North Dakota Law Review

Volume 58 | Number 1 Article 2

1982

Justice Robinson and the Supreme Court of North Dakota

Robert Vogel

COMMENTARY

JUSTICE ROBINSON AND THE SUPREME COURT OF NORTH DAKOTA

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North Dakota's 1916 election was probably the most epochal in its history. The Nonpartisan League swept into power with a mandate to enact its program, including state ownership of some businesses and regulation of others. The general history of the period has been told many times by observers and participants, both partial and impartial.

Little attention, however, has been devoted to the legal history of the era, the most colorful period in the judicial history of the State. I propose to offer some notes on this subject.

By an accident of history, three of the five justices of the North Dakota Supreme Court were elected in 1916. Under the 1889 Constitution there were three supreme court justices elected for six-year terms,[1] but the constitution was amended in 1908 to provide for a court made up of five justices.[2] Two additional justices were elected in 1910, along with a third to fill the vacancy caused by the ending of the terms of one of the three incumbent justices. The three elected in 1910 were Justices C. J. Fisk, E. B. Goss, and E. T.

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1. N.D. CONST. of 1889, art. 4, §§ 89, 91.
2. *Id.* § 89 (amended 1908).

Burke (not related to John Burke or Thomas J. Burke, later justices of the court). All three of those elected in 1910 were defeated by substantial margins in a Nonpartisan League sweep in the election of 1916.

Elections to the court were partisan in those days, and the three successful candidates were endorsed by the Nonpartisan League. They were Richard H. Grace, Luther Birdzell, and James E. Robinson. They joined the two holdover justices, Andrew A. Bruce, who was Chief Justice, and A. M. Christianson, who was destined to serve for more than thirty-nine years, the longest term of service of any justice in the history of North Dakota.

Of the five justices on the bench in 1917-1923, James E. Robinson was by far the most colorful. He was a veteran of the Civil War and was seventy-five years of age when he took office. He had a full beard and looked like an Old Testament prophet. He was apparently reluctant to give his age, since it is not included in several of the standard biographical references, including his own "official biography" in his book, *Wrongs and Remedies*.[3] He had other peculiarities also. He is reputed to have worn his hat regularly in the courtroom and to have walked out of the courtroom in the middle of arguments if he thought he had heard enough from the lawyer arguing the case.[4] He read the briefs in advance and, if he decided the case was a simple one, he would write a tentative opinion and send it to the lawyers before the oral argument so they could save the trip to Bismarck if they agreed with the opinion.[5] It is doubted that both sides agreed very often, and it is certain that the other judges often disagreed with him.

Robinson had been a law partner of William Lemke, one of the founders of the early Nonpartisan League, but a bitter enemy of the later (1932 and thereafter) Nonpartisan League. Within six months of taking office, however, Robinson was considered a traitor to the League by A. C. Townley, its principal founder, who reportedly would not speak to Robinson. Robinson occasionally referred in his opinions to Lemke as the "Bishop of the Nonpartisan League" and severely criticized some League policies, both in his opinions and in his book.[6]

There are several things about Robinson's opinions that are striking to a lawyer-reader. The most astonishing is Robinson's attitude toward prior decisions (precedents). He not only did not

3. J. ROBINSON, WRONGS AND REMEDIES (1923).
4. U. BURDICK, GREAT JUDGES AND LAWYERS OF EARLY NORTH DAKOTA 8 (1956).
5. J. ROBINSON, *supra* note 3, at 75.
6. J. ROBINSON, *supra* note 3.

feel obligated to follow them — he usually disregarded them completely. In his first year on the court, when he wrote the amazing total of forty-eight opinions of the court, thirty-one dissents with opinions, and twenty-nine concurrences with opinions (a total of one hundred and eight written opinions),[7] only eight contained citations to case law. Twenty-two of the opinions cite statutes, four cite the North Dakota Constitution, three cite Shakespeare, four the Bible, and one Blackstone. About eighty percent of the cases cite neither case nor constitutional law. The following year, 1918, Robinson wrote twenty-eight opinions of the court, twenty-one dissents with opinion, and twenty concurrences with opinion. His record as to citation improved somewhat, with thirty citations to statutes, twelve to decisions, two to Shakespeare, and one each to the Bible, the Constitution, and Oliver Goldsmith.

Robinson was an opinionated man. His opinions show that he was opposed to Prohibition, inheritance taxes, and many of the Nonpartisan League regulatory measures. They also indicate that he strongly believed in deciding each case on what appeared to him to be the justice of that particular case. He was the most colorful writer of that or any other period in the history of the court. Illustrations will be found later in this commentary.

Robinson's chief opponent on the court was Chief Justice Andrew A. Bruce, who also had a somewhat colorful background, but a more orthodox point of view. Justice Bruce was born in India, where his father was a general in the British Army. His early education was in England, where he became an orphan at fifteen. He came to the United States by himself, worked as a farm laborer, and attended law school in Wisconsin and Illinois, where he helped Jane Addams organize Hull House. He then taught law at the University of Wisconsin, where he was assistant dean, and he later became Dean of the School of Law at the University of North Dakota. He was appointed to the North Dakota Supreme Court by Governor John Burke to replace Justice Morgan, who had resigned thirteen months before the end of his term. Bruce was elected to a full term in 1912. He served most of that term, but resigned on December 1, 1918, returning to teaching at the University of Minnesota Law School from 1918 to 1923,[8] and at Northwestern University Law School until his death in 1934. Justice Bruce became a bitter enemy of the Nonpartisan League, probably as a

7. This is a total never exceeded by any justice of the North Dakota Supreme Court to date.

8. He left the University of Minnesota Law School for better pay at Northwestern. R. STEIN, IN PURSUIT OF EXCELLENCE, A HISTORY OF THE UNIVERSITY OF MINNESOTA LAW SCHOOL 79 (1980).

result of its attack on the court and its decisions during his service on the court, and he wrote a highly critical book about the Nonpartisan League.[9] He also wrote books on law, one of which was severely criticized in a book review[10] by Felix Frankfurter, later Justice of the United States Supreme Court. He became a nationally recognized authority on prison reform and wrote much on the subject.[11]

The other three justices are somewhat shadowy figures. Justice Grace was from Mohall, and was described as having socialist inclinations.[12] He wrote the longest opinions of the five members of the court, and was the most likely to dissent without an opinion or to concur without an opinion — a practice I think should be criticized since it indicates that the justice disagrees with the opinion but cannot explain why. On the other hand, when Grace did write, his views appear to be the most modern of the five members of the court. For example, he was an early advocate of leaving questions of assumption of risk to juries to decide,[13] rather than deciding them as a matter of law, an all-too-frequent practice in those days. He also held modern views on the responsibility of employers for acts of so-called independent contractors.[14]

Justice Birdzell wrote somewhat fewer opinions than the other justices in 1917 and 1918 and also wrote fewer dissents and concurrences than the other justices. After serving sixteen years and ten months on the court, he went to California where he was attorney for the Bank of America for many years.

Justice Christianson probably held as strong opinions as Robinson or Bruce. At least he was second only to Robinson in the number of dissents and concurrences with opinion. During the

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9. A. BRUCE, NON-PARTISAN LEAGUE (1921).

10. Frankfurter, Book Review, New Republic, April 23, 1924, (reviewing A. BRUCE, THE AMERICAN JUDGE (1924)) *reprinted in* FELIX FRANKFURTER ON THE SUPREME COURT, EXTRA-JUDICIAL ESSAYS ON THE COURT AND THE CONSTITUTION 149 (P. Kurland ed. 1970). Bruce's earlier book, *Property and Society* (1916), had been criticized by Harold Laski as "childish," and "uncritical, unilluminating and unscholarly." 1 Holmes-Laski Letters 48, 50 (M. Howe ed. 1953). These comments are omitted from the abridged paperback edition.

The book, *Property and Society,* however, contained some rather modern views for its day. For example, Bruce disagreed with the then prevalent view of the equality of workers and employers in negotiating wages and working conditions, which resulted in upholding sweatshop wage agreements under the "freedom of contract" theory. He also believed, contrary to the current opinion at the time, that workmen's compensation laws were constitutional. A. BRUCE, PROPERTY AND SOCIETY 129-35 & 94-95 (1916).

11. *See, e.g.,* A. BRUCE, THE WORKINGS OF THE INDETERMINATE SENTENCE LAW AND THE PAROLE SYSTEM IN ILLINOIS (1928).

12. *See* R. MORLAN, POLITICAL PRAIRIE FIRE, THE NONPARTISAN LEAGUE, 1915-1922 at 75 (1955).

13. *See, e.g.,* Yuha v. Minneapolis, St. P. & S. Ste. M. Ry., 42 N.D. 179, 171 N.W. 851 (1918) (action for damages for negligent construction, operation, and maintenance of a coal shed).

14. *See, e.g.,* Montain v. City of Fargo, 38 N.D. 432, 166 N.W. 416 (1917) (Grace, J., dissenting) (relation between City of Fargo and garbageman was one of master and servant and not independent contractor).

1917-1918 period, he was probably more traditional in his views than any of the justices, even Bruce.

When the three new justices took office in January 1917, there were, according to Robinson, 150 cases on the docket and undecided.[15] It is not clear whether this figure included all cases docketed, including some in which briefs were not yet due, whether it included only cases ready for argument, or whether it included only cases fully argued and submitted. Whichever it was, the figure was high. When I joined the court in 1973, there were fifty cases argued and not decided, and at least once each year since then the comparable figure has been reduced to zero.

The 1917 court deserves credit for tackling its backlog and disposing of it. That it did so is indicated by the fact that in 1917 it decided 207 cases with written opinions, probably the highest number of any year in the history of the court.[16] In 1918 it decided 117 cases with opinions, which probably indicates that the backlog had been well disposed of in 1917.

In disposing of that backlog, Justice Robinson wrote the most opinions.[17] Of course, it was easier for Robinson to write the enormous number of opinions he did because he cited so few authorities. Another factor that entered into the number of opinions he wrote was that, as mentioned earlier, he had the unprecedented custom of writing opinions in advance and releasing them in advance. It is quite apparent that he used these advance opinions as proposed opinions when the case was assigned to him. If the case was assigned to someone else, and he agreed with the opinion drafted by the other justice, he might not file his own, but if he agreed with the result but not the reasoning, he would file his own as a concurring opinion. If he disagreed with the result and the reasoning, he would file his own previously written opinion as a dissent.

Another custom of Robinson's, which surely must have infuriated his colleagues, was to write a weekly newspaper column about the court. The columns were called his "Saturday Night Letters"[18] and gave his opinions on a great variety of subjects, including some matters before the court. A few of the "Saturday

15. J. ROBINSON, *supra* note 3, at 80.

16. Higher figures have been cited for the North Dakota Supreme Court in recent years, but they include motions disposed of without opinion.

17. In disposing of that backlog, Robinson wrote 48 of the 207 opinions in 1917 and 28 of the 117 opinions in 1918. In 1917 Robinson wrote 29 concurring opinions, 31 dissents, and 5 concurrences in the result. In 1918 Robinson wrote 20 concurrences with opinion, 21 dissents, and 8 concurrences in the result.

18. U. BURDICK, *supra* note 4, at 8. *See also* R. MORLAN, *supra* note 11, at 99.

Night Letters'' are reprinted in his book,[19] and include comments on such diverse subjects as Adam and Eve, hints on health, Bolshevism, vaccination, Prohibition, hints on grammar and composition, and an ''official biography'' of the author.[20] The book also contains a number of sensible comments on court backlogs, brief opinions, writing clearly and grammatically, and other subjects, as well as some other comments which now seem bizarre.[21]

The response of other members of the court to Robinson's peculiarities was varied. Often they merely wrote that they agreed with Robinson's result in his opinions for the court, without dissenting or writing concurrences. Sometimes when this happened, there would be a petition for rehearing, pointing out the lack of authority or the extravagant language in the opinion, which was offensive to the losing attorney or client. If this happened and Robinson decined to modify the opinion, some other of the justices would sometimes write an opinion denying a rehearing but providing a more orthodox explanation.[22]

Sometimes, however, the other justices were not sufficiently diligent, and Justice Robinson smuggled something into his opinion that must not have been noticed by the others. For example, in *York v. General Utilities,*[23] three of the judges (Robinson, Bruce, and Birdzell) seemed to be in agreement that comparative negligence should have been applied in an ordinary negligence case.[24] Aside from Federal Employees' Liability Act[25] cases, this is the only instance I know of in which comparative negligence was approved by the North Dakota Supreme Court until the statute was changed many years later.[26]

Another somewhat surprising aspect of the same case is that Bruce and Christianson (the holdover, non-Nonpartisan League judges) thought that a verdict of $15,000 for electrical burns was not excessive, while the supposedly liberal Nonpartisan League

19. *See* J. ROBINSON, *supra* note 3.

20. *Id.* at 7 (Adam and Eve), 49 (hints on health), 91 (Bolshevism), 120 (Prohibition), 110 (vaccination), 176 (hints on grammar and composition), 279 (''official biography'').

21. *See, e.g., id.* at 190 (chapter entitled ''Suckers and Spoilers''); *id.* at 216 (chapter entitled ''Turning Water into Wine'').

22. *See, e.g.,* York v. General Utilities, 41 N.D. 137, 141, 170 N.W. 312, 313 (1918) (Christianson, J., concurring) (although lower court had erred in its instructions, it was not a matter of law that evidence of negligence was lacking or that contributory negligence existed); Fraine v. North Dakota Grain and Lumber Co., 41 N.D. 172, 176, 170 N.W. 307, 308 (1918) (Birdzell, J., concurring) (''remarks concerning counsel are uncalled for'').

23. 41 N.D. 137, 170 N.W. 312 (1918).

24. *Id.* at 140-41, 170 N.W. at 313.

25. Pub. L. No. 100, ch. 149, 35 Stat. 65 (codified at 45 U.S.C.A. § 51 (West 1972)).

26. 1973 N.D. Sess. Law ch. 78, § 1 (codified at N.D. CENT. CODE § 9-10-07 (1975)).

judges (Robinson, Grace, and Birdzell) thought the verdict was excessive.[27]

This leads me to another observation: the election of the three Nonpartisan League judges did not have as great an effect on the philosophy of the court as must have been expected. Of course, Robinson turned out to be a disappointment to the Leaguers, since he spoke up in opposition to House Bill 44,[28] one of the principal measures of the Nonpartisan League. This Bill would have amended the constitution of the state to permit state owned industries. But even aside from House Bill 44, there is no distinct political grouping to be found in the court opinions. So far as I can see, Robinson dissented as readily from opinions of Grace and Birdzell as he did from opinions of Bruce and Christianson, and they often dissented from his. There is no visible pattern of voting shown in the court decisions. There were no blocs on the 1917-1918 North Dakota Supreme Court or, rather, there were five of them. A more independent group of judges could hardly be imagined. Of the 117 cases decided in 1918, only 29 had no special concurrences or dissents, and of the 207 cases decided in 1917, only 84 had neither special concurrences nor dissents. I suspect the percentage of special concurrences and dissents in 1917 and 1918 is the highest in the history of the court.

I mentioned earlier Justice Robinson's disdain for precedents. He gave his view of them in a dissent in *McHenry County v. Brady*:[29]

> In this case there is no use of talking of *res judicata* or the force of any prior decision binding on this court. Though it is the custom of courts to adhere to their own blunders and pile error upon error, the nefarious custom is not a law, and the custom is of less force when a party invokes a prior decision made by a bare majority of one judge, or by three judges voting against three judges, including the trial judge.[30]

This lack of respect for precedent, which Robinson would have defended as necessary to do justice in each individual case, sometimes led him to contradict himself. To take one example, in *Patterson Land Co. v. Lynn,*[31] he dissented from the denial of a motion

27. 41 N.D. at 140-41, 170 N.W. at 313.
28. 15th Leg., 1917 House Journal 331.
29. 37 N.D. 59, 163 N.W. 540 (1917).
30. McHenry County v. Brady, 37 N.D. 59, 84, 163 N.W. 540, 549 (1917).
31. 36 N.D. 341, 162 N.W. 702 (1917).

to recall a remittitur, the motion being made years after the case was decided by the supreme court. Citing no authority, he said, "The court has ample power to order a new trial and there is no justice in denying it."[32] But in *Nordby v. Sorlie,*[33] decided less than three months later, he wrote the opinion of the court denying a second petition for rehearing filed seven months after the prior motion was denied, saying that even if the decision was wrong, "that would be no sufficient reason for allowing the motion to reconsider. There must be an end to litigation."[34]

It is not surprising that Justice Robinson's peculiarities did not escape comment in legal journals. Chief Justice Bruce himself, no doubt out of a sense of frustration, wrote an article entitled "Judicial Buncombe in North Dakota and Other States."[35] In that article he defended the written opinion and stare decisis:

> There is at the present time a judge upon the bench, James E. Robinson by name, who for many years has propounded this theory [government by men, not law] at the hustings and who has at last been elected upon it by an overwhelming majority, and this against one of the best lawyers that the state has ever produced. If elected he promised to decide cases on the argument without opinions and without leaving the courtroom. In many instances he has not only lived up to this theory so far as he was concerned, but in some instances he has come into court with an opinion already written before counsel have even been heard from.
>
> Every Saturday night he publishes a letter in the newspapers in which he prints these alleged opinions, and often before they have even been read by the other members of the court. In nine cases out of ten, indeed, they are never concurred in at all, and the other members are compelled to rewrite them, to be met merely with a caustic dissent and another article in the papers stating that the case was needlessly delayed, rewritten and was not decided by the majority of the court for some days or weeks, when it was merely a kindergarten case; and that it was decided by him rightly though contrary to the views of the majority, upon or before the hearing, and that the

32. Patterson Land Co. v. Lynn, 36 N.D. 341, 346, 162 N.W. 702, 704 (1917).
33. 37 N.D. 288, 163 N.W. 833 (1917).
34. Nordby v. Sorlie, 37 N.D. 288, 289, 163 N.W. 833, 833 (1917).
35. Bruce, *Judicial Buncombe in North Dakota and Other States,* 88 CENT. L. J. 136 (1919).

> delay has only produced an erroneous judgment and was insisted upon merely to allow time for the writing of opinions which were absolutely unnecessary.[36]

Justice Robinson responded[37] with an admission that he was peculiar — in insisting that judges devote full time to their office, in keeping opinions short and concise, and in being prepared when he heard oral arguments.[38] He stated:

> It is true that I have little regard for old, obsolete or erroneous decisions and prefer to decide every case in accordance with law, reason and justice. I do never — like Pontius Pilate — wash my hands and blame the law or a precedent or party zeal for an unjust decision. I do not believe in building error upon error.[39]

He then mentioned several cases he considered unjust.[40] All in all, it was an interesting exchange.

Justice Robinson was the subject of an article by the eminent legal scholar, Max Radin, who compared him to a well known French judge holding somewhat similar views.[41] Professor Radin was critical of the French judge, and more critical still of Justice Robinson.[42]

Perhaps I can close this digressive commentary with a few examples of the writing style of Justice Robinson. The following is an entire opinion involving a grade-crossing collision: "I approve this decision. It would be a great detriment to the public if railway trains were to move like teams. They must go. It is the duty of every person to use great care and caution in crossing a railroad track."[43]

Following are some other examples of Justice Robinson's colorful style:

> This action arises on one of those long, hard, cut-throat cropping contracts, reserving to the landowner title

36. *Id.* at 136-37.
37. Robinson, *"Peculiarities" in the Administration of Justice in North Dakota — Justice Robinson's Explanation,* 88 CENT. L. J. 155 (1919).
38. *Id.* at 156.
39. *Id.*
40. *Id.*
41. Radin, *The Good Judge of Chateau — Thierry and His American Counterpart,* 10 CAL. L. REV. 300 (1922).
42. *Id.* at 306-09. *See also* Note, *Rule and Discretion in the Administration of Justice,* 33 HARV. L. REV. 972 (1919-1920).
43. Crowson v. Minneapolis, St. P. & S. Ste. M. Ry., 36 N.D. 100, 105, 161 N.W. 725, 726 (1916).

to the crops until the producer complies with numerous conditions.[44]

In reading the decisions of this court and the statutes of the state it must be remembered that under the Constitution every man has a remedy by due process of law for all injuries done him in his person or property. He does not have to run all round Robin Hood's barn. He may demand of the courts right and justice, without sale, denial, or delay.

It is needless to waste time in reviewing decisions on so simple a matter. The order overruling the demurrer and the judgment are affirmed.[45]

In Fargo, North Dakota, there was an old resident named Hagen. He scorned delights and lived laborious days, and when about to depart for the land of rest he transferred all his property by will to a brother in Wisconsin, a sister in California, and to a sister in Norway, whose transfer tax of 25 percent was $8,000. . . . In this case the majority decision is based on the laws of feudalism, not on the Constitution of our State. The reasoning is based on the rules of law which resulted from the Norman Conquest, but the State does not stand in the place of William the Conqueror. It is no Lord Paramount. It has no kingly prerogatives. It does not exist by divine right. It is merely a corporate entity which we, the people, have devised for the purpose of protecting our natural rights, and it has no right to rob any person.

. . . .

The Inheritance Tax Law shows on its face that it is a thief and a robber. . . . If such an unjust system of taxation and confiscation has been sustained in any State under a similar constitution, it is because the judges did not know any better, and because they give to modern constitutions and the natural rights of man less consideration than they do to the laws of feudalism.[46]

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44. Walker v. Paulson, 36 N.D. 213, 214, 162 N.W. 299, 299 (1917).

45. Bismarck Water Supply Co. v. County of Burleigh, 36 N.D. 191, 195, 161 N.W. 1009, 1009-10 (1917). Robinson is paraphrasing the North Dakota Constitution. N.D. CONST. of 1889, art. 1, § 9. The language can be traced to the Magna Charta. Magna Charta, para. 40, *reprinted in* N.D. CENT. CODE vol. 13 (1981).

46. Moody v. Hagen, 36 N.D. 471, 491-93, 162 N.W. 704, 709-10 (1917).

In writing this dissenting opinion, I do solemnly thank God that my love for right and justice is far above any regard for my office. I am in no way dependent on the office and I have little regard for it, only so far as it presents an opportunity to sustain the right and to denounce the wrong. This I say, because in writing this opinion I am sure to give offense to a large class of zealous and well-organized people who make and unmake judges. (Who enters here leaves hope behind.)[47]

In this case it is extremely difficult to write a dissent without using some swear words. . . . That is awful![48]

It is right to forbid the sale of drinks to Indians, minors, to some persons of Celtic blood, and to any person who does not know enough to care for himself and his family; but to forbid a taste of wine, beer, ale, or Dublin stout to an Anglo-Saxon or a Teuton, why that is cruelty. And, cruelty, thou art a wickedness.

. . . .

At the Grand Pacific I have a nice, exclusive bachelor apartment ($45 a month). Now, if the Governor, the Bishop,[49] or one of the Justices call on me and I open a bottle of foamy Dublin stout — my elixir of life — and for his stomach's sake or for good fellowship give him a glass and join him in a drink with a thousand earnest wishes for his health and happiness, does that make my nice exclusive apartment a common nuisance? If I call on the good Bishop, and he treats me to a glass or a bottle of wine, does that turn his palace into a common nuisance? If not, then is there one law for the palace and another law for the cottage?[50]

In so small a case it were [sic] an act of folly to waste time in writing a grave discussion on numerous hairsplitting and frivolous objections. The judgment is affirmed.[51]

47. State v. Webb, 36 N.D. 235, 246-47, 162 N.W. 358, 362-63 (1917). In *Webb,* Justice Robinson assailed prohibition and came very close to accusing his fellow judges of violating the corrupt practice law by signing a pledge, in advance of election, to support the prohibitionists.

48. Blumardt v. McDonald, 36 N.D. 518, 524-25, 162 N.W. 409, 412 (1917).

49. This may be a reference to William Lemke, the Congressman, rather than a religious official. Robinson often called Lemke "the Bishop." And "palace" could refer to the house Lemke built in Fargo, partly with funds borrowed under the State Home Building Association Law, which he violated by building a more expensive home than the law allowed. *See* E. ROBINSON, HISTORY OF NORTH DAKOTA 345 & 350 (1966).

50. Scott v. State, 37 N.D. 90, 97-98, 163 N.W. 813, 816 (1917).

51. Steen v. Neva, 37 N.D. 40, 47, 163 N.W. 272, 275 (1917).

This is an action for the specific performance of a listing land contract. The plaintiff is an irresponsible nonresident corporation, and it never put up a dollar on the contract. That alone is quite enough to show that the plaintiff has no standing in a court of equity.

The land contract is in the form of a sharp listing agreement, such as a party may be induced to sign when he is tricked or hypnotized, or when he has taken leave of his senses.[52]

When a party attempts to purchase land at a tax sale and to get interest at the rate of 24 per cent., with a penalty of 5 per cent., he has no reason to complain if he gets back only his principal with 6 per cent. interest. Shylock did not fare so well when he insisted on the pound of flesh. He forfeited his principal sum of 3,000 ducats and had to become a Christian and to convey half his property to his daughter, Jessica, who had wed a Christian.[53]

It is exceedingly nervy for anyone to appeal such a case to this court or to any court.[54]

In the conduct of a lawsuit there is a time for candor and fairness. There is no time for deception, duplicity, or boy play.[55]

When a cropping contract is in microscopic print which cannot be read without straining the eyes, and when, by such means, it is turned into an impressive chattel mortgage, it deserves no favor of the courts.[56]

The defense is a pure and manifest sham, and it well deserves a severe rebuke.[57]

When this court certifies that a person is competent and may safely be trusted to give counsel and to defend the rights of suitors, it becomes the duty of the court to make good its certificates by guarding the rights of the poor and ignorant when their counsel failed them.[58]

52. M. Sigbert Awes Co. v. Haslam, 37 N.D. 122, 131, 163 N.W. 265, 267 (1917).
53. Davidson v. Kepner, 37 N.D. 198, 203, 163 N.W. 831, 832 (1917).
54. Bready v. Moody, 38 N.D. 321, 328, 164 N.W. 946, 948 (1917).
55. Bentler v. Brynjolfson, 38 N.D. 401, 413, 165 N.W. 553, 557 (1917).
56. Hopper v. Howard, 39 N.D. 83, 85, 166 N.W. 511, 511 (1917).
57. Gilbert Mfg. Co. v. Bryan, 39 N.D. 13, 27, 166 N.W. 805, 809 (1918).
58. Fischer v. Dolwig, 39 N.D. 161, 180, 166 N.W. 793, 799 (1918).

> It should not be accounted a libel to say of any person that he is a little blind to official duty, as that is true of nearly every person who has held office. Everyone knows that in the exercise of his duties an attorney general must have a large discretion, and that an apparent blindness may be on the side of charity in accordance with his sense of duty.[59]

> It is a petty kindergarten case which should have been heard and decided in two hours, and yet by the unwise indulgence of the court, six distinguished counselors were permitted to talk the case for two whole days.[60]

The one opinion that most delights aficionados of Robinson opinions is probably his dissent in *State ex rel. McCurdy v. Bennett*.[61] It involves the statute[62] that authorized a sheriff, upon a court order (which could be obtained on the affidavit of the state's attorney, on information and belief), to padlock an alleged bawdyhouse and its contents and keep them closed until a court determination was made as to whether it was a common nuisance.[63] Justice Robinson, in a dissent to an opinion holding the statute constitutional, said:

> [B]ut shall we say that the McKenzie Hotel is a common nuisance, and that it shall be closed for one year by reason of the fact that to some extent it is or may be used, as all hotels are used, for gambling, drinking, and forbidden love? Shall we say that the grass and the parks are nuisances to be destroyed because of use in that way? Shall we say that, on mere affidavits and without trial by jury, any party may be turned out of his house and deprived of his liberty and property? Even Shylock disdained to beg for life without his property. He said: You take my life when you do take the means whereby I live.[64]

It should be noted that the McKenzie Hotel, now the Patterson, was then the most luxurious hotel in North Dakota, and the

59. McCue v. Equity Coop. Publishing Co., 39 N.D. 190, 206, 167 N.W. 225, 231 (1918).
60. Olson v. Ross, 39 N.D. 372, 384, 167 N.W. 385, 387 (1918).
61. 37 N.D. 465, 471, 163 N.W. 1063, 1065 (1917).
62. Compiled Laws of 1913, §§ 9644-9645 (1914).
63. *Id.* § 9644.
64. McCurdy v. Bennett, 37 N.D. 465, 473, 163 N.W. 1063, 1066 (Robinson, J., dissenting).

favorite abode of legislators during the legislative sessions.

Justice Robinson wrote with abandon, striking out in all directions, and wrote entertainingly. Actually, he knew more law than he let on. Without citing authorities, he very often correctly stated rules of law and constitutional provisions. When new law was being made, he was often right, as we now view the questions of law, in his opinions and dissents. At other times he was hilariously wrong. But, in reading his opinions, one is often tempted to concur in what Justice Bruce once said, rather ruefully, in a brief concurring opinion: "I concur in the judgment and law announced by Mr. Justice Robinson, though not perhaps in his homilia."[65]

65. Wolf v. Wolf, 41 N.D. 109, 111, 169 N.W. 577, 578 (1918).