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Our Supreme Court Holds

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Whether or not contracts of adoption are valid and enforceable often resolves itself into a question of the sufficiency and conclusiveness of the evidence available. Roberts v. Roberts, supra; Hickox v. Johnston, 113 Kan. 99, 213 Pac. 1060 (1923). Many of the cases where the intention and acts of the parties must be shown to make an oral or implied contract have little evidence and much of it is conflicting and not conclusive. In such cases courts of equity have carefully adjudged the available evidence and have attempted to construe such contract in a manner that would be just and equitable to all parties concerned.

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OUR SUPREME COURT HOLDS

In Leo DeRochford, et al., Pltfs. and Applts., v. Bismarck Banking Company, a corporation, et al., Defts. and Respts.

That the court's instructions to the jury are to be considered in their entirety, when portions thereof are specified as error; and upon a review of the specifications of alleged error in the instructions given in this case, is held that when the instructions as given are considered as a whole, no reversible error has been shown.

That where the evidence on the issue of a contract of agency said to exist between H., one of the defendants, and the plaintiffs in this case is squarely in conflict, the verdict of the jury finding for the defendants and against the plaintiffs on this issue is decisive.

That an order of the trial court denying a motion for a new trial based upon the insufficiency of the evidence to justify the verdict will not be disturbed where it appears that there is substantial conflict in the testimony and the discretion of the trial court in passing upon the motion for a new trial was not abused.

Appeal from the District Court of Burleigh County; Hon. R. G. McFarland, J.

AFFIRMED. Opinion of the Court by Swenson, District Judge, sitting in place of Burke, J. disqualified.

In State of North Dakota, Pltf. and Respt., v., M. W. Dimmick, Deft. and Applt.

That no error can be predicated upon the admission of competent evidence bearing directly on the issue of fact involved in the case.

That error can not be predicated upon the refusal of the trial court, at the close of the state's case, to advise an acquittal.

That corrobation of an accomplice requires the production of such other evidence as tends to connect the defendant with the commission of the offense charged, and it is not sufficient if it merely shows the commission of the offense. Evidence is examined, and it is held: that the independent testimony furnished in the case at bar, if believed by the jury, is sufficient to meet the requirements of corroboration.

That evidence examined and it is held: that the verdict of the jury is amply sustained by the evidence produced.

Appeal from the District Court of Cass County, Hon. M. J. Englert, Judge.

AFFIRMED. Opinion of the Court by Burr, Ch. J.

In J. S. Lamb, in his official capacity as State Highway Commissioner of the State of North Dakota, Pltffs and Respts. v. Elmer King and Mrs. Anna King, Defts. and Appts.

That the judgment of a district court, having jurisdiction of the parties and the subject matter, imports absolute verity so long as it stands unmodified. in any respect.

That as long as such judgment stands, neither party can maintain an action to vacate and set aside said judgment on the ground that the same was obtained by fraud and deception when such party has an adequate remedy by motion.

That where a party to an action claims that the judgment was obtained by fraud, he has the remedy by motion to vacate such judgment, made in the court rendering it.

Appeal from the District Court of Stark County, Hon. G. Grimson, Special Judge. REVERSED. Opinion of the Court by Burr, Ch. J.

In R. A. Werner, Petr. and Respts. v. Hugo A. Riebe, et al., Board of County Commissioners of Stutsman County, et al., Defts. and Appts. and The State of North Dakota, doing business as the Bank of North Dakota, and C. D. Drawz, Intrs. and Appts.

That Chapter 225. Session Laws N. D. 1939, fixes the full and true value of property in money as the standard by which the validity of alleged excessive assessments shall be determined.

That the fact that taxable property is over assessed at the time a public debt is created does not vest in the holder of evidences of such debt a right to insist that property subject to taxation for the payment thereof continue to be over assessed; nor does a statute which affords relief from over assessment by reducing the valid tax charges to those based upon the true value of the property in money deprive the holders of such evidence of debt of their property without due process of law.

That chapter 225, Session Laws N. D. 1939, affords equal opportunity to property owners to have the valuations of their property fixed on the basis of the full and true value of that property in money, and is, therefore, nondiscriminatory and not violative of Section 176 of the North Dakota Constitution which requires uniformity in taxaton.

That chapter 225, Session Laws N. D. 1939, does not afford relief until the assessment process has been completed and a final determination of values made by the assessing authorities, and does not violate the requirement of Section 178 of the constitution that property be assessed in the county, city, township, village, or district in which it is situated.

That chapter 225, Session Laws N. D. 1939, does not relinquish or extinguish any indebtedness to the state or a municipal corporation therein, and is, therefore, not violative of paragraph 27, Section 69 of the constitution.

That chapter 225, Session Laws N. D. 1939, does not violate the requirement of Section 179 of the North Dakota Constitution that certain taxable property be assessed in the county, city, township, village or district in which it is situated.

Appeal from the District Court of Stutsman County, Hon. Fred Jansonius, Judge. AFFIRMED. Opinion of the Court by Morris, J.

In Jane Mann Pickett, Plff. and Appt. v. P. G. Wick and Minnie Wick, Defts. and Respts.

That where, in an action for the cancellation of a contract for the sale and purchase of real property, the distict court has granted a stay of execution against the cancellation of the contract under the provisions of chapter 165, session Laws 1939, and has given to the judgment debtor upon a proper showing the right to redeem at any time, within one year from the entry of judgment, upon conditions set forth in the order the fact that no appeal has been

taken from the judgment, and that the time to take appeal expired before the expiration of the period granted by the court for the stay of execution, does not divest the trial court of jurisdiction, under the provisions of said chapter, to hear and determine and application for a further extension of the period of redemption and stay of execution, if made and determined within the time prescribed by the law.

Appeal from the District Court of Hettinger County, Hon. H. L. Berry, Judge. AFFIRMED. Opinion of the Court by Burr, ch. J.

In Clara Jacobson, Plff. and Rest. v. Mutual Benefit Health and Accident Association, a corportion,, Deft. and Appt.

That the decision of an appellate court is the law of a case in all subsequent proceedings in both the trial and appellate courts.

That in this case the defendant issued an accident insurance policy whereby it insured, one Jacobson, against loss "resulting directly and independently of all other causes from bodily injuries sustained through purely accidental means* which shall, independently and exculsively of disease and all other causes, immediately, continuously and wholly disable the insured from the date of the accident and result" in the loss of life of the insured with in thirteen weeks. The policy provided that in case of such loss of like the insurer would pay to Clara Jacobson (the plaintiff here), the wife of the insured, the sum of $2,000.00. Held that the evidence justified the jury in finding that the insured, on July 23, 1938, sustained bodily injuries through purely accidental means which independently and exclusively of disease and all other causes immediately, continuously and wholly disabled the insured from the date of the accident and resulted in his death on August 16th, 1938.

That the term "wholly disabled" in such accident policy does not mean a state of complete physical and mental incapacity or utter helplesness; but means inability to do all the substantial and material acts necessary to carry on the business or occupation of the insured, or any business or occupation, in a customary and usual manner, and which acts the insured would be able to perform in such manner but for such disability.

That the term "continuously" in such accident policy does not denote ceaseless and absolute continuity, but means regularly, protracted, endurig and without any substantial interruption of sequence, as contra-distinguished from irregularly, spasmodically, intermittently or occasionally.

That where the liability under an accident insurance policy is limited to a continuous period of disability, the continuity or the disability is not broken by the fact that the insured endeavored to perform work if, in fact, he were unable to perform the substantial and material parts of his duties, and common care and prudence required him to desist from such acts in order to effect a cure.

That the credibility of witnesses, including that of medical experts, and the weight to be given to their testimony, are questions for the jury.

That declarations and manifestations of a sick or injured person as to the nature, symptons and effects of the disease or injury from which he is suffering at the time are competent evidence in an action wherein the nature and cause of the disease or injury are in question.

That the general rule that a party may not impeach his own witness does not imply that a party calling a witness is bound to accept the verious of such witness of material facts as being correct. A party may prove material facts as being correct. A party may prove material facts by other competent evidence, even though the effect of such evidence is to contradict his own witness.

The object of such contradiction is not to impeach the witness, but to prove facts relevant to the controversy.

That under the laws of North Dakota, "every person who is entitled to recover damages, certain or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day is

entitled also to recover interest thereon from that day, except during such time as the debtor is prevented by law or the act of the creditor from paying the debt." Section 7142 C. L. 1913.

That under the provisions of Section 7142, C. L. 1913, the beneficiary in a policy of insurance, whereby the insurer agrees to pay to such beneficiary a certain sum for the loss of life of the insured, is entitled as a matter of law to interest on the principal sum due for the loss of life from the time such loss becomes payable under the terms of the policy.

That where the complaint sets forth a debt or obligation which bears interest as a matter of law the right to recover interest is not waived by failure to include the amount of interest in the prayer for judgment.

That to constitute a waiver there must be an intention to relinquish a known right, an intentional forbearance to enforce a right.

That for reasons stated in the opinon, it is held that in this case the plaintiff did not intend to waive, and did not waive, the right to recover interest.

That where issue is joined by answer and there is a trial of such issue, the prayer for relief in the complaint does not control, but the court may grant to the plaintiff any relief consistent with the cases made by the complaint and embraced within the issue. (Sec. 7680, L. 1913).

That in a case where the sole issue is plaintiff's right to recover anything of the defendant, and where the amount due; if anything, is undisputed and the debt or obligation is of such nature that interest is recoverable as damages as a matter of law, and where the jury returns a general verdict in favor of the plaintiff and against the defendant for the amount of the principal debt without mentioning interest, it is not error prejudicial to the defendant for the court to add the amount of interest to the verdict and order judgment for the plaintiff for the amount due for both principal and interest.

Appeal from the District Court of Burleigh County, Hon. R. G. McFarland, J. The defendant appeals from a judgment, and from an order denying its motion for judgment notwithstanding the verdict or for a new trial, and from an order denying its motion to amend and reduce the amount of the judgment. AFFIRMED. Opinon of the Court by Christianson, J.

In Esther Schwarz and Arnold Thoreson, Petrs. and Respts. v. Anna Thoreson, Respt. and Appt.

That the general rule that a party may not appeal from an order or decree which has been entered with his consent has no application to an order appointing a guardian of the person or estate of an incompetent person.

That upon a general appeal from the County Court issues of fact must be tried in the District Court upon evidence to be offered anew and not upon the record or transcript certified from the County Court.

That a motion to the Distict Court to remand a record on appeal from the County Court, to the County Court for correction upon a matter which could have no bearing upon the result of the appeal, pesented a moot question and was properly denied.

Appeal from the District Court of Richland County, Hutchinson, J. AFFIRMED. Opinion of the Court by Burke, J.

In Harry Stern, Pltff. and Respt. v. John Gray, Tax Commissioner, Deft. and Appt.

That a demurrer admits truth of all issuable, relevant, material facts well pleaded.

That in determining the issue raised by a demurrer to a complaint, the allegations of the complaint are to be construed liberally.

APPEAL from the District Court of Richland County, Hutchinson, J. AFFIRMED. Opinion of the Court by Burr, Ch. J.