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Review of North Dakota Decisions

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State ex rel Fried v. McDonald. Habeas Corpus. The relator is the parent of four children of school age and defendant is a sheriff. The relator lives more than two and one-quarter miles from the nearest school. The school board did not offer vehicular transportation to or actual carriage of the children of relator to school, but did offer to pay him fifty cents per day for transporting his children to school. The relator did not, under the circumstances, require his children to attend, and was prosecuted for violating the compulsory school attendance law and a fine was imposed. HELD: That under Section 1342, Compiled Laws 1913, as amended by Chapter 206, Session Laws of 1917, it is the legislative intent to make the parents of children of school age living beyond the two and one-quarter mile limit amenable to the criminal provisions of the statute in cases where the school board actually furnishes or offers to furnish vehicular transportation or actual carriage to the children. The relator therefore is not guilty of violating the penal provisions of the statute and is ordered released. Nuessle J., dissenting. (Opinion filed, February 26, 1926).

State doing business as Bank of North Dakota v. Stolting et al. The head of a family who held title to premises occupied by himself and his family for some twelve years as a homestead executed a warranty deed to his wife in which the wife joined. On the same day the wife executed a note to a bank, of which the husband was a director, and president, and secured it with a mortgage on the homestead, the husband not joining therein. The husband procured the wife's signature to the note and mortgage, delivered them to the bank, and himself received credit for the face of the note. The mortgage was recorded about a year and a half later, and was of record when a note and mortgage on the property were executed by the wife and her husband to the defendant bank. The first note and mortgage were assigned to the plaintiff, which brought an action to foreclose. The defense is that since the mortgage held by the plaintiff was a mortgage on the homestead in which the husband did not join, it was invalid. HELD: That the mortgagor and the second mortgagee were estopped as against the assignee of the first mortgage to assert the invalidity of the mortgage on the homestead. (Opinion filed March 3rd, 1926).

Hughes Electric Company v. Burleigh County. An electric utility owned by plaintiff was assessed by the local authorities, and though two other like utilities were located in the county, the board of county commissioners, sitting as a board of equalization, increased the value of the property of the plaintiff in a resolution specifically designating the property. An application was made to the board asserting the invalidity of the transaction and asking that the valuation fixed by the local board be recognized as valid. Plaintiff tendered the amount due under the last valuation. The application was denied and an appeal taken to the district court. HELD: The board of county commissioners, sitting

as a board of equalization, has no power to raise or change an individual assessment; that changes can be effected only by equalizing property of the same class; and that illegal action by the commissioners in this behalf may be corrected by them under Section 2165, Compiled Laws of 1913, as amended by Chapter 227, Laws of 1917. (Opinion filed March 2nd, 1926).

Morton County v. Hughes Electric Company. The defendant, a public electric utility, undertook to construct a transmission line between Bismarck and Mandan. The highway commission granted permission to attach the line to the Missouri river bridge, and to use the approaches thereto. Plaintiff brought the action to enjoin the defendant from using the bridge for this purpose, contending that it has control over the west half of the bridge. HELD: A board of county commissioners has no power to control or supervise or grant a right of way to a public service corporation over or upon any state highway within the limits of their county, that all state highways are under the general control and supervision of the state highway commission, but that such commission has no power to grant a right of way for the erection of an electric power transmission line over or upon any of the highways under its control and supervision. Sections 1921 and 5444, Compiled Laws of 1913, Chapter 188, Laws of 1925, and Section 2, Chapter 141, Laws of 1919, construed. (Opinion filed March 4th, 1926).

Minot Special School District v. Olsness: In a proceeding to prohibit and enjoin the commissioner of insurance from enforcing the state fire and tornado insurance fund law against the plaintiff, IT IS HELD: That the law establishing the state fire and tornado fund for the purpose of furnishing fire and tornado insurance upon the property of the state, counties, cities, and other political sub-divisions thereof, is not unconstitutional on the ground that it abrogates or impairs the right of freedom of contract; that it does not violate any express or implied guaranty of the right of local self-government; that the wisdom, necessity or expediency of legislation are matters for legislative and not judicial determination; that the act in question does not create an indebtedness on the part of the state of North Dakota at all; and that the act is not unconstitutional as delegating taxing power to the commissioner of insurance. (Opinion filed February 17, 1926).

Talcott v. Bailey: Each of the two life insurance policies involved in this action recognizes the right of assignment, but stipulates that it should become binding only when it or a copy thereof is filed in the home office, and each permits a change of beneficiary. At the time of the death of the insured each policy was payable to the executor, administrator or assigns of the assured. The deceased left a will providing that no part of his property was left to the plaintiff. Plaintiff and defendant are the sole heirs at law, and plaintiff claims one-half the proceeds of the insurance policies. HELD: The county court is without

jurisdiction to adjudicate the question of title to the proceeds of an insurance policy payable to the heirs or the estate of the insured because whoever may be designated in the policy by the insured to receive the proceeds after his death takes by contract and not by descent, and such proceeds do not become a part of the decedent's estate. Section 8719, Compiled Laws 1913, does not attempt to confer jurisdiction on the county court in violation of Section 111 of the State Constitution, and the duty to inventory and distribute such a policy rests upon the executor or administrator, and not on the court. Section 8719 is not an exemption statute within Section 208 of the State Constitution. The right to transfer a policy of insurance by will or assignment remains under Section 6629, Compiled Laws 1913, and the proceeds of these policies are not property of the testator in the sense that they pass as a part of his estate, but go to the beneficiaries by contract and not by descent. (Opinion filed February 17, 1926).

U. S. SUPREME COURT DECISIONS

Consignors of goods f. o. b. destination, although the freight is actually paid by the consignee and there is a provision that the buyer shall be liable for and get the benefit of any rise or fall in the freight rate, may nevertheless maintain an action against the carrier to recover overcharges for transportation.—Louisville & Nashville Co. vs. Sloss-Sheffield Co., Sup. Ct. Rep. 46-73.

A shipper is bound by the terms of a freight receipt limiting the carrier's liability for loss on goods for which a lower rate is paid, and the fact that the carrier knew that shipper's agent was ignorant of the true value of the goods is immaterial.—Amer. Ry. Express Co. vs. Daniel, Sup. Ct. Rep. 46-14.

The 1921 Oklahoma statute establishing an eight hour day and providing that all workmen employed by or on behalf of the State be paid "not less than the current rate of per diem wages in the locality where the work is performed" is void for failure to fix any ascertainable standard of guilt.—Connally vs. General Construction Co., Sup. Ct. Rep. 46-126.

Section 3 of the Future Trading Act of 1921, imposing a tax of 20c per bushel upon every privilege or option for a contract whether of purchase or of sale of grain, was not intended to produce revenue but to prohibit all such contracts and hence can not be sustained as a valid exercise of the taxing power.—Trusler vs. Crooks, Sup. Ct. Rep. 46-165.

Consulting engineers professionally employed to advise states or sub-divisions of states are not officers and employees, and income received as compensation, whether in daily, monthly, annual, or lump sums, is not exempt from Federal income tax.—Metcalf vs. Mitchell, Sup. Ct. Rep. 46-172.