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Review of North Dakota Decisions

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Board of Railroad Commissioners, upon petition and after hearing. Until such section of the Constitution is repealed, the same cannot be done. It should be a well recognized fact that present day business conditions have outgrown local franchises. Local prejudices, politics and factionalism are a deterrent to utility development. We personally know of instances in the State at the present time where the public is being deprived of more efficient and cheaper service, because of the attitude of local boards, in refusing to approve the transfer of a franchise, which action has been brought about through agitation of certain individuals, based upon selfish motives, not in connection with service.

"We recommend that the Board of Railroad Commissioners be, by law, given authority to require physical connection between electric utilities, where the same appears to the Board to be feasible and can be done without any damaging results to either utility. This, of course, with usual right of appeal. There are high tension electric lines in this state which are in close proximity, being, in some instances, within one mile of each other. At other places, there are high tension electric lines within a very short distance of an individually owned utility plant. If physical connection as above should be made, it would insure to the public, in that community, continuous service, and the patrons would not be inconvenienced by any temporary break in the plant from which they are regularly receiving their service. In time this would also perhaps result in high-line distribution of electric current, with a saving to the public through the elimination of local generating plant operation.

"In conclusion, we recommend to the incoming officers of this Association, that the membership of the committee be reduced to a number which will permit cooperation on the part of the entire committee, and eliminate any seeming discourtesy on the part of the chairman, in attempting to perform the work of the committee, without consultation with the entire membership."

REVIEW OF NORTH DAKOTA DECISIONS

First National Bank vs. Olivier. Defendant, subsequent to service of process in garnishment and disclosure by the garnishee, disposed of all of his other property to legitimate creditors, and then claimed and proved the moneys held by the garnishment as exempt. HELD: Distinguishing the case from *Mahon & Robinson vs. Fansett,* 17 *N. D.* 104, which says, "If the property was not exempt when the lien was acquired, no changes by sale thereafter can inure to the benefit of the debtor," the defendant, having alleged and proved that the moneys due from the garnishee were exempt at the time of the service of the garnishment summons, the disposition of his other property to legitimate creditors after commencement of the garnishment proceedings did not change his status in that regard.

Pipan vs. Aetna Insurance Co. A building in Towner, belonging to plaintiff, was destroyed by fire. Action to recover on insurance policy, which was issued in name of plaintiff's husband. (Presumably the policy carried the usual provision that it should be void if the insured's interest was other than that of sole and unconditional owner.) Equitable relief was sought (if necessary) for reformation of policy,

and the issues so raised held conclusive. The testimony was in conflict on the point, plaintiff's evidence supporting the view that defendant's agent made a mistake, after being told of the true situation, and defendant's evidence tending to establish that the general belief was that plaintiff's husband was record owner. HELD: That in view of trial court's superior opportunity to judge the credibility of the witnesses, its ruling that no mutual mistake occurred and that defendant at no time intended to issue a policy in favor of plaintiff is conclusive and must be sustained.

Mayer vs. Central Light & Power Co. Defendant maintained electrical transformers, by which power line current was reduced from 28,000 volts to 2,300 volts, close to a public highway. These were enclosed by a wooden picket fence. The ground wire entered the ground about four to six inches from the fence. After some heavy rains, plaintiff, a ten year old boy, in company with others returning from a swimming hole, came by. Plaintiff held a piece of iron, which he permitted to hit the boards of the fence. At or near the center, he testified, "It pulled my hand and the iron in". He received a shock and sustained electric burns. HELD: It was defendant's duty to safeguard the equipment for distribution of electrical current, and "where transformers are so placed that persons are likely to come in contact therewith, the duty requires greater precaution" than if located at more isolated points. "It is not for plaintiff to ascertain wherein the defendant's appliances were defective."

Meldahl vs. Holberg. Action to restrain the alteration of a building and for the establishment of a "funeral home" therein. The facts disclose that there are but two exclusive residences in the particular block in which the "home" is sought to be located, one 65 feet and one 80 feet away; that the growth of the city showed gradual business place enroachment upon the district and the particular block; that the city authorities had refused to interfere in the conversion of the residence into such "funeral home"; that damage by depreciation of the value of plaintiff's residence, which might be attributable to the establishment of such business, was not shown. HELD: That a "funeral home" is a legitimate business and not a nuisance per se; that, in determining whether it is a nuisance, it must be judged by the "degree of discomfort or injury produced upon the average person" and not upon "peculiarly sensitive feelings"; and that a restraining order is not warranted where the "home" is to be located in a district, not exclusively residential, but gradually changing to one of business as required by the needs of the city.

Larson vs. Clough et al. C, the owner of the involved real estate, first mortgaged said real estate to H, and later to L. & T Co. This second mortgage was foreclosed and, remaining unredeemed, sheriff's deed issued (but it was not recorded). C continued in possession of the farm, which was sold for taxes three years prior to the issuance of sheriff's deed on foreclosure; and about a year and six months after the issuance of such sheriff's deed the proceedings for completing tax title were had (the same sheriff being in office). The sheriff served the tax notice on C, the record owner and the person in possession,

paying no attention to the unrecorded deed issued by him on foreclosure. Tax Deed issued and was recorded, likewise deed to plaintiff L. HELD: The holder of the tax certificate did all required of him when he delivered tax certificate to county auditor; the auditor performed his duty by delivering proper notice for service by sheriff; and the sheriff performed his duty by making personel service on the record owner in possession in full compliance with Section 2223, 1913 Laws; and that (dicta) any implied notice of different ownership would fail at crucial point of bringing knowledge of actual ownership.

Johnson Construction Co. vs. Austin et al. Defendant A purchased residence property of plaintiff for $8,000, payment to be: $1,000 cash, assumption of a $3,000 mortgage on the residence, and warranty deed to a quarter of land, free of incumbrance, transfers to be completed by Aug. 1, 1923. Upon exchange of abstracts title to the quarter was objected to, and bond in sum of $4,000 required and executed. The bond was conditioned upon a loan of $2,000 on the quarter section and the furnishing of good and sufficient deed by Jan. 1, 1924. Partial release of the bond was made when loan was completed. Some of the objections to the title were removed before Jan. 1, 1924, action brought in October, 1923, to quiet title as to others, and deed tendered Dec. 31, 1923. Deed was refused and action started on the bond. Upon trial defendants were found not to have cleared the title, and given until July 1, 1926, by the trial court to do so. HELD: That while time be not of the essence of a contract it may nevertheless be so material that protracted delay, without a showing of facts and circumstances sufficient to justify and excuse the delay, may prevent decree of specific performance. The demand for, and execution of, the bond, conditioned for furnishing title at a stated time, was sufficient indication of the materiality of the time element. Judgment reversed and cause remanded for determination of plaintiff's damages under the bond, "the measure of which is the same as for breach of any other contract."

WORKMEN'S COMPENSATION DECISIONS

Where special transportation is provided by employer, one who does not report for duty in time to take such transportation and is killed while walking to work is not injured in course of employment.—*McMahon vs. Mack, 222 N. Y. Supp. (N. Y.).*

An accident resulting from a cause brought onto the employer's premises by the workman himself for his own purposes is not caused by his employment, and is not compensable. In this instance the accident was caused by the breaking of steering gear of car on way home from work.—*Industrial Commission vs. Enyeart, 256 Pac. 314 (Col.)*

Where employer's general business was marketing sand and gravel, which was covered by Compensation Act, the mere fact that hay raised on alfalfa land which employee was raking when killed was fed to