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New State Legislation

North Dakota Law Review Associate Editors

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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.

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.

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.

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

address or residence number. The affidavit may be made upon information and belief. By an amendment to the bill as originally introduced it was provided that failure to file such affidavit shall not invalidate the judgment, but the clerk may be held liable for a penalty of \$5.00 in case he enters or permits the entry of judgment without the filing of the affidavit. Presumably the purpose of the act is to avoid confusion as between the judgment debtor and persons whose names are similar to or identical with his name. As is usually the case when legislative bodies attempt to control matters of procedure, this statute will be troublesome in some cases. For instance some difficulty will arise in cases brought to quiet title where there are many defendants, including persons unknown. The operation of the act should have been limited to money judgments.

Senate Bill 78, which has passed both houses, relates to limitation of time for commencing actions. As originally introduced, the bill repeals subdivisions 6 and 7 of Sec. 7375, Compiled Laws of 1913, and includes, among actions to be commenced in six years:

"An action for relief on the ground of fraud in all cases both at law and in equity, the cause of action not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud.

"An action for the foreclosure of a mechanic's lien."

THE EDITOR'S PARAGRAPH

In response to our appeals for assistance some very excellent contributions have been submitted, but unfortunately the limitations of space in BAR BRIEFS occasioned by a rigorous budget will prevent the use of the same at least until some future issue. As a guide to prospective contributors we call attention to the fact that a full page of BAR BRIEFS contains approximately five hundred words, so that a single issue under present conditions contains something less than two thousand words. Articles should be in the hands of the editor by the 5th of the month in order to be available for the current issue.

The mailing list for BAR BRIEFS is not entirely accurate and up to date, although we are attempting to make it so. The publication is sent out as second-class mail and will not be forwarded without additional postage. Please notify us of any change of address.

A member of the Association advises that he is in the market for a full set of North Dakota Reports together with the Code and Session Laws. The editor will be glad to get this buyer and a seller in touch with each other and will not charge a brokerage fee.

PLEADING AND PRACTICE

Our old friend X brought an action upon a promissory note. One of the defendants, a layman, duly served an answer for himself and his fellow defendant. Thereafter, and more than thirty days subsequent to the service of the summons and complaint, the defendant served the following document upon plaintiff's attorney:

"(Title) "Request Damages. And now come the defendants Y and Z and ask Damages caused upon them by X, Plaintiff, of the above entitled action, by reason of Defamation, Worry and time lost on account of the above entitled action, in the sum of \$1000.00 besides the costs and disbursements of this action."