North Dakota Law Review

Volume 2 | Number 9 Article 4

1925

Review of North Dakota Decisions

North Dakota Law Review

the purpose; 6. Offering of suitable prizes for essay contests on Constitution in high and grade schools.

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Revision of Federal Practice

In addition to the summary reported in the April number of Bar Briefs this committee reports the Senate Bill (passed) and the House Bill (for consideration in December) with the following changes in judicial salaries:

	Senate	House
Circuit Judges	$15,000.00	$12,500.00
District Judges	12,000.00	10,000.00
Chief Justice, Court of Claims	15,500.00	12,500.00
Other Judges, Court of Claims	15,000.00	12,500.00
Chief Justice Court of Appeals District of Columbia	15,500.00	12,500.00
Other Judges Court of Appeals	15,000.00	12,500.00
Chief Justice Supreme Court, District of Columbia	13,000.00	10,500.00
Other Judges Supreme Court	12,500.00	10,000.00
Presiding Judge Court of Customs Appeals	15,500.00	12,500.00
Other Judges Customs Appeals	15,000.00	12,500.00
Board of General Appraisers	12,500.00	10,000.00

REVIEW OF NORTH DAKOTA DECISIONS

Robinson v. Swenson et al. A loan was negotiated by a resident of this state, and the mortgage executed to his father, a resident of New York. The mortgagee shortly thereafter executed a satisfaction of the mortgage before the son, who negotiated the loan, who was a notary public. Prior to the date borne by the satisfaction the note and mortgage were sold and assigned by the mortgagee to the plaintiff, who also was a resident of New York. This assignment was not recorded for nearly six years after the execution of the mortgage. The son was the agent of the mortgagee to handle his business in North Dakota, and there is evidence showing that plaintiff knew this. The plaintiff entrusted the matter of collecting the paper purchased by him largely to the mortgagee. The defendants paid the mortgage to the son of the mortgagee, who negotiated the loan, but prior to doing so ascertained that the mortgage stood of record in the name of the mortgagee and paid only after the satisfaction was recorded. In an action by plaintiff, the assignee, to foreclose, it is HELD that in the absence of authority, express or implied, to employ a sub-agent the confidence reposed in the agent by the principal is personal and may not be delegated to affect the rights of the latter. From usage or circumstances the power to delegate authority may be inferred. Unless specifically forbidden by the principal, an agent may delegate his power to a sub-agent, when the agent cannot himself and the sub-agent can lawfully perform, and when it is the usage of the

place to delegate such power. A person who negotiates a loan at whose office the principal note and coupons are payable, and who has in his possession a satisfaction executed by the mortgagee, has authority to receive payment of the principal and deliver the satisfaction and payment to such person discharges the debt notwithstanding the notes and mortgage are in the possession of another, who owns the note and has an unrecorded assignment. While non-possession of the evidence of the debt is materially important in determining whether agency with consequent authority to receive payment exists, it does not necessarily control. All facts considered together may repel the presumption arising from retention of the custody of the instruments evidencing the obligations. (Opinion filed July 19th, 1926.)

State ex rel Gran v. Bratsberg, et al. Petitions for the recall of a city commissioner of the city of Minot, signed by the electors of that date was presented to the city auditor. They did not contain, in addition to the names of petitioners and their street and house numbers, any statement as to their age or length of residence in th city of any of the signers. These were certified as sufficient by the city auditor and presented to the board of city commissioners, which board proceeded to examine the same and to hear evidence relative threto, and found that they did not show the age or length of residence in the city of any signer thereon, and that affidavits attached thereto were fraudulent, and that the petitions were insufficient in form and substance. Upon appeal from a judgment in mandamus compelling the board of city commissioners to call an election for the recall of such commissioner, IT IS HELD that the petitions are not invalid because signers failed to add to their signatures their ages and length of residence in the city, and that the city commissioners are without power to review the determination of the city auditor that the petitions are signed by a sufficient number of qualified electors. (Opinion filed July 13, 1926.)

Kellar v. U. S. F. & Co. The plaintiff is a plumber licensed under a city ordinance. He gave a bond saving the city harmless against liability on account of injuries resulting from negligence in carrying on his business. Defendant issued to plaintiff a public liability policy indemnifying plaintiff against loss from liability imposed upon him by law for damages on account of accidental injuries or death suffered or alleged to have been suffered by any person not employed by him at or about his work and as a result of an accident while the policy was in force, and to defend any suit brought against plaintiff to enforce a claim whether groundless or not for such damages. The policy excluded the liability of others assumed by plaintiff under any contract. Plaintiff made an excavation in a street and negligently left a pile of earth near the walk over which a pedestrian fell and was injured. The injured recovered a judgment against the city and the city paid the same and sued plaintiff to recover over on account of his negligence. Defendant refused to defend such action. Plaintiff having prevailed suit is brought on the policy to recover his costs and expenses incurred in the defense. HELD: On demurrer to the complaint, a municipal corporation required to pay

damages to a person injured because of the unsafe condition of its streets, has, unless it also is a wrongdoer, a remedy over, against a third person who is at fault and has so used the streets as to produce the injury and that the claim of a city of a right to recover damages against the insured was a claim contemplated by the terms of the policy in question. (Opinion filed July 19, 1926.)

Klemmens v. Workmen's Compensation Bureau. The wife of plaintiff, and another, owned and operated a garage. Plaintiff, a mechanic, was employed by his wife to balance the work of her partner in the business and was paid out of the wife's share of the partnership earnings. An injury was sustained, a claim made to the Workmen's Compensation Bureau for compensation, and the claim denied. In an action in district court, findings were made in favor of the plaintiff upon conflicting evidence. HELD: The cause is not triable anew in the supreme court and the findings of the trial court are presumed to be correct, and will not be disturbed, unless shown clearly opposed to a preponderance of the evidence, and that the plaintiff is an employee of the partnership and entitled to compensation out of the Workmen's Compensation fund. (Opinion filed July 27, 1926.)

Johnson v. Lindermann et al. In an action by the holder of tax sale certificates after three years from the date of the certificates to recover the rents and profits of the land sold at tax sales, no notice of expiration of the period of redemption having been given, IT IS HELD: That construing Section 2199 of the Compiled Laws of 1913, as amended by Chapter 257 of the Laws of 1915, the holder of a tax sale certificate to entitle him to possession of rents and profits must have taken the necessary steps to cut off the right of redemption. (Opinion filed July 31, 1926.)

Lyness v. Realty Company. Certain directors of a solvent corporation became sureties for certain debts contracted by the corporation, and later some of the corporate property was sold to such directors for the full value thereof, and the debts for which the directors had become sureties were extinguished out of the proceeds of the sale. In an action by a creditor of the corporation to set aside the sales of corporate property to the directors, IT IS HELD: That all the debts under the circumstances do not constitute a violation of the provisions of Sections 4543, Compiled Laws 1913, and that the purchase of corporate assets from a solvent corporation by a director thereof for full value, without fraud, cannot be questioned by corporate creditors. (Opinion filed July 27, 1926.)

Hanson v. Berry. Upon appeal from an order overruling a demurrer to a complaint alleging that a police officer of the defendant city was driving an automobile belonging to the city, which the city had negligently failed to provide with proper brakes, upon a congested street, in the performance of official duties, on the left hand side of the street and at an excessive rate of speed, and by reason of his negligence collided with the plaintiff and inflicted serious injuries: HELD: A municipality is not liable for the tort of its agent committed in the course of the performance of a governmental duty nor for the manner in which it exercises its governmental authority, nor for the failure to exercise it properly;

that though a city may be liable in damages for injuries occasioned by an unsafe physical condition of its streets, it is not liable for an unsafe condition resulting from failure to enforce police regulations governing traffic thereon, and that where personal injuries are caused by the negligent act of a policeman while driving an automobile belonging to the city, and while engaged in the performance of a governmental duty, such automobile being driven in violation of the law of the road and traffic regulations, the city is not liable though reasonable necessity existed for such violations and though the city may have acquiesced in unnecessary uses of its automobiles by officers and employees therein and reckless driving thereof. (Opinion filed July 27, 1926.)

U. S. SUPREME COURT DECISIONS

The Minnesota Laws of 1921 and 1923, treating ore lands as a distinct class of property and imposing upon them a tax that was not extended to other sorts of land or interests in land, held not to deprive the owners of the equal protection of the laws.—Iron Mines vs. Lord, 45 Sup. Ct. Rep. 627.

An insurance company can not be excluded from the right to do business in the State because it pays fees to non-residents for obtaining policies covering risks within the State, and a State Statute so limiting its right to do business violates the fourteenth amendment and is void.—Fidelity Co. vs. Tafoya, 46 Sup. Ct. Rep. 331.

The fifth and fourteenth amendments to the Constitution are not directed against the action of individuals, but are limitations upon the powers of the State or General Governments; and the thirteenth amendment does not protect the individual rights of negroes except in the matter of slavery. Therefore, a covenant, running with the land, providing that the land affected shall never be sold or leased to negroes, raises no constitutional questions. Corrigan vs Buckley, 46 Sup. Ct. Rep. 521.

It is a denial of due process of law for a State to require of a private carrier (particularly truck and motor bus), as a condition precedent to the continued use of the public highways, that it be subject to the duties and burdens of a common carrier. "We are not to be understood" said the Court, however, "as challenging the power of the State, whenever it shall appear that a carrier, posing as a private carrier, is in substance and reality a common carrier, to so declare and regulate the operation accordingly."—Frost Trucking Co. vs. R. R. Commission, 46 Sup. Ct. Rep. 682.

WORKMEN'S COMPENSATION DECISIONS

A county policeman, elected or appointed, is a public officer and not an employee within the meaning of that term under the compensation law. —Goss vs. Gordon County, 133 S. E. 68 (Ga. 1926).