

# BAR BRIEFS

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—By—

## STATE BAR ASSOCIATION OF NORTH DAKOTA

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### WASHINGTON

Modest to the point of diffidence, and pleasingly sincere in his humility, he was nevertheless quick to recognize that among the objects of civil government that of promoting the happiness of the race stood out as one of the greatest. He was, therefore, never hesitant about laying aside personal considerations in order to accept appointments of responsibility, and, in that way, becoming the humble instrument for promoting that welfare and happiness.

Truth, the Divine attribute, was, to him, the foundation of every virtue. It dictated his every endeavor and regulated his conduct through life. Endowed with intellect and power, he used both to the advancement of the interests of the country he loved. Fervency and zeal ever distinguished him from the common run of men. Assailed by misfortune, disease, and some of the greatest trials and temptations, his fortitude was supreme, enabling him ever to "carry on." And his fidelity to the principles of liberty, justice and equality was as firm and steadfast as the foundations upon which this, Our America, was erected.

"When Freedom first her glorious day had won,  
She smiled on Washington, her darling son,  
Mild Justice claims him as his virtues rise,  
And Love and Honor still attend the prize."

—Seck.

## REVIEW OF IMPORTANT DECISIONS

By C. L. Young

Bowman County et al, Plaintiffs and Respondents, vs. Wm. A. McIntyre and the State Bonding Fund, Defendants and Appellants.

The district court overruled a demurrer to the complaint alleging that the official bond of the defendant McIntyre, as treasurer of the plaintiff company, was issued by the State Bonding Fund, under Chapter 158, Laws of 1919; that a certain bank was designated and qualified as a depository of county funds to the extent of \$5,000.00; that between May 2nd, 1921, and April 13, 1923, the treasurer deposited an excessive amount of county funds in such bank, contrary to Chapter 56, Laws of 1921; that on April 13th, 1923, the bank closed; that on July 24, 1923, the board of county commissioners of plaintiff county discovered that excess deposits had been made, and on August 7th, 1923, the plaintiff county presented its claim to the commissioner of insurance. HELD: (1) Sections 7 and 8 of Chapter 158, Laws of 1919, providing that a claim against the State Bonding Fund shall be filed not later than sixty days after the discovery of a wrongful act on the part of any public employee for which the State Bonding Fund is, or may become, liable, are mandatory and create a condition precedent to claimant's right of recovery. (2) The deposits by a county treasurer of county funds in a depository bank in excess of the amount of depository bonds of such bank, contrary to the provisions of Chapter 56, Laws of 1921, constitutes a breach of duty on the part of the treasurer, and a breach of condition of his official bond issued by the State Bonding Fund under the provisions of Chapter 158, Laws of 1919.

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State, Plaintiff and Respondent, vs. First State Bank of Jud, et al, Defendants and Appellants:

The attorney general instituted an action under Chapter 137, Laws of 1923, to liquidate the affairs of the Mohall State Bank, its affairs being in the hands of one McIntosh, appointed receiver in an action theretofore commenced in district court under a former statute. The answer of the receiver sets up the unconstitutionality of said Chapter 137. This is the only question considered. HELD: (1) Under the constitution of this state all governmental power is vested in the legislature, except such as is granted to the other departments of government, or expressly withheld from the legislature by constitutional restrictions. (2) The only test of the validity of an act regularly passed by the legislature is whether it violates any of the express or implied restrictions of the state or Federal constitutions. (3) If the end be legitimate, all appropriate means plainly adapted to that end and which are not prohibited may constitutionally be employed to carry it into effect. (4) Chapter 137 of the Laws of 1923 is constitutional.

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County of Burleigh, Plaintiff and Appellant, vs. Standard Oil Com-

pany of Indiana and International Harvester Company (two cases), Defendants and Respondents.

Following proceedings upon an order to show cause issued by the Board of County Commissioners of Burleigh County, the value of the so-called corporate excess of the corporations was placed on the tax rolls and equalized by the board for the year 1918, and subsequent years. On appeal to the district court judgment was entered declaring the assessments made illegal and void, and directing their discharge and cancellation of record. HELD: Section 2110 of the Compiled Laws of North Dakota for 1913, as amended by Chapter 221 of the Laws of 1919, Chapter 110 of the Laws of 1921, and Chapter 305 of the Laws of 1923, provides for the taxation of the corporate excess of domestic corporations or the value of the corporate stock over and above the value of the real and personal property, and does not apply to foreign corporations.

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City of Dickinson, Plaintiff and Appellant, vs. Dakota National Bank et al, Defendants and Respondents.

A demurrer to a complaint on a depository bond given to the plaintiff by the defendant bank on February 28, 1916, was sustained. HELD: (1) Section 7 of Chapter 147, of the Session Laws of 1919, which required the deposit of public funds in the Bank of North Dakota, and prohibited, under penalty, their deposit elsewhere, terminated the liability of sureties on depository bonds previously executed as to deposits subsequently made contrary to its provisions. (2) In an action against the sureties on a depository bond given prior to the taking effect of such act, a complaint which fails to allege a breach of the obligation, that is a failure to pay over deposits made prior to the termination of the depository relationship, is demurrable.

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#### LEGISLATIVE

By the time this issue of Bar Briefs is distributed all legislative proposals sponsored by the State Bar Association of North Dakota will have been presented to the Legislative Assembly in the form of printed bills.

The Legislative Committee has confined its efforts to the presentation of the proposals of the Probate Code Revision Committee. Following the meeting of the Legislative Committee at Bismarck on the 2nd of February, Hon. J. F. T. O'Connor of Grand Forks presented and explained these proposals to the Committee of the State Legislature having them in charge.

The matters presented to the Annual Meeting by the Criminal Law Section were up for further consideration at the conference of State's Attorneys called by the Attorney General, and were subsequently presented to the Legislature.

Hon. A. G. Burr, Judge of the District Court in the Second District, has in hand the matter of presenting the proposal for the establishment of a Judicial Council, and Hon. Sveinbjorn Johnson, Judge of the Supreme Court, is handling the Re-Compilation Bill.

Individual attorneys have introduced measures of various kinds, seeking to amend the Attorneys' License and Bar Board Acts, none of which, however, had the endorsement of the Annual Meeting of the Association.

The members of the Association will be interested in knowing that the House of Representatives passed a bill transferring \$10,000 from the State Bar Fund to the General Fund of the State; and that the appropriation bill, calling for an appropriation for the Supreme Court Library, of \$6,000 was amended so as to provide that this sum, also, should be taken from the State Bar Fund.

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#### COMPILATION OF N. D. SUPPLEMENT

In addition to having the careful consideration of the Executive Committee of the Association, this matter had the benefit of the best judgment of an exceptionally strong special committee, chaired by Hon. Sveinbjorn Johnson, Judge of the Supreme Court. It was recognized that there was presented a distinct opportunity for service to the State by the Association, and the original plan, which also met with the approval of individual attorneys who stand high in the profession, was to have the work placed under the direct supervision of the Supreme Court, the actual work to be parcelled out to a number of attorneys throughout the State.

Costs of publication figures ran so high, however, that the plan had to give way, and the final result was the introduction of House Bill No. 131, which provides for the publication of a supplement to the Compiled Laws of 1913 by the Lawyers Co-operative Publishing Company, at a cost to the State of \$6,000, private copies to sell at \$14.00.

In this connection attention is called at this time to possible errors and omissions heretofore discovered by individual attorneys in the context, citations or indexes of previous publications, and the request is made that the same be called to the attention of the Chairman of the Committee, Hon. Sveinbjorn Johnson, to the end that the same may be corrected in the new publication.

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#### PRINTING AND SUPPLIES

One of the most active committees of the Association is that headed by J. P. Conmy of Fargo and which has in charge the matter of legal printing and supplies. By this time, doubtless, every attorney in the State has received from this committee the circular letter, samples and order forms.

Just kindly remember that the committee has already put in considerable time and effort for you, but in order to reap the full benefit of the work of that committee it will be necessary for you to exhibit some degree of promptness, in return.

Expressions from some members of the Association indicate that there are a number who do not favor such "pooled" purchases. It is suggested to those of that opinion that they return the order blank to the Chairman of the Committee, with the notation that they will require no such supplies during the year.

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### FACTS TO BEAR IN MIND

What is termed "extreme radicalism" has in the United States today 70 papers printed in English, and 200 printed in foreign languages. In addition to that there are 269 such papers imported regularly from foreign countries and circulated in the United States.

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### CITIZENSHIP AND AMERICANIZATION COMMITTEE

The following is quoted from the 1924 report of the State Bar Association Committee on Citizenship and Americanization, of which Hon. John Knauf, of Jamestown, is Chairman:

"Your Committee, with other members of the Bar, have been the leaders in over 4000 patriotic celebrations, generally speaking, always planning the celebrations. That they have spoken at some forty county teachers' institutes, reaching some 4482 teachers, holding our youth in one-room district schools, with inspiration and comely methods of carrying home the strength and beauty of our institutions to over 169,300 pupils, and aiding and assisting 730 town and city school teachers in the patriotic work they have to do.

"Your Committee, and other members of the Bar, have been responsible for, or the inspiration of, over 4400 district school and rural consolidated school celebrations in the State, reaching some over 160,000 of our students of school age and their parents—one-third of our entire state population within one year. These celebrations, partaking of patriotic song services, declamations, essays, letters, orations and pageants. We believe the work has been worth while, that the youthful mind of this State has been more fully developed in and for the cause of good government."

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### EDITORIAL ENGLISH

"Submission of the question would be clearly a recommendation to the voters that they should adopt it, for Legislatures do not submit, nor are they justified in submitting, issues the members of which do not themselves regard as just and sound."—Forum, Feb. 11.

### 1925 ANNUAL MEETING

The Cass County Bar Association has perfected its organization for the handling of the annual meeting of the State Association, which will be held in the City of Fargo this year. The Chairmen of the various committees are as follows:

- Finance—E. Sgutt.
- Publicity—H. G. Nilles.
- Reception—V. R. Lovell.
- Program—W. F. Burnett.
- Entertainment—M. W. Murphy.
- Banquet—H. G. Nilles.
- Registration—J. P. Conmy.

These Committees are already at work, under the general direction of the Executive Committee of the Cass County Bar Association, consisting of the following local officers: V. R. Lovell, President; H. G. Nilles, Vice-President; Emanuel Sgutt, Secretary. This committee, again, is co-operating with the President of the State Association, Hon. A. W. Cupler, of Fargo.

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### THE JUST SYSTEM

The lips of many speak the name of Abraham Lincoln these days with reverential pride and mingled feelings of civic kinship and national possession. There are some, however, who paint glowing word-pictures of the Great Emancipator upon every conceivable occasion, and generally for the purpose of justifying their own positions on some particular subject. A comparison of the picture with the original it is supposed to represent frequently finds one in the position where he is constrained to say that the two have very little in common. The following, for instance, from the pen of Abraham Lincoln, certainly does not appeal to us as being in accord with the views of some of those who today claim to be the direct heirs of the Lincoln economic and political philosophy:

“The prudent, penniless beginner in the world labors for wages for awhile, saves a surplus with which to buy tools or land for himself, then labors for himself another while, and at length hires another new beginner to help him. This is the just, and generous, and prosperous system, which opens the way to all, gives hope to all, and consequent energy and progress and improvement of condition to all.”

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### COOLIDGE AND ECONOMY

Speaking to the members of the Government's business organization on the 26th of last month, President Coolidge said, among other things:

“As I am pledged to economy in my requests for funds, so you are pledged to economy in the expenditure of the funds which may be granted by Congress. No longer are the funds appropriated by Congress regarded as the minimum amount which is to be expended. Every dollar that is saved by careful administration adds to the amount by which

taxes may be reduced in the future. It is practical economy which I have in mind and which we must practice. I had rather talk of saving pennies and save them than theorize in millions and save nothing - - We cannot look to a reduction in pay to effect a reduction in the Government payroll. What we are looking for is a reduction in the number of employees. Let me remind you that the Government pay roll for 1924 reached the staggering total of \$1,680,000,000. - - It is an unpleasant and difficult task to separate people from the Federal service. But it can be done. It will be done. . . . If the practice of economy is not popular, the results of it are viewed with tremendous satisfaction."

General Lord, Director of the Budget, on that same occasion, made use of the following terse sentence:

"Travel less, buy less, ship less, build less, employ less, write less, print less, use less, waste nothing."

#### EXTRACTS FROM ADDRESS OF PRESIDENT CUPLER TO MINNESOTA BAR ASSOCIATION

Some reference was made in the January Bar Briefs concerning the visit of President Cupler to the meeting of the Minnesota Bar Association. The space of this publication is too limited to permit printing of the address in full, even at this time. The following are some of the observations made by the President on that occasion, and represent, in part, his view of the benefits that have resulted from the passage of the Bar Act:

"The Association is more democratic. Every lawyer and every judge is a member and has an equal voice in the affairs of the Association. There is now no room for the charge that the Association is run by any group or clique of lawyers.

"By reason of the fact that every lawyer and judge is a member of the Association, social intercourse is improved, and a more friendly feeling exists among the lawyers as well as between the Bench and the Bar.

"There has been a marked increase in the interest shown by the members of the bar and by the bench in the affairs of the Bar Association. There has been a better attendance at annual meetings; and there have been better programmes.. At our last meeting many of the district judges attended, and the entire Supreme Court was there and participated in the sessions, several of the judges reading papers, and entering into the discussions.

"My observance has been that our plan of organization automatically raises the ethical standards of the profession. There is an instinctive desire on the part of every member of the bar to conform to the high ideals of the profession, and to the code of ethics prescribed by the organization to which he belongs. We have found that by giving the associa-

tion the power to discipline its members the work of the so-called "Grievance Committee" is not increased but on the contrary minor infractions disappear, and the State Bar Board is called upon to act only occasionally, and then in the most serious derelictions. I really believe that the fears expressed by some of the members of your Bar to this feature of your proposed bill have no real foundation in fact."

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### **RESPECT FOR LAW**

Just a short time prior to his resignation, United States Attorney General Stone directed attention to the growing and insistent complaint that our system of law enforcement is breaking down in the following language:

"We make a prodigious number of laws. In enacting them we disregard the principles of draftsmanship and leave in uncertainty their true meaning and effect. More and more we take over into the field of positive law that sphere of human action which has been hitherto untrammelled by legal restrictions, without thought of the extent to which a wise policy may leave some phases of human activity to the control of moral sanctions or to the restraints of the community sense of what is right conduct.

"We disregard the principle that there is a point beyond which the restraints of positive law cannot be carried without placing too great a strain on the machinery and the agencies of law enforcement. We leave out of account the true relationship of the law to be enforced to the agencies for enforcing it. We build up our administrative machinery with ever-increasing powers and authority in administrative officers at the expense of individual liberty and freedom of the citizen.

"To preserve in our system the principles of individual liberty and to accommodate to them the requirements of an efficient administrative system, to ascertain the principles which govern the relationship of positive law to the machinery and processes of law enforcement, are problems which cannot be solved wholly in the field of politics and of government. To their solution, schools of law and of political science have contributions to make. There must be brought to bear upon them the same thorough-going research, the same analysis carried forward in the spirit of science and scholarship as have hitherto been devoted to the study of law."

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