



1933

Recent Declaratory Judgement Decisions

North Dakota Law Review Associate Editors

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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;

Sarner vs. Kantor, 205 N. Y. S. 760 (N. Y.), decreed that the lessor defendant did not have a right to withhold consent to assignment of lease; *City vs. Underwood*, 298 S. W. 1090 (Ky.), decreed rights of jailor concerning transportation of prisoners; *Dodge vs. Campbell*, 220 N. Y. S. 262 (N. Y.), determined the validity of a former divorce decree; *Moore vs. Moore*, 137 S. E. 488 (Va.), established state official's individual rights against himself as an official; *Baumann vs. Baumann*, 165 N. E. 819 (N. Y.), entered decree showing plaintiff was wife of H. and that defendant was not his wife; *Butterick Co. vs. Fulton*, 229 N. Y. S. 86 (N. Y.), affirmed a tenant's right to sublet; *Morecraft vs. Taylor*, 242 N. W. 570 (Wis.), declared plaintiff illegitimate child of defendant; *Wingate vs. Flynn*, 249 N.Y.S. 351 (N.Y.), determined whether a term of office was six or fourteen years; *Llandudno vs. Woods*, 2 Ch. 705 (English), decreed that defendant clergyman was not entitled to hold services in certain places without plaintiff's consent; *Chapman vs. Michaelson*, 2 Ch. 612 (English), decreed that a mortgage (not yet due) was invalid for illegality; *Powell & Thomas vs. Evan Jones*, 1 K. B. 11 (English), declared that a sub-agent who had bargained for a secret commission would become indebted to the principals of the agent who employed him when and as he should receive any portion of such commission; *Rawlinson vs. Mort*, 93 L. T. 555 (English), established that an organ in a mission church belonged to the plaintiff; *Cope vs. Crossingham*, 2 Ch. 624 (English), declared that a proposed act by a labor union would be ultra vires.

ADDITIONAL EMERGENCY MEASURES

House Bills

No.		Approved
24.	Escaped Convict	3- 9-33
81.	Unfair Discrimination Purchase Certain Farm Products	3- 9-33
93.	Usury	3- 6-33
102.	Redemption Execution Sales	3-10-33
103.	Overrun in Manufacture of Butter	3- 9-33
134.	Resident Hunt and Fishing Licenses	3- 9-33
161.	Taxation Commercial Motor Vehicle Using Highways	3- 9-33
180.	Tree Bounty Repeal	3- 8-33
194.	Regulation Sale Tractor Fuel Oil	3- 9-33
207.	Unlawful Removal Personal Property from Premises	3- 7-33
209.	State-wide Valuation Public Utility Properties	3- 9-33
229.	Regulation Common Carrier Pipe Lines	3- 9-33
231.	Repeal Recall City Officials	3- 9-33
271.	Tax Levy Interest, Etc., N. D. Real Estate Bond	3- 6-33
287.	Bonds of North Dakota Bank Series (B)	3- 7-33
314.	Reservation Gas Franchises	3- 9-33

Senate Bills

No.		Approved
107.	Estate Tax	3- 9-33
118.	Certificates of Indebtedness	3- 9-33
126.	Powers Building and Loan Associations	3-10-33
271.	Registrar of Motor Vehicles	3- 7-33
314.	Transfer Permanent Hail Insurance Fund	3- 7-33
326.	Salaries, Etc., Appointive State Officers	3- 9-33