



1934

## North Dakota Decisions

North Dakota Law Review Associate Editors

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Americanism and Citizenship: Thos. J. Burke, Bismarck;  
 Comparative Law: Herbert G. Nilles, Fargo;  
 Constitution and By-Laws: L. J. Wehe, Bismarck;  
 Criminal Law and Enforcement: Harold D. Shaft, Grand Forks;  
 Ethics and Internal Affairs: C. L. Young, Bismarck;  
 Fee Schedule: F. J. Traynor, Devils Lake;  
 Jurisprudence and Law Reform: James Morris, Jamestown;  
 Legal Education and Admission: Olaf H. Thormodsgard, Grand  
 Forks;  
 Legislation: J. P. Cain, Dickinson;  
 Local Organizations: H. G. Fuller, Fargo;  
 Memorials: Hiram A. Libby, Grand Forks;  
 Modification of Jury System: G. Grimson, Rugby;  
 Press and Public Information: M. W. Duffy, Cooperstown;  
 Public Utilities: E. B. Cox, Bismarck;  
 Selection of Judges: John F. Sullivan, Mandan;  
 Unauthorized Practice: John A. Layne, Fessenden;  
 Uniform Laws: C. J. Murphy, Grand Forks.

Upon motion, duly carried, Miss Cathernie M. Coleman, formerly of Dickinson, now of Helena, Montana, was declared an honorary member of the North Dakota Bar Association, and the Secretary was instructed to notify Miss Coleman of the action taken.

Secretary Wenzel's proposal for a more effective bar organization for North Dakota, informally submitted to the Executive Committee early in October was, upon motion, referred to the Committee on Local Organization.

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#### NORTH DAKOTA DECISIONS

*Olson vs. Ottertail*: An action for damages resulted in a verdict in favor of the plaintiff. At the close of plaintiff's case, and again at the close of the entire case, defendant made a motion for a directed verdict. Two days after verdict stay of proceedings, except entry of judgment, was entered, to permit making of motion for judgment notwithstanding the verdict. Judgment was entered for plaintiff, and, four days later, defendant gave notice of motion for judgment notwithstanding. No motion to set aside plaintiff's judgment was made, nor was the motion *non obstante* coupled with a motion for new trial. Defendant's motion was granted. Plaintiff appealed, and then, more than six months after entry of plaintiff's judgment, defendant entered judgment. HELD: Construing *Sec. 7643, Laws 1913*, that a motion for judgment notwithstanding the verdict could be coupled with a motion for new trial, and such motion, in the alternative, was available either before or after entry of judgment (by plaintiff). The construction placed on the statute in *Stratton vs. Rosenquist, 37 N. D. 116*, evidently inspired the further amendment by *Chap. 133, Laws 1921*, which was again amended by *Chap. 335, Laws 1923*, and there is nothing in the statutes that contemplates a motion for judgment notwithstanding the verdict, standing alone, to be made after judgment. The rule which requires a motion *non obstante* to be presented before entry of judgment still obtains in this state. *Sec. 7643, 1925 Supp. Laws 1913*, provides a remedy for vacating a verdict, after judgment entered thereon, by motion *non obstante*, only when coupled with a motion for a new trial. The only express authority for setting aside a verdict is by motion for

a new trial, which may be made either before or after entry of judgment. The Court points out that *Bank vs. Thompson*, 55 S. D. 631, goes so far to say that a motion for judgment notwithstanding, when coupled with a motion to set aside the judgment is not timely when made after the entry of judgment. Even if the motion for judgment notwithstanding, after judgment, be considered as a motion for new trial, then the only errors that can be considered are those stated in the motion, which, in effect, permits only a review of the court's ruling in denying the motion for directed verdict; and the evidence discloses that the defendant was not entitled to a directed verdict for the reason that substantial evidence had been introduced to establish a prima facie case. (N. B. Both parties, apparently, went astray in the procedural labyrinth, which suggests the thought, once more, that procedure might better be a matter of court rules than legislative enactment.)

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### THE CONSTITUTION AND MODERN TRENDS

"Slurring reference to our eighteenth century constitution suggests to the unthinking that it is obsolete, just as like reference to the capitalistic system suffices at a time like this to arouse the antagonism of many who would not willingly surrender the right to possess and enjoy the fruits of their own labor, which is all that capitalism means.

"The framers of the constitution did not gear our institutions to the stage coach. They foresaw vast changes on this continent. The scheme which they devised, the principles which they applied and the safeguards which they provided have become increasingly important at each stage of our national development and are today indispensable, unless we are to substitute the supremacy of the state for the supremacy of the people, arbitrary power for our democratic institutions.

"The truth is that there has never been another combination of circumstances so favorable to wise decisions in the organization of a government, uninfluenced by selfish and partisan considerations, as existed on the 25th of May, 1787, when the convention assembled at Philadelphia to frame a constitution. There has never been and is not likely to be gathered again such another assemblage of men under such a presiding officer as framed the document, which, until it became the vogue to scoff at experience, has been regarded in the words of Gladstone as "the most wonderful work ever struck off at a given time by the brain and purpose of man." The leading men of a period that produced statesmen and philosophers assembled at Philadelphia. The subject of government had been uppermost in their minds since Yorktown. They had studied the science of government and the history of government more deeply than any similar body of men that has ever been assembled. They were imbued with the august nature of their task. They visualized a country stretching across the continent and they undertook to frame a constitution which should be a charter of liberty for ages to come. It was not a code of laws to fit temporary conditions such as its critics would frame today. It provided a scheme of government based on fundamental principles as unchanging as human nature itself. It contained a plain and concise statement of the powers conferred without any attempt to define the means of exercising them, which were thus left entirely to time and circumstance." Excerpt from address delivered by Hon. Nathan L. Miller, of New York, before the American Bar Association.