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Review of North Dakota Decisions

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sojourn, to study their experience with judge-trial. It is just barely within the range of possibility that the continental bar could reveal some grounds of dissatisfaction with judge-trial!

In short, let us see whether our American Watch can be repaired, and whether, if repaired, it will still be inferior to that Swiss Watch.

REVIEW OF NORTH DAKOTA DECISIONS

Bolton vs. Wells: Plaintiff, an osteopath by profession, was riding with defendant, upon invitation, to attend a meeting of a service club in another town, both being members of the organization. While driving at a speed of 35 to 40 miles an hour, over more or less icy roads, defendant turned his head to speak to some one in the rear seat. At that moment the car swerved, then skidded into a ditch and turned over. Plaintiff received severe injuries, permanent in nature, incapacitating him from practice of his profession, as to which there is no dispute. Jury returned a verdict for \$7,000. HELD: This was not a joint enterprise. Plaintiff was guest of defendant. The jury's determination of defendant's negligence is controlling. Plaintiff did not assume the risk of the car skidding and overturning, and the theory that mistake of judgment in an emergency does not constitute negligence can not be invoked where defendant's negligence creates the emergency. *Knapp vs. Gibbs*, 277 S. W. 259, is quoted: "A person may not operate a car at an excessive and unlawful speed so as to prevent its reasonable control in an emergency and then be permitted to say, after the emergency arose, that he did all he reasonably could with the means at his command to avoid the injury."

Rode et al vs. Highway Commission: Proceeding to enjoin construction of highway, and involves Chapter 159 of 1927 Session Laws. Late in 1927 the county commissioners of Ward county made application to the Highway Commission and to the U. S. Bureau of Public Works for certain road construction, and also spent moneys for survey and acquiring right of way. The plan was approved. The Highway Department relocated and redesignated certain parts of the road. This was approved by the county commissioners with certain provisos relating to the original location "or the road through the village of Douglas" which was not referred to in the original location. The county budget provided for the original location, but not for the one as changed. Trial Court determined injunction should issue if the county was to be charged for part of the improvement, otherwise not. Both sides appealed. HELD: The Highway Department has full power to locate and relocate roads. Determination of the wisdom of such selection is not for the courts. Action of the commissioners is unnecessary for location of a road, only to provide the county's share of the expense. By pledging the county's share of the cost, the county consented to the change of location. "Whether it is necessary to have the Board of County Commissioners adopt a new resolution every time a slight change is made in the location of the highway or whether after the road in general is routed and agreed to by the County changes may be made by the Department without consulting the County" is not determined.