



1926

Review of North Dakota Decisions

North Dakota Law Review

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Recommended Citation

North Dakota Law Review (1926) "Review of North Dakota Decisions," *North Dakota Law Review*. Vol. 3: No. 11, Article 2.

Available at: <https://commons.und.edu/ndlr/vol3/iss11/2>

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REVIEW OF NORTH DAKOTA DECISIONS

Kilby et al vs. Movins Land Co. et al. Plaintiff, a stockholder in defendant company, brought action to have certain sales of property belonging to defendant corporation declared fraudulent and set aside and for an accounting between the other defendants and the land company. The trial court found for plaintiff and awarded damages including attorney fees in the sum of \$500. HELD: That Sections 7789, 7790, 7794 and 7795, Compiled Laws 1913, make no provision for the allowance of attorney fees in such actions; that unless attorney fees are specifically provided by statute, they can not be awarded as costs.

State ex rel Dinger vs. Wyndmere School District. Petition was presented to defendant school board for election to select a school house site and for building of school house thereon. Pursuant to such petition the board called an election, the result of which was a vote in favor of such selection and building. The board then failed to act, there being some contention as to the sufficiency of the original petition. HELD: Where enforcement of action upon such petition is sought prior to an election the provisions of the statute with reference to sufficiency of the petition are mandatory; but after an election is called and held, the presumption is that the board exercised its discretion in passing upon the sufficiency of the petition, and mandamus will lie to compel the board to make effective the result of the election.

McPeck vs. Travelers Equitable Insurance Co. Plaintiff's husband was insured by defendant, being classified as a cook. The policy called for the payment of \$1,000 in case of accidental death, which, by reason of continuance over a long enough period entitled beneficiary to 50 per cent additional. For two months prior to death by accident the deceased was cook of a hotel operated by himself and was also working in a coal mine, and the injury which caused his death was sustained while walking on the railroad track to his work at the mine. The policy provided that in event of injury after having changed occupation to one classified as more hazardous the indemnity would be only such as the premium would provide for such more hazardous occupation. HELD: That while walking to the mine the deceased was engaged in something incidental to the occupation as a miner, and hence the recovery could be only such sum as the company's schedule provided for such occupation.

Elliott School District vs. Gorder. Defendant and one H. were interested in various banking and business ventures including banks at Elliott and Englevale in North Dakota and a bank at Thomas, South Dakota. The Elliott bank became insolvent and H. became liable to plaintiff on depository bonds to extent of about \$10,000. This was known to defendant. Plaintiff recovered judgment against H. in sum of more than \$9,000. About that time H. transferred stock in the Englevale bank, valued at about \$11,000, to defendant, dating transfer back to time prior to closing of the Elliott bank. H. had no other property in North Dakota, which was known to defendant at time of

transfer. The consideration for the stock was defendant's note, which was held by the South Dakota bank, the stock evidently being there held as security for the note. At any rate, the stock was taken beyond the jurisdiction of the North Dakota courts. Later the Englevale bank also became insolvent. Plaintiffs asked for personal judgment, as the setting aside of the transfer would prove worthless. HELD: That where a fraudulent transferee took property outside of the state, so that it could not be reached by execution, and retained same until it became valueless, judgment for its value was proper. The case was reversed, however, for the purpose of fixing the true value of the stock at the time of the disposition.

Greene vs. Newberry et al. Plaintiff, the assignee and owner of a mortgage on certain half section of land, proceeded to foreclose same by advertisement. The mortgage authorized the mortgagee "TO SELL THE LAND AT PUBLIC AUCTION AS ONE FARM OR TRACT OR OTHERWISE." Attorney for plaintiff instructed sheriff, in writing, to bid the land in for the plaintiff at a sum which would cover the amount due on the mortgage, with interest and costs. "IF THERE ARE NO OTHER BETTER BIDDERS." At the time of sale one N. informed the deputy sheriff, who was in charge of the sale in the absence of the sheriff, that the land would have to be sold in forty acre tracts under the law. Pursuant to such information, the eight forties were offered separately and bid in by N. at \$100 each. At the time, however, the deputy refused to execute certificate to N., after reading the letter of plaintiff's attorney. But on tendering the \$800 to the sheriff a few days later, the latter instructed the deputy to issue the certificate to N. This was done. It was later assigned. The action was brought to set aside the certificate and compel issuance of certificate to plaintiff. HELD: (Note that the Court does not seem to rely upon the provision for sale hereinbefore quoted.) That sales on foreclosure by advertisement are controlled by Section 8082, 1913 Compiled Laws, and not by Section 7747; that the provision for sale in separate tracts contemplates natural division into farms; that the foreclosure is for the purpose of collecting the indebtedness and the purpose of a sale by farms or tracts is to prevent the sale of more parcels than necessary to satisfy the indebtedness; that the sheriff's act amounted to a rejection of the bid of \$6747.80 by plaintiff; that in rejecting such bid and accepting one for \$800.00 he violated his duty, and there was really no sale as contemplated by law; that such sale was, therefore, invalid, and that the certificate should be cancelled and a new foreclosure had.

WORKMEN'S COMPENSATION DECISIONS

Burden of proof is on claimant for compensation, and where workman, apparently in healthy condition, and while doing accustomed work, collapses and subsequently dies from apoplexy, there being no evidence that he was struck, fell, overexerted himself, or otherwise sustained any traumatic injury, compensation must be denied.—*Crews vs. Mosely Bros.*, 138 S. E. 494. (Va.)