North Dakota Law Review

Volume 9 | Number 6 Article 5

1933

North Dakota Decisions

North Dakota Law Review Associate Editors

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Recommended Citation
North Dakota Law Review Associate Editors (1933) "North Dakota Decisions," *North Dakota Law Review*: Vol. 9: No. 6, Article 5.
Available at: https://commons.und.edu/ndlr/vol9/iss6/5

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members of the legislature. That is the "appearance before committee" method. Were this method employed, as it could be employed, by legislative committees, through the medium of a summons to appear before these committees, instead of through the adopted method of hearing those who come voluntarily, much more in the way of valuable legislation could and would be accomplished.

Now that the 1933 session is over, may we not suggest, that, until some other plan is evolved, the next session of our legislature organize its committees under a rules procedure that will require such committees to call before them those who have special knowledge concerning the matter under consideration; then, instead of asking them their views, invite them to recite the facts within their knowledge that may have a bearing upon the issue before the committees?

This would still leave us with politically-minded legislators passing upon the facts gathered by the "investigating" committee, but it would, at least, get the facts that should be gotten before the committees to the attention of the legislature, instead of getting only the volunteer crusader's viewpoint.

We offer this as a constructive suggestion and an approach to more beneficial, scientific, systematic legislation.

NORTH DAKOTA DECISIONS

McCurdy vs. Hughes and Mann: Defendant H. had his attorneys prepare a verified complaint, charging plaintiff with misconduct as an attorney, and requesting appropriate action by the Bar Board and the Supreme Court. These verified charges were presented to the Supreme Court. Prior to such presentation, H. informed M., publisher and managing editor of a daily newspaper, that such charges were to be presented, and M. advised H. that said paper and the Associated Press might be interested. Later, and before the matter was considered by the Supreme Court, M. sent one of his reporters to the attorneys for H. for a document, with instructions, "they would know what was wanted." Publication followed. This included noticeable headlines, editorial and other comment. After deliberating for some time, the jury came in with a verdict (for plaintiff, apparently). The Court indicated the verdict was not acceptable, asked the jury to retire for further deliberation, and in the detailed instructions relating to such further consideration, stated, "This verdict must be in the language of the instructions, finding in favor of the plaintiff." etc. The first verdict was not made matter of record. HELD: The making, or presentation, of charges against an attorney in Supreme Court is a preliminary step in a legal proceeding. Such preliminary steps must be kept secret, and hence, are privileged. No civil liability attaches through their presentation. But, until the Court orders an investigation, or takes further steps in the matter, publication of the complaint or its allegations is not privileged, and every person who is in any way responsible for publication is liable in a civil action for damages, if the matter is libelous. The evidence is sufficient to justify a conclusion by the jury that both defendants had something to do with the publication. Apparently, the new trial is ordered upon the basis of the erroneous instructions on resubmission to the jury, also the assumption that a presentation of charges means publication.

This case is quite important to lawyers and publishers. It is regrettable, however, that it should supply one more lay complaint to the

delays of legal procedure. Our boasted theory of "a remedy for every wrong" is much emasculated, at least disfigured, by the years that pass before final decision. Four years have been "swallowed up" in this case, and it may take that many more to reach the last lap.

SAFETY MORE IMPORTANT THAN SPEED

Attorney R. H. Sherman wrote a justification of President Hutchinson's editorial of last month, in answer to a newspaper assumption that the editorial was a "reply" to something else. A copy was sent to us. The facts, as stated by Mr. Sherman, are correct. The editorial was written before any announcement was made of a contemplated recall. But is it really material when the editorial was written? It needs neither apology nor justification. It merely announced that the lawyer who now heads the State Bar Association intends to abide by his oath as a lawyer, as well as by his oath as a Judge, and intends to protect the citizens of this state against *threats of violence.*

Right in that connection, let us revert to a reported speech of Governor Langer. The Fargo Forum, Sunday, April 16, 1933, quotes the Governor as follows: "I believe in the recall law, and think it should apply to a district judge who won't obey a governor's proclamation."

If the quotation is correct, then it marks the first time in the history of North Dakota that a public official has ever intimated that the official acts of the state's executive were not subject to judicial review.

We submit that the final repository of the rights of the people of this state is the Judiciary. Any citizen has the right, under the constitution, to appeal to the courts of the state for the redress of any wrong which such citizen believes has been committed against him, even if the alleged commission of such wrong is based upon an alleged right of the executive or the legislative department. We are still a government of law, and not a government by executive fiat.

Even in case of alleged emergency, the question of the existence of the emergency may be contested before the courts by an individual citizen affected; and the reasonableness of the executive's conclusion, and the constitutional or legislative authority for a resulting proclamation, is always open to attack before the courts.

May we not get too overheated during these trying times. It will help matters, perhaps, to remember that this is a government of law; that the rights of every individual, no matter how humble, can be and will be protected by the machinery of law the people have erected—the courts; but that this will be true only so long as we continue to maintain the integrity and independence of those courts.

RECENT DECLARATORY JUDGMENT DECISIONS

Bernard G. Gavit, Indiana U. Law School, discusses procedure under Declaratory Judgment Acts, and lists some interesting cases decided since the summarization by Farabaugh and Arnold.

Axton vs. Goodman, 265 S. W. 806 (Ky.), declared the rights of a political party at the polls; *Craig vs. Sinking Fund, 203 N. Y. S. 236 (N. Y.),* declared the rights of public officers between themselves;