



1930

## Review of North Dakota Decisions

North Dakota Law Review

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### Recommended Citation

North Dakota Law Review (1930) "Review of North Dakota Decisions," *North Dakota Law Review*. Vol. 7: No. 8, Article 6.

Available at: <https://commons.und.edu/ndlr/vol7/iss8/6>

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selves in order to make their power potent. Against such a system the American Bar should make a protest as long as the system remains as powerful as it appears to be today. Unfortunately, in this particular instance, it seems that the situation could have been handled so as to have made a more decisive issue. After notifying Senator Schall to submit the names it would seem as if in fairness a better reason should have been given for the rejection of the names submitted by him." (Note: Minnesota Bar referendum on Michel—1,561 ballots sent out; 1,341 ballots returned; Duluth, Minneapolis, St. Paul vote for Michel 186, against 614; country vote for Michel 107, against 362; total vote for 293, against 976.)

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### THE BANNON CASE

The Havens disappeared from McKenzie County a little over a year ago. The Bannons, father and son, took over the farm. Haven property was sold. The father traveled to Oregon. He was located there with Haven money upon him. Meanwhile, but after many months, the son, Charles, was suspected. He was arrested. He confessed. A gruesome, horrifying sight was then unearthed. Charles pleaded guilty. The father was returned. A lynching followed. Faced with death, the boy exonerated his father, as he had previously done in his confession. The father was charged with first degree murder. Recollections were taxed to reconstruct specifics—days, dates, doings. The trial came. It was in another county. The father, a witness in his own defense, was subjected to cross-examination. A jury of twelve found him guilty, and he was sentenced to life imprisonment. That ends the Bannon case.

But does it? Will there not always be a feeling, even among the twelve who made the decision, that hysteria played some part in whatever happened after official and unofficial society awoke from its ten months' sleep? Will there not always be a feeling of doubt concerning the one important question involved in the charge of first degree murder against James Bannon? Are they, will they ever be, really satisfied that proof of possible guilty knowledge, probable embezzlement, and recollection-test impeachment evidence, convinced as well as convicted?

We don't pretend to know. This much, however, seems clear. Society erred in illegally fastening a hangman's noose about the son. It may have erred in placing the murder brand upon the father. And so the Bannon case is not ended. It can not end, for many people, so long as this indictment stands: Society is charged with the crime of illegal execution, illegal execution that sealed forever the lips of Charles, and buried for all time the last hope of getting all of the truth concerning James. Is revenge, after all, ever sweet?

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### REVIEW OF NORTH DAKOTA DECISIONS

*Dahl vs. Winter-Truesdell*: Plaintiff delivered certain grains to the defendant, receiving storage tickets therefor. The storage tickets were lost by plaintiff. Upon statement that he desired to sell the grain the plaintiff was requested to provide a bond, which was furnished.

Plaintiff then requested delivery or purchase at \$1.49, the price listed between the date of the demand and the furnishing of bond being \$1.30 to \$1.49. Subsequently plaintiff went to offices of defendant in Minneapolis and demanded the then market price of \$1.65. Defendant offered to pay on basis of \$1.51, which plaintiff refused. No duplicate storage tickets were issued or demanded. HELD: Defendant was not obligated to act on the bond until it was found satisfactory, or until ordered by Court. There was no obligation to buy the grain, and no obligation to deliver until production of storage tickets. The burden was on defendant to show lawful excuse for failure to deliver on demand. The warehouseman's lien was a sufficient excuse, and demand without failure to satisfy that lien created no obligation to deliver. Sections 3125a14 and 3125a54 govern. The statutory remedy is designed, not only to protect the warehouseman but "any person injured by such delivery." "We are unable to adopt any construction of Section 54 of the Uniform Receipts Act which would relieve from criminal responsibility a warehouseman voluntarily making a delivery of goods without obtaining possession of the receipt, except in the cases provided for in Section 14 and 36 of the Act. . . . To hold the defendant liable under the facts pleaded in this case would be to hold it liable for not doing an act which the statute denominates a crime."

#### NORTH DAKOTA MEMORIALS

Through the courtesy of Mr. A. J. Small, Law Librarian of the Iowa State Library, we are able to publish the summary of references to memorials of North Dakota judges, to-wit:

Bartholomew, Joseph M. 1889-1901	elec.N.D.10:XXIII, reelec.N.D.10:XXIII, mem.N.D.10:XVII - XXXVII, mem.N.D.14:XIII-XV, mem.N.D.B.A.1904-05,1905-06:91-3, mem.N.D.B.A.1899-1904:51-75.
Carmody, John 1909-1911	app. N. D. 49:XXIX, mem.N.D.49:XXIX-XXXII, hist.sketch N.D.B.A.1905 - 06:3, resol.N.B.A.1920:68-70.
Cochrane, John F. 1902-1904	mem.N.D.12:XV-XLI, mem.N.D.B.A.1899-1904:95-121.
Engerud, Edward 1904-1907	elec.N.D.49:XXIV, mem.N.D.49:XXIV-XXVII.
Grace, R. H.	mem.Bar Briefs,6:81.
Morgan, David E. 1901-1911	elec. and res.N.D.22:XXV, mem.N.D.22:XXV-L, Resol.N.D.B.A.1912:140-142, 1927:136-138.
Wallin, Alfred 1889-1902	elec.N.D.51:XIX, mem.N.D.51,XIX-XXIII, mem.N.D.55:XXV-XLVIII,resol. N.D.B.A.1923:25-46.
Young, Newton C. 1898-1906	app.,elec.relec.and res.N.D.51:XXXIII, mem.N.D.51:XXIII-LIII,resol.N.D.B.A. 1924:109-133.

#### MATTER OF FAIRNESS

The June issue carried an article entitled "We may have to fight," relating to the pamphlet of the First National Bank & Trust Co. of