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## Review of North Dakota Decisions

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## REVIEW OF NORTH DAKOTA DECISIONS

A. E. ANGUS

*Rolette State Bank vs. Rolette County*: One member of a board of county commissioners authorized his two sons to repair roads within said member's district, and they filed bills for the repair work with the county auditor against defendant county. The claims thereafter were assigned to plaintiff bank by written agreement. The board of county commissioners rejected the bills and plaintiff bank brought action against the county to recover. On motion of both parties for a directed verdict, judgment was entered in favor of plaintiff. HELD: In order to bind the county there must be formal action on the part of the commissioners as a board. One commissioner does not have authority to enter into contract in question so as to render county liable on quantum meruit.

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*Birks vs. Globe Protective Bureau*: Action to determine adverse claims to land. Plaintiffs claim to be owners in fee by virtue of a warranty deed. Defendant admits that plaintiffs are owners, but asserts that it has a lien by virtue of a judgment against the former owners of the land. At the time the judgment was rendered the land was the homestead of the owners, and plaintiff claims that the judgment does not, therefore, constitute a lien. Judgment quieting title in plaintiff was entered. HELD: Owners of property exempt as a homestead may sell and convey the same, and where such premises are sold, the exempt character runs with the transfer and the title conveyed to the purchaser is free of a judgment lien which was unenforceable against the premises because of their homestead character while they were occupied by the homestead claimant.

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*Minneapolis Threshing Machine Co. vs. Bank*: Plaintiff sold machinery to two boys, taking promissory notes secured by chattel mortgage on machinery and cattle owned by them. Mortgage was issued in triplicate and recorded. Mortgagors later moved to another county to live with their father, taking the cattle. No copy of the mortgage was filed with the Register of Deeds in the second county. The father subsequently gave defendant a promissory note secured by chattel mortgage on personal property, including cattle. Defendant seized cattle in father's possession and foreclosed. Plaintiff then took them on claim and delivery proceedings. Judgment was rendered in favor of plaintiff on ground that the ownership of the property was in the boys at the time their father mortgaged them to defendant. HELD: One who purchases personal property at the foreclosure of a mortgage given by one not the owner cannot retain the property against the demand of one having a mortgage on this property given by the owner, who demands possession for the purpose of foreclosure.

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*Nyglund vs. Northern Packing Co.*: Plaintiff was injured in the course of employment in defendant's plant. He filed a claim with the Workmen's Compensation Bureau for the injury, which claim was dismissed for the reason that the defendant had not contributed to the compensation fund. Plaintiff then filed an "elective" claim with the Bureau as provided for in the compensation act against an employer who had not complied with the law. While such claim was pending, plaintiff brought action in district court against the employer. The case went up on certified question of law from district court, as to

whether plaintiff can maintain this action after having elected to proceed under the Compensation Act. HELD: The remedy under the Workmen's Compensation Act is exclusive, and election to proceed under the Act precludes employee from maintaining action at law. Under Section 11 of the Act the employee may file application with the bureau for an award to be determined by the bureau but to be paid by the employer who has failed to pay premiums to the compensation fund, which award constitutes a claim for liquidated damages, recoverable in an action by the state for the benefit of the person entitled to it.

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*Hart vs. Casterton*: C and McK were officers of a Bank in Iowa, and also directors of a bank in Golden Valley County, North Dakota. One Casterton, in his lifetime, purchased from the Iowa bank, through the N. D. bank, a mortgage on real estate in said county. The Iowa bank also owned a mortgage on some other real estate in the county, which was assigned (without consideration) to C, who foreclosed. The property was bid in the name of McK and sheriff's deed was issued to him, although real ownership remained in the Iowa bank. The sheriff's deed was recorded. McK then executed a mortgage to C, who paid nothing for it. The mortgage bought by Casterton becoming past due, he suggested exchange for another mortgage, and the bank turned over the McK mortgage for the one originally purchased, but the McK mortgage had not been recorded. Subsequently, and in order to obtain county and similar deposits for the N. D. bank, C and McK signed as sureties on bonds, attaching statements to the bonds showing ownership of real estate in the county. The real estate involved herein was the only real estate showing in the name of McK, and investigation by the county disclosed clear title. In January, 1924, both the banks became insolvent; in February, 1924, the McK mortgage was recorded; and in June, 1924, McK was adjudged a bankrupt (debts of about \$100,000 and assets of about \$6,000). The county proved its claim against the estate of the bankrupt (deducting dividends received from the bank through the receivership), and the trustees of the bankrupt's estate brought this suit to set aside the McK mortgage as fraudulent and void. The defendants are executors of the Casterton estate and had paid taxes on the McK land. HELD: Neither the original purchase by Casterton, nor the trade for the McK mortgage, was fraudulent or void, but the instrument having been kept off the record to maintain McK's credit, and the county having acted to its detriment on the strength of such record, the trustee has a valid lien for the amount of the claim of the county, subject only to taxes paid by the defendants.

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#### WORKMEN'S COMPENSATION

A workman died from cerebral hemorrhage while at work. The only possible "overexertion" in connection with his work consisted in walking "pretty fast" and carrying a 21-pound iron key for a distance of 250 to 300 yards. Whatever immediate effect was produced by such possibly unusual physical exertion was of no material consequence, as is manifested by the fact that shortly thereafter he appeared to be "all right". Evidence also disclosed that the decedent, who was usually reliable, had made a number of mistakes prior to carrying the iron key, indicating that the blood vessel had already been ruptured. It was held that the dependents were not entitled to compensation, death