killed by a train when voluntairily taking a short cut across tracks on way to or from work was not in the course of his employment. He chose to take a route more dangerous than that afforded the public, and cannot hold the employer responsible.—*Dambold vs Industrial Commission,* 154 *N. E.* 128 (*Ill.*)

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Deceased, who owned team and wagon and hauled coal for defendant when needed, at a certain amount per ton, and was allowed to select own method and means of performing the work, and worked for others when not so employed, was not an employee but an independent contractor.—*Bolon vs Amond,* 210 *N. W.* 923 (*Iowa.*)

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Employee contracting typhoid fever while on a trip for employer, there being at the time an epidemic of such disease, is not entitled to compensation unless it is shown that he, by reason of the employment, was subjected to a special exposure in excess of that of commonalty.—*Pattiano vs Industrial Commission,* 250 *Pac.* 864 (*Cal.*)

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Employee of firm engaged in business at Elmira, N. Y., was sent to Lancaster, Penn., to attend a convention. Transportation expenses paid, but not room and board. Injury was sustained while at a hotel or rooming house. Held, that the hotel was claimant's "home," and injury was not in course of employment.—*Jakeway vs Bauer Co.,* 218 *N. Y. Supp.* 193 (*N. Y.*)