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## Decisions Of Supreme Court

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committees have to answer require that the canons be construed in order that the principles laid down therein may be applied to the question to be answered. Frequently the members of these committees differ as to the construction and application of the canons, and would be glad to avail themselves of some uniform interpretation. When such doubt exists there is at present no committee of this Association of whom they may request an opinion for their guidance, and thus enable them to make their answers uniform with that of similar committees of other associations. Lacking such, they may give an answer on an involved or complicated question that may appear at variance with that expressed on a similar question by the committee of some other association."—American Bar Association Journal.

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### NATIONAL ORATORICAL CONTEST ON CONSTITUTION

The final meeting of the national oratorical contest on the Constitution was held at Washington, in Memorial Continental Hall, on June 6. President Coolidge presided, and was presented to the audience by Temporary Chairman, Hon. R. E. L. Saner, President of the American Bar Association. The judges of the contest were Chief Justice Taft and Justices Van Deventer, Sanford, Sutherland and Butler. Mr. Don Tyler of Los Angeles won first place in the contest, and a prize of \$3,500. Miss Ruth Newburn of Washington won the second prize of \$1,000 and Mr. John M. Dallam, III, of Philadelphia, the third prize of \$500.

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### DECISIONS OF THE SUPREME COURT

Ella M. Schlak, Plaintiff and Respondent, vs. Max C. Schlak, Defendant and Appellant.

1. In awarding the custody of children in a divorce action, their welfare is the paramount consideration.

2. Where the defendant father has a farm home and all the boys express a strong desire to remain with him, it is held, that it does not appear that their welfare would be promoted by transferring their custody to the mother, where it does not appear that she has a home to which to take them or what her plans are.

3. For reasons stated in the opinion, the alimony award of the trial court is modified.

Appeal from the District Court of Mountrail County, N. Dak., Hon. John C. Lowe, J.

Opinion of the Court by Johnson, J.

MODIFIED AND AFFIRMED.

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Caroline Gehler, Plaintiff and Respondent, vs. Herman Kenoske, Defendant and Appellant.

Upon an accounting between parties who have been engaged in a joint enterprise, it is held for reasons stated in the opinion that in deter-

mining the respective interests of the joint adventurers in certain lands, each of the joint adventurers should bear a proportionate share of the cost of certain buildings and other improvements which have been constructed on the premises.

From a judgment of the district court of Stutsman County, Jansonius, J., defendant Herman Konoske, appeals.

REVERSED IN PART.

Opinion of the Court by Christianson, J.  
Birdzell, J., dissents.

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Farmers Exchange State Bank of Sanger, North Dakota, Plaintiff-Respondent, vs. F. R. Schofield, Defendant and Appellant.

1. The sufficiency of the evidence can not be reviewed upon appeal in the absence of a motion for a new trial or of a motion properly made at the trial specifying the insufficiency of the evidence.

2. Where counsel has failed to make a request for instruction or to call the attention of the trial court concerning a particular issue arising upon the evidence adduced and otherwise submitted, he can not predicate error upon the failure of the trial court to particularly instruct upon such issue.

3. In an action upon a promissory note an endorser in blank can not establish by parol that the endorsement was made upon the understanding that it should be without recourse to him.

In District Court, Burleigh County, Coffey, J. Action upon a promissory note. Defendant Schofield has appealed from the judgment.

AFFIRMED.

Opinion of the Court by Bronson, Ch. J.

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S. A. Olsness as Commissioner of Insurance, acting for State Bonding Fund, Plaintiff and Appellant, vs. L. R. Baird as Receiver of Slope County State Bank of Amidon, Defendant and Respondent.

1. Where principal debtor in default and surety who is bound for part of principal obligation discharges debt to extent of his liability, surety is not subrogated to rights of creditor against third parties.

2. Section 10, Chapter 158, Laws 1919, does not amount to contract giving Bonding Fund right of subrogation in competition with creditor where creditor's claim is only partially satisfied.

3. Where pro tanto subrogation based on contract, right must be clear and certain before subrogation permitted to detriment of obligee or creditor.

Appeal from Burleigh County, Cooley, Judge. Affirmed: Opinion by Birdzell, Judge.