North Dakota Law Review

Volume 13 | Number 5 Article 4

1936

On Court Reoganization

M. C. Fredericks

QUESTION SIX: On retirement of Judges — privilege. Yes 324, No 107.

ON COURT REORGANIZATION

The argument, about a year ago, was: that the constitution of the United States was written and adopted by an outmoded people; that it was obsolete and now largely useless. Some of us do not agree with this view, of course, but, at any rate, any needed changes, must necessarily be made by amendment. This it is claimed now, takes too long, and it is now claimed that the members of the Supreme Court are too old to properly interpret the language and meaning of the constitution. That a set of younger men on the bench will interpret it so that amendment will not be needed.

Now will any one please tell us how plain English can mean one thing to an old man, and the reverse to a younger one? True the justices do not always agree, but this is not due to difference in the age of the judges.

Is it not plain then that this court reorganization is nothing less than an attempt to destroy the constitution by forcing a false construction of its provisions? That after all, it is the constitution which is under fire and not the court or the Judges? Is this "supporting and defending the constitution against all enemies foreign and domestic?"

M. C. FREDRICKS.

ON CONTRIBUTIONS TO THE BAR BRIEFS

Bar Briefs is not the property of any individual, or any group of individuals, but on the contrary is the property of all the members of the association which pays the bills. Its pages are open to all who desire to express themselves on matters of interest to the Bar. That contributions of this class are infrequent is a source of regret to the editor. Articles from members of the association would unquestionably enhance both the general interest and the value of Bar Briefs.

The proposal to increase the membership of the Supreme Court of the United States is so uppermost in the public mind that it deserves the widest possible discussion from all points of view. The forceful and sincere presentation of the opinions of the minority of the members in this state merits consideration the same as that of the majority.

OUR SUPREME COURT HOLDS

In State of North Dakota, vs. Harold Osen, doing business as the Wahpeton Floral Company,

That under the provisions of chapter 315 of the Session Laws of 1931, when an employer is alleged to be in default in the payment of premiums, the bureau is required to "cause suit to be brought" in the courts of Burleigh County or of the county in

which employer is engaged in business, for the collection of the premiums and the accrued penalties; but such law does not of necessity require the action to be tried in such county.

That the general law of the State, at the time of the enactment of said chapter 315, permitted the commencement of such an action in any county of the State and authorized the trial of said action in the county selected by the plaintiff unless a change of place of trial to the county of the defendant's residence was demanded in due time. In case of such demand the change was mandatory.

That said chapter 315 does not in itself purport to amend the general law governing change of venue, and repeal by implication is not favored unless there be such positive repugnancy between the provisions of the new law and the old law as to work a change. It is only when the language of the new statute is so unambiguous as to permit but one reasonable interpretation, and that contrary to the provisions of the old law, that the old law is modified or changed.

That in construing the provisions of chapter 315 already cited, held: the requirement that the suit shall be brought in the courts of Burleigh county, etc., does not abrogate the right of the defendant to have a change of place of trial to the county of his residence.

In Elizabeth H. Anderson and Laura Anderson vs. Northern & Dakota Trust Company, a corporation, et al, Chas. G. Anderson, et al.

That where the insured makes no other disposition of the policy or the avails thereof, a life insurance policy payable to the estate of the insured is, under chapter 149, Laws 1929, deemed payable to the heirs at law of the insured and such heirs take such avails by contract and not by descent.

That in the absence of provisions in the policy to the contrary the insured has, under said chapter 149, Laws 1929, the right and power to dispose by will of the avails of a life insurance policy made payable to his estate.

That under chapter 149, Laws 1929, the avails of a life insurance policy made payable to the estate of the insured do not become a part of the estate of the insured unless there is a specific provision in the policy, or the insured has made provision to that effect by special contract or by provision in his will.

That the intention on the part of the insured to dispose by will of the avails of a life insurance policy made payable to his estate, and hence payable to his heirs at law, must be declared in clear and unmistakable terms; and such intention will not be inferred from the fact that the provisions of the will purport to dispose of all "property" of the testator.

That where the insured in a policy payable to his estate makes a will purporting to dispose of all his property but in such will makes no reference to such policy or the avails thereof; and where there is no change of beneficiary, and the insured makes no

contract for the transfer or disposition of such policy or the avails thereof he manifests an intention that upon his death such insurance policy shall be payable to his heirs at law and the avails thereof distributed to them in accordance with the laws of succession.

That where an insured makes a will naming certain persons as residuary legatees but makes no reference in such will to the life insurance policy or the avails of the policy, the residuary legatees do not become beneficiaries under an insurance policy made payable to the estate of the insured. Legatees become entitled to share in the avails of such policy only where the insured by specific provision in his will directs that the avails of such policy be distributed to the legatees and then only to the extent that he directs that they shall go to such legatees.

That a person who is entitled to a share of the avails of a life insurance policy under the provisions of chapter 149, Laws 1929, as an heir at law of the deceased insured has an individual cause of action against an administrator or executor who has received the avails from the insurance company and refuses to pay over to such heir at law that share of the avails which belong to him.

That where two persons, one claiming to be the surviving widow and the other the daughter of the insured, join as plaintiffs and bring action against the executors of the last will and testament of the deceased insured for the avails of a life insurance policy made payable to the estate of the insured, and the defendants in their answer admit that the plaintiff alleged to be the surviving widow of the insured is such surviving widow, but deny that the plaintiff, who is alleged to be the daughter of the insured, is such daughter, such denial does not raise an issue of fact so far as the plaintiff, who is alleged to be the surviving widow of the insured, is concerned.

That the surviving wife of an insured in a life insurance policy made payable to the estate of the insured instituted an action under chapter 149, Laws 1929. In such action the executors of the last will and testament and a brother, two sisters, and children of deceased sisters of the insured, were made parties of defendant. The brother, sisters and children of deceased sisters interposed an answer wherein they alleged that the insured and his wife had entered into an agreement whereby she agreed that if the insured would make certain provisions for her in his will whereby upon his death certain property would be given to her, she would make no claims to the avails of such policies; that the insured, pursuant to such agreement, made provision for his wife in the will as agreed upon; and that upon his death she received the benefit of such provision. It is held that these allegations set forth a defense.

It is with much sorrow that we record the passing of another member of our profession, the Hon. W. D. Lynch of LaMoure, a fine, competent and painstaking lawyer; a lovable, loyal and sterling friend, an upright, patriotic citizen who gave much time and labor to the affairs of his town, county, state and country—with no thought of personal reward. Peace be to his ashes.