

# BAR BRIEFS

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—By—

## STATE BAR ASSOCIATION OF NORTH DAKOTA

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### LIBERTY OR TYRANNY

“The Constitution is not self-perpetuating. If it is to survive, it will be because it has public support. Such support is not a passive but an active operation. It means making adequate sacrifice to maintain what is of general benefit.

“The Constitution of the United States is the final refuge of every right that is enjoyed by any American citizen. So long as it is observed, those rights will be secure. Whenever it falls into disrespect or disrepute, the end of orderly government, as we have known it for more than one hundred and twenty-five years, will be at hand.

“The Constitution represents a government of law. There is only one other authority and that is a government of force. Americans must make their choice between these two. One signifies justice and liberty; the other, tyranny and oppression.

“To live under the American Constitution is the greatest privilege that was ever accorded to the human race.”—President Coolidge’s foreword to special edition of “The Constitution of the U. S.” by James M. Beck.

## REVIEW OF IMPORTANT DECISIONS

By C. L. YOUNG

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### **Farmers State Bank of Richardton v. Brown, as Sheriff, et al.**

The president of a failing corporation, in sole charge of corporate affairs, executed a chattel mortgage on corporate property without affixing the corporate seal, to secure a pre-existing debt evidenced by notes renewed from time to time. The sheriff levied on the same property under an execution after the failure of the corporation to file its annual report with the secretary of state, and after a certificate of cancellation of its charter had been made by the secretary of state. This certificate was offered in evidence in defense of the levy. HELD: That the chattel mortgage was executed by an officer having proper authority, and that it was valid, though the corporate seal was not attached, and though it constituted a preference. Held further that the burden of establishing the non-existence of the corporation was on the defendant, and that the ex parte certificate of the secretary of state as to the cancellation of the corporate charter is not competent evidence of the facts therein stated. Whether cancellation of a corporation charter for failure to file an annual report terminates the corporate existence without a judicial proceeding is not decided.

### **Brown, vs. Leeak, et al.**

There was involved an issue of fact as to whether an existing incumbrance was assumed by the grantee under a conveyance and it was HELD: A contract by which a grantee assumes the payment of existing incumbrances is distinct from the conveyance, and may be embodied in the deed, or in another instrument, or may rest in parol. It may appear without a formal promise or be implied from all the facts. When equities are exchanged subject to existing mortgages no presumption arises that the grantee agrees to pay the debt. A promise subsequent to the transfer must be supported by a new consideration.

### **Fyten v. Cummins et al.**

The purchaser under a land contract while in possession became indebted to the seller in a considerable amount and committed various breaches of the contract and thereafter abandoned it and relinquished possession of the land. The contract did not contain the usual forfeiture clause fixing the amount of payments made as liquidated damages. In an action brought by the vendor, who had resumed possession of the land sold, to have the contract cancelled as a cloud upon the title, HELD: Where a contract for the sale of land contains no provision purporting to fix as liquidated damages the amount of payments made or owing upon a purchase contract at the time of cancellation for breach, and where there is no finding of the value of the purchaser's equity at the time

of cancellation, the findings will not support a personal judgment for the amount owing, in addition to a judgment quieting title.

**Golden Valley County v. Lundin et al.**

A bank was designated as a depository by the county and a depository bond for \$1,000.00 was given and filed in the office of the county auditor and accepted, under Chapter 56, Laws of 1921. A new designation of the same depository was made by the county commissioners in July, 1923. The bank remained a depository until February, 1924, when it failed. A large amount was then on deposit and this action was brought on the depository bond. In defense it was claimed that Chapter 56, Laws of 1921 was repealed by Chapter 199, Laws of 1923. HELD: A clause in a statute purporting to repeal other statutes is not in all cases conclusive evidence of the legislative intention. The statute must be construed as a whole and the legislative intent given effect, though contrary to the terms of the repeal clause. Where a repealing statute contains provisions identical, or practically so, with some provisions of the statute declared to be repealed, such provisions remain in force without interruption. The judgment against the sureties was upheld.

### EMERGENCY LEGISLATION

Laws passed by the 1925 Legislature as Emergency Measures. All are now in effect.

#### HOUSE BILLS

24. Appropriation \$28,000.00 to cover deficit of State Training School at Mandan.
26. Appropriation \$30,000.00 to cover deficit in Wolf Bounty Fund.
42. Appropriation \$16,200.00 to pay loan made to Dickinson Normal School.
47. Appropriation \$75,000.00 from State Highway Fund for construction of Red River Bridge at Fargo.
55. Appropriation \$200,000.00 from State Highway Fund for construction of Missouri River Bridge at Williston.
57. Appropriation \$100,000.00 from State Highway Fund for construction of Missouri River Bridge at Sanish.
61. Authorizes reduced rate of interest 6%—upon redemption of real estate sold to the county of 1923 or any prior year and still held by the county, if said redemption is made on or before Nov. 1st, 1925.
63. Relieves assessors from duty of making military enrollment.
65. Declaration of dividends and creation of indebtedness by directors of corporations and increasing or diminishing of the Capital Stock and issuing of bonds by corporations.
67. Commission of crime while armed.
69. Foreclosure of mortgages by agent or attorney and legalizing and validating prior sales where power of attorney has been filed for record at or prior to the time of sale.

84. Empowering Board of Railroad Commissioners to permit common carriers to charge special freight rates within the state and fix classifications, rules and regulations accordingly.
86. State Hail Insurance.
89. Tuberculin test and eradication of Bovine Tuberculosis in Townships by petitions.
90. Appropriation \$40,000 for water works system at Hospital for Insane.
94. N. D. Mill & Elevator Association.
96. Abstractors Board of Examiners—licensing, bonding of abstractors.
108. Collection of County seed and feed accounts.
111. Preliminary examination and change of venue, County Court, Inc., J.
127. Right of eminent Domain of State Institutions.
131. Compilation, Session Laws of 1915, 1917, 1919, 1921, 1923 and two Special Sessions.
149. Board of Accountancy.
155. Auto Transportation.
166. Establishing State Mill and Elevator at Grand Forks, a public terminal elevator.
194. Requiring motor vehicles owned by state to carry name of departments, institution or industry on each side.
212. Regulating sale of frogs and establishing closed season for same.
216. Bonds of N. D. Real Estate Series.
239. Public dances and dancing places.
246. Sunday Dances.
271. Warehouse receipts of public terminal elevators.
275. Wolf and Magpie Bounty.
286. Opposing increase in lignite freight rates.
287. Sow Thistle eradication.

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#### AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE

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The 29th annual meeting of this Society is scheduled for May 15th and 16th at Philadelphia, at which time there will be under discussion the subject of "American Policy and International Security."

The request has been made that the State Bar Association of North Dakota appoint three delegates to take part in the deliberations on that general topic, to which six special sessions will be devoted for the consideration of the following specific points:

1. The Operation of the Dawes Plan.
2. War Debts as a Menace to International Peace;
3. The Possibilities of Disarmament;
4. Foreign Investments and International Peace;

5. Can the Feeling of Insecurity in Europe be Eliminated Without the Co-operation of the United States?;
6. The Outlawry of War.

It is the wish of President Cupler that any North Dakota attorneys who contemplate being in the East at that particular time communicate with him at once, to the end that the Association may be represented at these sessions, if possible.

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### JUDICIAL SELECTION

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A pamphlet of the American Bar Association presents for consideration the matter of selection of candidates for judicial positions. It discusses three plans, designated, respectively, as the New York plan, the Philadelphia plan, and the Cleveland-Chicago plan.

The first represents those associations wherein the recommendations of the Judiciary Committee become in practical effect the selection of the Bar Association that creates it; the second, those wherein the selection of judicial candidates is made through a plebiscite of the Bar Association, leaving to the Judiciary Committee merely the function of initiating or supervising action; the third, those wherein the Bar plebiscite obtains and yet wherein the Judiciary Committee is clothed with the duty of collecting information concerning candidates for submission to the members of the Association or of adding to this information the committee's own definite recommendations as to merit.

The pamphlet argues that it is the duty of the Bar to make such selections; to become the militant sponsor of the candidates so selected; to impress the public continuously, not spasmodically, with the necessity for maintaining the highest character of judiciary; to create and maintain a higher standard for the Bar itself; and that the following Canon of Ethics of the American Bar Association be made effective in State and Nation:

"It is the duty of the Bar to endeavor to prevent political considerations from out-weighting judicial fitness in the selection of judges. It should protest earnestly and actively against the appointment or election of those who are unsuitable for the Bench; it should strive to have elevated thereto only those willing to forego other employments of a business, political or other character, which may embarrass their free and fair consideration of questions before them for decision. The aspiration of lawyers for judicial position should be governed by an impartial estimate of their ability to add honor to the office and not by a desire for the distinction the position may bring to themselves."

### CITIZENSHIP DENIED

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Federal Judge Jeremiah Neterer of Washington recently denied the application of one Gust Olson for citizenship. Olson acknowledged that he was a member of the I. W. W., contended that there was no conflict between its principles and the Constitution of the United States, and had the requisite number of character witnesses. He refused, however, to state that he would support the Constitution in any and all circumstances under which it might conflict with the principles laid down by the I. W. W.

In announcing the decision, Judge Neterer compared the by-laws of this organization with the preamble of the Constitution, and then continued:

"The organization recognizes no country and knows no flag, whereas the object of the Constitution of the United States is to insure domestic tranquility, promote the general welfare, etc. It, therefore, recognizes labor and capital. Aliens, seeking citizenship, must swear to support and defend it against all enemies. We can't have a divided allegiance. Citizenship is a privilege, and to obtain it one must show love for the adopted country. The petitioner has not met the test."

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### OFFICE SUPPLIES AND STATIONERY

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"For many years there has been a demand on the part of members of the Association for an organized co-operative buying of office supplies and printing, it being the opinion of those in favor of the plan that the lawyers could save much money by pooling their purchases.

"Accordingly I appointed a committee to act in this matter. Mr. John P. Conmy, of Fargo, is Chairman of that Committee.

"Every member of the Bar has received a letter from this committee outlining its plan. With that letter each member received a blank, upon which an estimate of the quantity required could be designated. If you are interested, please fill out and return this estimate to Mr. Conmy immediately.

"If there is a desire on the part of the members of the Bar to further this plan, it will be carried out by the committee. The committee must know your wishes at once, and I ask that you write Mr. Conmy NOW."

A. W. CUPLER, President.

(We renew our previous suggestion, also, that you return the estimate sheets with the notation "None Required" or "None Desired," if you are not favorably disposed to the plan.)

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## HIGHER BAR ADMISSION STANDARDS

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Higher standards are being adopted from time to time as a result of the activities of the American Bar Association for higher bar admission requirements. At the present time eighteen States have no requirements, fifteen require a certain amount of general education before beginning the study of Law, and thirteen require High School education as a preliminary.

The more advanced requirements are represented by the following: One year of College in Colorado and Illinois; two years of College in Kansas, Illinois (after July 1926), and West Virginia.

Five States accept six months of training in a law office as a preliminary to admission, and Louisiana requires registration in addition.

Illinois, Michigan, Ohio and Washington have fixed the requirements for study in a law office at four years, in addition to which Ohio requires the filing of an affidavit showing two hundred hours of actual instruction each year.

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## ADDITIONS TO ATTORNEYS LIST

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Recent additions to the list of practicing attorneys in North Dakota are: R. A. Nestos, Minot; L. E. Fitzgerald, Grand Forks; F. W. McLean, Langdon; J. F. X. Conmy, Fargo; H. A. Bronson, Grand Forks; L. N. Torson, Rugby; H. A. Nelson, Williston; E. B. McCutcheon, Minot; G. H. Drowley, Starkweather; S. M. Frank, (moved to) Beulah; Thos. T. Hiner, (moved to) Belfield; Robert A. Eaton, Edgeley; A. E. Draeb, Hebron; W. H. Freeman, Hazen; G. J. Lindlauf, Greene; J. J. Nilles, Grand Forks.

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## CURRENT LEGAL LITERATURE

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Tiffany on Agency (2nd Ed.) by Powell, West Publishing Co; History of Political Theories by Merriam, Macmillan Co; Income Tax Procedure 1925 by Montgomery, Ronald Press; The Constitution and the Courts by publishers, Edward Thompson Co.; The Architect's Law Manual by Blake, Pencil Points Press; The American Bar Association 1924 London Meeting by publishers, Frank Shepard Co.

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## UNIFORM LAWS

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Uniform laws which will be presented to the August 1925 meeting of the American Bar Association for adoption are:

1. Uniform Sale of Securities Act (Blue Sky Law);
2. Uniform Real Property Act;
3. Uniform Real Estate Mortgage Act;

4. Uniform Chattel Mortgage Act;
  5. Uniform Child Labor Act;
  6. Uniform Public Utilities Act;
  7. Uniform Act Governing Use of Highway by Vehicles.
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### SENATORIAL DISDAIN, DIGNITY OR DELIBERATION?

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Last year Senator Walsh of Montana notified the Hon. John W. Davis that he was the Democratic nominee for President. On that occasion Senator Walsh said:

"The head and front of your offending hath this extent, that you have been employed as a lawyer by gigantic business interests. It is not advanced that you have represented them except as a legal adviser. This implies no acceptance of either the political or the economic views of your clients. It is an unjustifiable inference that your views on matters of public concern approximate those of your employers, or that, called to high public office, you would accommodate your own to theirs, or grant them aught beyond justice."

On March 7th, the same Senator Walsh said, concerning the nomination of the Hon. Charles B. Warren:

"I think that he ought not to be made Attorney General, not only because he is not eminent in the profession, but chiefly because for years he was the representative, in his State, of the sugar trust, one of the most offensive and oppressive trusts with which the American people have unfortunately been familiar in the present and past generation."

It is recorded that the name of the Hon. John G. Sargent was presented to the Senate shortly after the second rejection of Mr. Warren. The name had scarcely settled on the clerk's desk, when it made a dash for the Judiciary Committee, was reported back almost immediately, the Senatorial rules were suspended, and unanimous confirmation of the nomination reported; and that which might have been termed disdain, or even duplicity, by a critical citizenship was translated into distinguished dignity through the medium of a rather driving deliberation.

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<p><b>1925 ANNUAL MEETING</b> <b>Fargo, September 9th</b></p>
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