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—By—

STATE BAR ASSOCIATION
OF NORTH DAKOTA

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A JUDICIAL COUNCIL

The State Bar Association, at its 1926 meeting just closed, again endorsed the principal of the Judicial Council as a means of bringing about a better administration of justice, and the incoming president was directed to select a committee of five members of the association to confer with the judges in the framing of the necessary legislation to make this section effective.

It is deemed meet and proper, therefore, to direct attention to certain questions that should be thoroughly discussed before a bill is presented for legislative action. First, comes the question of the personnel of the council. This question was answered by the association in part only through its expression that the bar should be represented on the council. Secondly, therefore, comes the question of what other agencies or departments should be represented and in what capacity. May it be suggested, here, that the attorney general's department or the State's Attorneys' Association, or both, should be represented, and that other agencies be called in to act only in an advisory capacity? Thirdly, how shall the personnel be selected? In answer to that question it is respectfully submitted that selection should be removed from the field of politics as far as possible—the members of the judiciary should be selected by the judiciary, and the members of the bar should be selected by the State Bar Association. Fourth, how many members of the bar should be on the council? It is suggested that there should be at least three members of the bar, and these should be men actively engaged in practice, not connected officially with the bar association or any department of government, and representative of different sections of the state. Fifth, to what department should the council make its reports and recommendations? May not the answer to this question be: that the council should not be limited, but that it should be empowered to make its reports and recommendations directly to the department whose action would be required?

May it be understood that these regulations are made solely for the purpose of promoting discussion.

THE ANNUAL MEETING

The 1926 annual meeting is history. About 170 members of the profession were registered, and more than 40 brought their ladies.

It was a busy and a profitable session. It made progress. It mixed business with pleasure, and profitably so.

A self-styled "youthful barrister" made mention of the fact that there was a spirit of earnest devotion to the business at hand, which caused the youthful one to sit "reverently attentive, silent, impressed," listening "with surprise" at the report of Mr. McIntyre that there existed no statute defining the practice of law, taking mental note of "the apparent alarm with which certain members greeted the proposal to permit district judges to comment upon the evidence," and applauding the following statement of Mr. Divet in reply: "I am as loath as any one to depart from the established landmarks, but here we are not dealing with a landmark but a recent innovation of the right of trial by jury. We are dealing with a popular situation that contributes to delay in trials by jury cases. The bar must consider charges against it of reactionaryism and conservatism. I wish to go on record as being willing to consider the motion, in the firm belief that no harm can come from it."

The association committed itself to the following legislative program: 1. Establishment of a judicial council; 2. Amendment of statute defining conspiracy; 3. Amendment of statute to give the state and the defendant an equal number of peremptory challenges; 4. Repeal of double-barreled affidavit statute; 5. Amendment to limit time of appeal in criminal cases; 6. Amendment to provide a reasonable state's attorney contingent fund; 7. Amendment transferring from state's attorney to county superintendent control over excuses from compulsory school attendance; 8. Amendment to restore to railroad commission power to fix rates on lignite coal and extending the power of the commission in respect to public utilities; 9. Amendment to limit amount of state income tax to that paid to federal government; 10. Amendment to make all decisions of the Workmen's Compensation Bureau subject to review; 11. Amendments to extend terms of judges, supreme court to 10 years, district court to 6 years; 12. Amendments to permit trial judges to comment upon evidence and to examine jurors; 13. Amendment to increase salaries of judges of supreme court, district courts, and county courts of increased jurisdiction; 14. Amendment to change manner of selecting jurors, adopting Federal Commission system; 15. Amendment to incorporate the Washington statute for lessening of number of jury trials; 16. Amendment to more clearly define what constitutes practicing law, and provide punishment for practicing without license.

The following legislative proposals were favorably reported by a divided committee, but no formal approval recorded by the association: 1. Adoption of statute authorizing examination of persons prior to arrest of a defendant; 2. Adoption of statute permitting perpetuation of testimony by both the state and he defendant; 3. Repeal of law prohibiting

comment by state on defendant's failure to testify; 4. Amendment to permit presence of court reporter to take testimony given before grand jury.

The following proposals for legislative action were left without recommendation by the committees or the association: 1. Revision of statute relating to crimes connected with banking operations; 2. Adoption of motor vehicle act; 3. Amendment to cover aggravated cases of malicious assault; 4. Repeal of statute permitting dismissal of indictment for failure to place names of all witnesses thereon and adoption of practice similar to that in case of information; 5. Adoption of statute requiring defendant to pay reporter in misdemeanor cases if testimony is requested in writing; 6. Adoption of California criminal syndicalism law.

The Code of Judicial Ethics, as published in the 1925 proceedings, was adopted, without amendment. This code is identical with the American Bar Association code adopted a few years ago.

Attention is called particularly to the work and recommendations of the new committee on Correct Public Information. Under the leadership of A. W. Cupler, of Fargo, this committee did most effective service during the past year. Its recommendations, briefly summarized, are: 1. Designation of a member in each county to co-operate with the press; 2. Furnishing of news articles to the press through the medium of the committee; 3. Prevention of publication of items prepared or inspired by parties or counsel; 4. Impressing upon individual attorneys the importance of co-operation with the committee so that it may be advised immediately of articles that are inaccurate or violate the principles stated by the committee.

The addresses delivered at this meeting were of a high order. President Young spoke on "A More Efficient Administration of Justice," Justice Olson on "Human Destiny in Human Hands," Chancellor Brannon on "Law and Social Evolution," and Governor Christianson on "The States and the Nation." Those who were unable to attend the meeting are most earnestly urged to read every one of these addresses in the report of the 1926 meeting.

The space limits of this publication make it unfair to the speakers, who prepared and presented these helpful and timely addresses, to print extracts thereof within these pages. That, also, makes it impossible to cover the reports of all committees in one issue. The portion of President Young's address, in which he directed his thoughts towards the legal profession, is of such import, however, that the unfairness of publication without the context is pardonable. Said Mr. Young:

"What the practicing lawyer too often forgets is that his function is to aid and not to hinder the courts; that in theory his objective is to secure justice for his client, and not victory at any price, and that when he yields to the seductive spell of the lucre offered for advantage without regard to honor he prostitutes the profession which his life and service should exalt.

"Though perfection is not to be expected in those of our calling any more than in those engaged in any other pursuit, the trend is in favor of a raising of the general level of the profession. For at least fifty years there has been a movement in the direction of more thorough qualification for admission to the bar. Professional schools have raised their prelegal requirements and have increased the length of the professional courses. The high standard prescribed by the American Bar Association as reasonable and desirable has been adopted in a number of states. While in this state it has not yet seemed wise to adopt such a standard, the general raising of requirements in the schools and elsewhere reflects itself in the constantly improving character of candidates for admission to our bar. We are the beneficiaries of the steady change in the general situation and no doubt in time it will seem advisable to prescribe the higher standard.

"While there always are exceptions to what seem unvarying rules, the general education of a practitioner may reasonably be expected to bear a definite relation to the character of the service he will render to society as one of those responsible for the administration of justice. The more readily a lawyer can perceive the significance of the social and economic movements of his time, the more helpful he can be in giving the basic principles of the law new vigor and meaning by their adaptation to what hitherto has been foreign to the law. The broadening vision of the profession to which reference already has been made is a distinct advance. The very cause of our common criticism has been the general belief that lawyers have their faces to the past. With the growing view that the law is in a state of constant flux, there is developing a more constructive profession.

"But not only is there demand within the calling for a higher degree of fitness for it, but for a greater fidelity to professional honor. The obligations of lawyers to their clients have long been clearly defined, but breach of these has not always met the official reproach which it has merited. Men with professional pride always depreciate the manipulations of the shyster, but they have too commonly borne the disgrace heaped upon the calling as a whole on account of his delinquencies rather than to bring him to bay. In these later days, with their emphasis upon ethics in business relations, there is evident growing exaction as regards professional conduct. With higher standards of professional fitness, greater interest in molding the law to the current needs and more rigid adherence to ethical requirements, the bar will contribute materially to more effective service by the courts."

The officers elected for the ensuing year are: W. A. McIntyre, Grand Forks, president; Aubrey Lawrence, Fargo, vice-president; R. E. Wenzel, Bismarck, secretary-treasurer.

PROCEDURAL REFORM

Dean Roscoe Pound of the Harvard Law School lays down the following canons of procedural reform:

1. "Legal procedure is a means, not an end; it must be made subsidiary to the substantive law as a means of making the law effective in action. That procedure is best which most completely realizes the substantive law in the actual administration of justice.

2. "There should be no such thing as an individual procedural right, i. e., a recognized absolute claim to a procedural advantage merely as such.

3. "The ideal of mechanical disposition of one narrow issue or of one simple application for a specific remedy should be replaced by an ideal of complete disposition of entire controversies in one proceeding in which all the remedies of the legal system are available in order to give full effect to the substantive rights of the parties. (Read this one over again.)

4. "The ideal of appellate procedure should be not a separate proceeding in a distinct tribunal but an application for rehearing, new trial, vacation, or modification, as the case may require, made in the same cause before another branch of the same tribunal."

The more one hears or reads of the discussions by such competent authorities as Dean Pound, the more is one impressed with these facts: That lawyers as a group must deal with the question of procedural reform and that in order to deal effectively with the question of rule-making power must be restored to the courts. It may be difficult to convince the layman in the legislature that such power is inherent in the courts or that it is properly placed there if not inherent, but the effort to convince him should be made and that right speedily. (Since this was written, the association has taken definite steps towards this end.)

REVIEW OF NORTH DAKOTA DECISIONS

First National Bank of Le Sueur v. Bailey et al. A note taken by a grain commission house was sold to plaintiff bank for full value within a reasonable time after its execution. The maker claims an agreement with the commission house that the note should not be negotiated. The president of the commission company was also president of the plaintiff bank, but in selling the note to the bank another officer represented the bank. In an action on the note it is claimed the bank is not a holder in due course. HELD: When a holder of a negotiable instrument has shown that the instrument was purchased before maturity, and for a valuable consideration, he is presumed to be a holder in due course. When the president and active manager of a brokerage company, acting for such company, sells a negotiable note to a bank of which he is also president, the cashier of the bank acting for the bank in the purchase of the note,

the knowledge of the president of any defect in the title of the company to the note cannot be imputed to the bank.

Olson v. Coalfield School District No. 16. Two common school districts and a special school district held elections for the organization of a high school, adopting the procedure prescribed for the organization of a high school in common school districts. Pursuant to the elections held a high school was organized, bonds voted, taxes levied, the construction of buildings commenced, teachers employed, and a high school conducted for a period of nine months without opposition. In an action then brought to enjoin the board of education further to organize, operate, or continue such high school, it is HELD that thhe plaintiffs are guilty of laches and are estopped to question the regularity of the organization proceedings.

Thoreson v. Hector. Plaintiff, who operates a grain elevator, at the request of defendant and another, wrote telegrams at different times ordering the purchase of wheat and oats on the Minneapolis Chamber of Commerce. Losses resulted and the defendant executed a note to plaintiff to cover the loss. In an action on the note defendant claims the losses to have been sustained in gambling transactions in which plaintiff knowingly participated. Evidence offered by defendant to prove that he did not intend, when the grain was bought, to accept or receive any part thereof, was excluded unless it was shown that his intention was communicated to the other party to the transaction. Held: That Section 9699, Compiled Laws of 1913, prohibiting the operation of "bucket shops," does not modify the rule previously announced in John Miller Co. v. Klovstock, 14 N. D. 435, to the effect that the test of illegality in such a transaction is the intention not alone of one of the parties but of both to the transaction.

State ex rel Francis et al v. Murphy et al. An experimental station was established by the legislature of 1907, in Williams County. Conveyances of land for the purpose were made by private citizens, the state being named as grantee. The property was purchased with a fund raised by public subscription. The legislature of 1925 enacted a statute directing the state board of administration to convey this property to Williams County, without consideration, for use as a county poor farm. The board of administration refused to execute the conveyance. This mandamus proceeding was instituted to compel action under the statute. HELD: Chapter 218, Laws of 1925, insofar as it purports to direct the state board of administration to convey to Williams County without consideration the real property used and known as the Williston Experimental Station, violates Section 159 of the state constitution, such land having been donated to the state for an educational purpose within the meaning of this section.

Young v. Mutual Trust Life Insurance Company. A limited payment endowment life insurance policy was issued with stipulations for

payment of the premium in semi-annual or quarterly installments. Premiums were paid on a semi-annual basis, some of them after the date fixed in premium notes taken in payment. The loan provision of the policy was used by insured. When the premium of December 9th, 1924, came due the insured sent the dividend notes to the company to be applied as reduction of the premium and asked for an extension of sixty days from January 9th, the grace period. Receipt was acknowledged by the company and a premium note for the unpaid balance of the installment enclosed, extending the due date to March 9th, 1925. The note was not executed and returned and the insured died four days after the grace period expired, without paying the premium. There was an automatic provision for continued participating paid-up endowment insurance for a reduced amount in case of lapse. HELD: Where notes from time to time have been taken in payment of premiums or installments, and such notes have been extended from time to time, this course of dealing does not amount to a waiver of the stipulation requiring the payment of premiums in advance. Where a policy provides for the payment of premiums in advance the retention of a dividend less than the amount of the premium installment due for four days after expiration of the grace period, during which period insured asked to have the dividend applied in reduction of the amount due, does not show waiver of the governing policy provisions. A life insurance policy in this state is not required to be written on North Dakota standard forms where it conforms to other statutory requirements regarding policy forms.

WORKMEN'S COMPENSATION DECISIONS

Contributions made by deceased employee to his father for the purpose of saving the father's farm can not be considered on the question of dependency, but contributions for the support of the father and his dependents, if reasonably necessary to maintain them in a manner suited to their station in life, should be. The son having contributed 22% of his earnings for the latter purpose, the dependents were entitled to 22% of his average weekly wages.—Dumond's Case, 133 Atl. 736 (Me., June, 1926).

A hospital nurse, who was required to sleep on the premises and to breakafst at the hospital on mornings assigned to her as days off, was injured by falling down stairway while going from her room to the bathroom on one of such days, and the injury was held to be in the course of employment.—Doyle's Case, 152 N. E. 240 (Mass., June, 1926).

An injury must appear as a risk to which the injured was exposed by reason of the nature of his employment; and where a city workman, who

sought shelter in a private garage because of a rainstorm, was bitten by a dog, as a result of which he died, the injury was not compensable. —Ryan vs. City of Port Huron, 209 N. W. 101 (Mich., June, 1926).

An employee whose disobedience of orders consists in doing his work in a forbidden manner does not lose his right to compensation, but if such disobedience of orders takes him outside the sphere of his employment he can not recover.—Erdberg vs. Textile Print Works, 216 N. Y. Supp. 275 (N. Y., May, 1926).

There must be competent evidence to show a causal connection between the conditions under which work is performed and a resulting injury, and where the record does not disclose evidence to show that a fit or dizzy spell, which caused claimant to fall against a flame, was the result of, or had its origin in, the risk or hazard connected with the employment and to have flowed therefrom as a rational consequence, no recovery can be had, and the award of the commission must be reversed. —Illinois Oil Co. vs. Grandstaff, 246 Pac. 832 (Okla., May, 1926).

A night watchman furnished to a company by a detective agency, which agency retained entire control and direction over the watchman and paid him, is not an employee of the company.—Tilling vs. Indemnity Insurance Co., 283 S. D. 565 (Tex., April, 1926).

AMERICAN BAR ASSOCIATION

The Denver meeting of the American Bar Association in July set a new attendance record, more than 2,100 members attending. Other high-lights of the convention were: Membership passed the 25,000 mark; criminal law enforcement and judicial procedure sounded the keynote for the program; opposition to the Caraway bill or any other measure seeking abridgment of the powers of U. S. judges in the conduct of jury trials was officially voiced; the Uniform Motor Vehicle Code was approved; a resolution favoring the passage of S. B. 2585, fixing salaries for federal judges, was passed; support was given H. R. 9174, providing for indexing state session laws so as to insure uniformity of nomenclature and arrangement; change by constitutional amendment of the date of presidential inauguration was again favored; ex-Governor Whitman of New York was elected president of the association.