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REVIEW OF NORTH DAKOTA DECISIONS

A. E. ANGUS

Olson vs. Railway Co.: Action to recover damages alleged to have been sustained while plaintiff was employed in defendant's round-house. Plaintiff alleges that he took sick while employed by defendant and that defendant's building was out of repair. Jury awarded verdict for plaintiff. HELD: New trial ordered. Under the Federal Employer's Liability Act, defendant is not an insurer of health of its employees. Plaintiff's right is founded on the negligence of defendant, which plaintiff failed to prove.

Corrington for Creditors of Bank of Barber, Mont., vs. Stockholders: Action to enforce stockholders liability in banking corporation in Montana. Plaintiff deposited money in Montana bank in 1920, for which he took certificates of deposit. These C. D.s were several times renewed, with interest added in. The bank failed in 1924. Defendant stockholders plead Montana statute of limitations which limits the commencement of an action against stockholders to three years after creation of the liability sought to be recovered on. The case comes up on appeal from judgment in favor of defendant. HELD: Reversed. The stockholder's liability attaches as of the date on which the renewal Certificates of Deposit were issued. Each certificate represents a new contract.

L. R. Baird, Receiver, vs. First National Bank: Action by receiver of insolvent bank to recover from defendant bank on account of a preference obtained by it. The Williams County State Bank became insolvent and suspended business. Thereafter defendant bank demanded from it cash assets in the amount of certain unpaid drafts which it had accepted from the Williams County State Bank for clearance. This is an appeal from a decision in favor of plaintiff receiver to recover the amount from defendant bank. HELD: Affirmed. An insolvent banking corporation may not prefer a creditor having knowledge of insolvency and soliciting the preference. Code provision that a debtor may prefer a creditor applies to corporations when the legislative intent is clearly indicated. Legislative provisions governing banking corporations negative the power of such corporations to prefer creditors.

In the Matter of Application for Disbarment of Charles L. Crum: Evidence in a disbarment proceeding showed that defendant attorney was appointed as assistant attorney general to prosecute a criminal action; that defendant in the case offered him \$10,000 to "keep him out of the pen". Later the attorney received \$700 by registered mail, which he suspected was from defendant who had previously asked him if a contribution to the Recall Campaign Fund would help. This money was turned over to the Recall Campaign Fund. HELD: The acceptance of money by an attorney when acting as a prosecuting officer, knowing that such money was intended to influence him in the prosecution of a criminal action, is a wilful violation of his duties as attorney and ground for disbarment, notwithstanding the fact that

it was not retained by him for his personal use. The purpose for which the money was paid, not the use to which it was put, controls.

First International Bank of Minot vs. Brehmer and First International Bank of Minot, garnishee: Action on a promissory note, in which plaintiff sought to garnishee itself. Defendant delivered a promissory note to plaintiff bank in 1920. In 1924, defendant deposited money in plaintiff bank on general deposit. That day plaintiff bank sued defendant on the note and commenced garnishment proceedings naming itself as garnishee. Thereafter defendant filed petition in bankruptcy, and listed the note in the bankruptcy schedules, of which defendant was notified. Defendant was discharged in bankruptcy in 1925. Plaintiff appeals from a judgment for defendant. HELD: Affirmed. Bank cannot charge against a depositor a debt due it from the depositor. Plaintiff bank cannot garnishee itself because statute provides that the garnishee is a party defendant, and plaintiff cannot be both plaintiff and defendant in the same suit.

Hoover vs. Life Insurance Co.: Action to set aside the assignment of a mortgage on the ground of fraud and conspiracy. Defendant Insurance Co. had an agreement with the Dawson State bank, its agent, to leave deposited in the bank a certain amount of the insurance sold by the bank. When this amount came to exceed the limit allowed the Minnesota examiner, and just previous to an examination of the Insurance Co. by said examiner, the defendant Insurance Co. instructed the bank to make a temporary investment in real estate. The bank thereupon agreed to purchase plaintiff's mortgage and deposit the amount to be paid to plaintiff's credit in the bank. A deposit slip was given plaintiff, with the amount in "notes" credited to him. Plaintiff later tried to check on this deposit, and his check was returned marked "insufficient funds". Case comes up on appeal from a decision for plaintiff. HELD: Affirmed. Plaintiff's check marked "insufficient funds" is competent testimony tending to disprove that the price of the mortgage was deposited in the bank to plaintiff's credit, and the deposit slip is also admissible to show an executory contract.

WORKMEN'S COMPENSATION DECISIONS

An employee, who had been specifically instructed to report any damage to electric line to the repair station, but who, without any existing emergency necessitating immediate repair, started to repair electric line and was killed while so working, was not in the course of his employment when injured, and recovery under the compensation law can not be had by the dependents.—*San Francisco & S. Ry. Co. vs. Industrial Commission*, 258 Pac. 86 (Cal.).

Person employed as bus driver, while driving on the 4th of June, complained of the heat and on his return home at 5 o'clock seemed tired and worn and declined to eat. He drank several glasses of iced drinks and returned to work until about 9:30 in the evening. He drank some more iced drinks, complained of pains. About two or three o'clock during the night the attending physician found him normal as