



1935

## North Dakota Decisions

North Dakota Law Review Associate Editors

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### Recommended Citation

North Dakota Law Review Associate Editors (1935) "North Dakota Decisions," *North Dakota Law Review*.  
Vol. 11 : No. 3 , Article 3.

Available at: <https://commons.und.edu/ndlr/vol11/iss3/3>

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## NORTH DAKOTA DECISIONS

*Ellsworth vs. Martindale-Hubbell Law Directory, Inc.*: A foreign corporation continuously engaged through a long period of years in the carrying on of a business in which it employs representatives who, in the usual course of their employment and in furtherance of the business of the corporation, annually enter the State of North Dakota, there solicit orders subject to acceptance at the home office for a publication, make collections, investigate and report on complaints, and perform such other duties as are incidental to those above stated, is "doing business" within the state within the meaning of that term as used in subsection 7426, Compiled Laws 1913. *Held*, that service of process upon one of such representatives of the corporation is service upon the corporation.

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*Bowers vs. Great Northern Railway Company*: The defendant railroad company, in operating a train over an ordinary unguarded highway in the regular course of its business, stopped its train on the highway crossing in response to an imperative semaphore signal at intersecting railway lines, but on stopping immediately proceeded to back its train off the crossing. Plaintiff alleged that while the highway crossing was so obstructed plaintiff drove his car against the train and sustained damages. *Held*, that under the circumstances above stated, the railroad company is not charged with the duty of providing lights or other signals at the crossing while so occupying it, to warn travelers, even though the night is dark and a blizzard is prevailing; and the evidence is held to be insufficient to submit to a jury on the question of railroad's negligence.

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*State ex rel Sathre vs. Moodie et al.*: Quo warranto proceedings in Supreme Court to determine qualifications and right of newly elected Governor to hold his office, under constitutional provision requiring that Governor must have resided within the state for five years. Respondent had been absent from the state for twenty months and had voted in another state during such five year period. *Held*, among other things, that the question of residence must be determined from all the facts and circumstances and the intention must be accompanied by acts in harmony with the declared intention; and notwithstanding one may testify that his intention was to make his home in a certain place, if his acts are of a character to negative his declaration or inconsistent with it, the court cannot be governed by his testimony as to intention; and that citizenship may depend upon the intention of the individual, but this intention may be shown more satisfactorily by acts than declarations. *Held*, further, that the Governor being disqualified to hold office, his successor is the newly elected and qualified lieutenant governor of the state, and not the former governor, or former lieutenant governor acting as governor at the time of the election.

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## NEW STATE LEGISLATION

At the time of going to press we note that few bills have finally passed and received the approval of the Governor. Among them is Senate Bill 33, which will be effective July 1st, 1935. It provides that as a prerequisite for entering judgment, except judgments for taxes, the judgment creditor shall file an affidavit stating the full name, occupation, place of residence, postoffice address, and, if known, street