



1933

## North Dakota Decisions

North Dakota Law Review Associate Editors

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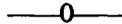
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## NORTH DAKOTA DECISIONS

*Williams vs. City of Fargo:* Plaintiff owned property in Fargo upon which she desired to build a dwelling. The City wanted a portion of it to open a street (12th). At meetings of the City Commission discussion resulted in promises to require all buildings to face on 11½ Street, and building permit was subsequently issued plaintiff requiring plaintiff to build facing 11½ Street. Plaintiff sold a small bungalow to one Coulter. At time of sale this faced 11½ Street, but the purchaser obtained a permit to rebuild facing 12th Street. Subsequently no more permits were granted for a 11½ Street facing, but two or three were issued for a 12th Street facing. This brought three back yards directly opposite plaintiff's front yard. There was no attempt to deny the damage to plaintiff's property. HELD: 1. City Commissioners are only agents of the City, and the City is not liable when they exceed their authority. 2. Persons dealing with officers of a municipality must, at their peril, ascertain the scope of authority. 3. The zoning ordinance does not give the City authority to direct the facing of buildings in any direction. 4. Plaintiff's damage did not result from the opening of 12th Street, but by reason of the facing of new buildings on 12th Street and the failure to carry out its agreement (which was ultra vires) to have all such buildings face 11½ Street. 5. The dismissal, on defendant's motion, was held to be under Sec. 7597, 1913, and not under Chap. 133, 1921 Session Laws. "If the plaintiff fails to establish a claim the court could, on the motion, dismiss the case without a final determination, but had no authority to dismiss it on the merits."



*Holgerson vs. Devils Lake:* This was an action for damages for injury sustained by a minor while using a toboggan slide constructed, maintained and operated by the City on premises belonging to the City's School District. Demurrers to the complaint were sustained as to the City and Park District, but overruled as to the individual members of the Park Board. HELD: A park district is a corporate agency and is not liable for the tort of its agents committed in the performance of governmental duty. Sections 4055 to 4063 of C. L. 1913 define the powers of park commissions. The mere fact that the slide was erected upon property belonging to a separate corporate entity of the city does not alter the governmental character of the enterprise. The board had power to acquire land by purchase, gift, devise, condemnation, or otherwise. Under these broad provisions it could lease land or acquire such grounds under license. Unless otherwise affirmatively established, the actions of the board were lawful and innocent, and the demurrer should have been sustained as to all defendants.

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### UNSOOUND LEGISLATION

We use that term with respect to the bill before the present legislative assembly which provides for majority control of the State Pardon Board. In making such a designation for that legislation, we are not concerned with current rumors relating to any possible motives for the introduction of the bill at this time. The designation is made,