BAR BRIEFS

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BAR ASSOCIATION MEETING

The State Bar Association will held its annual meeting at Bismarck on September 9th and 10th. Definite announcements of its principal features will be made in July. Chief Justice Harry Olson of the Muncipal Court of Chicago, nationally known for his successful judicial administration, and president of the American Judicature Society, will be one of the principal speakers. Negotiations are under way for another speaker of national prominence. The Burleigh County Bar Association has begun to make the necessary local arrangements.

ASSOCIATION COMMITTEES

A number of the committee reports for this year will deal with subjects of vital interest. Some were laid over from last year to permit members of the association to consider the recommendations made. The president desires that the reports be submitted this year not later than the 1st of August, so that at least their substance may be published in the August number of Bar Briefs. If that is done, it will be possible to consider the several recommendations with a full appreciation of their significance and will permit a more interesting and satisfactory discussion at the meeting.

DECISIONS OF N. D. SUPREME COURT

State on behalf of N. D. Workmen's Compensation Bureau vs. Padgett and Northern Trust Co. Defendant Padgett had complied with the Compensation Law by filing a small estimated payroll, paying premium thereon, but failing to file actual payrolls or account, later. The action was brought for accounting and to recover balance of premiums due. The Trust Co. was made a party upon the theory that the condition of the bond for the protection of the State of North Dakota on highway contracts included premiums payable to the compensation fund. The case originated prior to the amendment of the law at the 1925 Session (Chap. 96 of 1925 Laws), and the only stipulation in the contract at that time was to the effect that the contractor would comply with the workmen's compensation law. The Surety Co. demurred. Held: That the Workmen's Compensation Fund is not synonymous with the State of North Dakota; that claims against the Fund are not claims against the State; that the Fund is not a State Fund; that the surety has a right to stand upon the strict terms of his obligation when such terms have been ascertained; and that the strict terms of the bond as ascertained do not include this liability.—(May, 1926.)

Todd vs. Board of Education. The City of Williston is a special school district. A large proportion of pupils in attendance at the high school of the district for a number of years have come from without the district. Though formerly there were no accommodations for such pupils, facilities have been provided for them and the cost per pupil of maintaining the high school was ascertained and fixed, and a tuition charge accordingly prescribed. Children of the plaintiff, who were high school pupils, sought admission to the high school and claimed the privileges thereof without paying the entire amount of tuition demanded by the board of education. This action was to enjoin the defendants from denying the privileges of the school under the circumstances. Held: That under Chapter 107, Session Laws of 1921, non-resident pupils from districts not affording high school facilities must be admitted into the high school departments of standardized schools when their facilities will warrant. The governing board of the receiving district may determine whether it has facilities warranting admission and its determination will be disturbed only in case of manifest abuse. The provisions of such chapter as to the amount of tuition which may be charged is intended to apply only in those cases where the district already has facilities which, in the judgment of the board, warrant the admission of non-resident pupils. Where the governing board determines that its ordinary facilities do not warrant the admission of non-resident pupils, but makes provision for such pupils as a matter of favor, it may impose a tuition charge sufficient to defray the additional expense. Where such a charge is imposed it must be alike to all and the board may not arbitrarily admit some pupils and exclude others. (May, 1925.)

Dehn vs. N. D. Workmen's Compensation Bureau. The claimant's husband died from encephalitis-lethargic, or sleeping sickness, the contention being that the disease resulted from working in dirty, dusty surroundings while remodeling a building. Medical and other expert testimony agreed that this is a germ infection of the brain through the blood stream, and that it is purely speculative whether or not the dust and impurities of the surroundings where the deceased was working were factors in starting the infection. There was no abrasion or other injury. In holding that the claimant had failed to establish the claim by a fair preponderance of the evidence, the Court said: "The Fund administered by the Compensation Bureau is collected from employers of labor and is to be husbanded by it in the manner directed by the Legislature for the benefit of workmen who receive injury in the coures of employment. It is not a general social insurance law justifying awards in cases of ordinary disease not arising in the course of the employment." (May, 1926.)

WORKMEN'S COMPENSATION DECISIONS

One engaged by village to collect and haul garbage, work being let on bids, held to be an employee and not independent contractor.—Schullo vs. Nashwauk, 207 N. W. 621 (Minn., 1926).

A compensation claimant's unjustified fear of operation for hernia, recommended by physician, is not reasonable ground for refusal to submit to operation, and compensation should be denied.—Palloni vs. Transit Co., 214 N. Y. Supp. 430 (N. Y., 1926).

An injury to employee while cranking automobile owned by him and preparatory to his driving to work, held not sustained in course of employment and not compensable, although he was employed because he owned the car and used it in the employer's business.—Grathwohl vs. Nassau, 214 N. Y. Supp. 496 (N. Y., 1926).

Compensation act does not authorize award in case of injury or death from a peril common to all mankind. Claimant's husband was killed by the falling of the building in which he was working, this building and a number of others being destroyed by a storm.—Gale vs. Krug Park Amusement Co., 207 N. W. 677 (Neb., 1926).

Workman engaged in cutting all trees of saw-log size on certain strip of land, for which he was to be paid at rate of 22 cents per log, was held to be an independent contractor and not an employee.—Kimberg vs. Murray, 207 N. W. 880 (Mich., 1926). Same holding under a similar state of facts in Dean vs. Johnson, 214 N. Y. Supp. 448 (N. Y., 1926).

Lightning causing death is an "Act of God," but where deceased was engaged in performance of duties subjecting him to greater hazard

than ordinarily applies to the general public, (in this case working with a steel shovel in close proximity to an underground pipe line), the injury is compensable.—U. S. Fidelity & Guaranty Co. vs. Rochester, 281 S. W. 306 (Texas, 1926).

Where pneumonia resulting in death occurred 81 days after employee cut his hand, which became infected, the burden was on claimant to establish by expert evidence that death resulted from such injury, and the statement of a physician who treated the injured person to the effect that he was not prepared to state that pneumonia from which employee died resulted from the injury but that such result was extremely possible held to be insufficient to prove connection between the injury and death. —Anderson vs. Baxter, 132 Atl. 358 (Penn., 1926).

Questions of fact and weight of evidence are for the Compensation Bureau to determine; and upon evidence showing that deceased was struck on the chest by a pole used as a lever; that no report of injury was made at the time, and deceased discharged for lack of work; that he died a week later; that the autopsy revealed no fracture, lungs in advanced stage of tuberculosis, diseased kidneys, and the direct cause of death was rupture of an aneurism of the aorta, probably of two years' duration and syphilitic in nature; the Bureau's finding that death was not the result of injury in the course of employment must be sustained.—Duarte vs. Industrial Commission, 243 Pac. 886 (Cal., 1926).

NEWS NOTES

Kansas has one hundred fifty fewer lawyers than it had three years ago.

The heroic statute of the late Chief Justice Edward Douglass White was recently unveiled at New Orleans.

A district bar association was recently organized at Minot by attorneys from the northwest counties of the state.

Frank J. Loesch of Chicago proposes novel reading as a remedy for the tendency of lawyers to separate justice from law by technicality.

A fund of $500,000 has been completed through the instrumentality of the American Bankers Association to endow scholarships and research in economics in American colleges.

The American Bar Association has endorsed the constitutional amendment changing the beginning of the first session of a new congress to January following the election.

W. S. Heller, president of the National Shorthand Reporters' Association, asserts that attorneys speak an average of sixty-five words a minute faster than they did forty years ago.

Rome G. Brown of Minneapolis, Minnesota, long prominent at the Minnesota bar, died on May 21st. He was an authority on the law of waters and was one of the leaders in the American Bar Association in the fight against judicial recall.

The faculty of the Harvard Law School will conduct a crime survey in Massachusetts during the coming summer and fall and will submit its recommendations to the 1927 legislature. The survey will be wider in its scope than the Cleveland survey which also was under the direction of Dean Pound. It will cover not only the administration of justice but general crime conditions as well.

The Indiana State Bar Association has recently put to a test the rule long prevailing in that state whereby the only qualification for admission to the bar was a good moral character. Judge Fortune refused to admit an applicant without an examination testing his legal knowledge. Upon application by the applicant to the supreme court for a writ of mandamus, the issuance of the writ was refused.

In Robins v. Jones, 277 S. W. 333, the Kentucky supereme court takes cognizance of the decreased purchasing power of the dollar, in allowing an attorney's fee of $6,000.00 for successfully defending a will contest. There is greater likelihood, the court says, that attorneys will do themselves injustice in the way of charges for services outside of litigated matters than that they will deal unjustly with clients in their charges for services in litigated matters.

Senator Thos. J. Walsh of Montana at a meeting of the Tri-State Bar Association, consisting of Texas, Arkansas and Louisiana delivered an address against reform in federal procedure. He contended that the task which the bill now before congress imposes upon the supreme court is one entirely beyond the power of that court to perform. In his opinion the reformed procedure is unnecessary, would aggravate the evils which it is intended to remove, and would introduce confusion in the practice.

AMERICAN BAR ASSOCIATION MEETING

The American Bar Association meeting will be held at Denver on July 14th, 15th and 16th. On the first evening Hon. James M. Beck will deliver the annual address, and the following evening Thomas J. Norton of Chicago will speak on "National Encroachments and State Aggressions." Duncan Campbell Lee of London will represent the English bar at the meeting. On the afternoon of July 14th, there will be a symposium on the "Enforcement of the Criminal Law" with addresses by Guy A. Thompson of St. Louis, prominent in efforts to improve the administration of criminal justice in Missouri, and Richard Washburn Child of New York City, who has devoted much time to an investigation of the administration of criminal justice. In the afternoon of July 15th, there will be a symposium on "Greater Efficiency in Judicial Procedure," with addresses by Robert C. Dodge of Boston, a member of the Massachusetts Judicial Council, Edson R. Sunderland of the University of Michigan Law School and Roscoe Pound of Harvard University Law School. Three half day sessions will be devoted to committee reports. July 13th, preceding the opening of the sessions, is set apart for the sectional meetings. Those of the criminal law and judicial sections have programs of unusual interest. The afternoon of July 16th, and the whole of July 17th,

are set apart for motor trips for members of the association and their ladies as guests of the Colorado and Denver bar associations.

The program throughout is an unusually strong one. Excursion rates from North Dakot points are reasonable and Denver is so accessible by automobile that the bar of this state should be well represented. There is a distinct advantage in membership in the American Bar Association. The membership fee is only $6.00, and in return members in addition to other advantages receive the American Bar Association Journal and a bound volume of the proceedings of the annual meeting. These are of great value to all who would keep in touch with the developments within the profession.

RE-STATEMENT OF THE LAW

At the recent meeting of the American Law Institute both President Wickersham and Director Lewis brought out the fact that teachers of law are beginning to make use of the tentative drafts in class room work, and that such use offers a valuable opportunity to familiarize the Bar of the future with the undertaking. Director Lewis further remarked that many law professors had obtained valuable suggestions from the doubts and questions of bright students, and there was no reason why the Institute might not find profitable suggestions through the same source. Due consideration is being given to the comment or criticism of all who take the trouble to present either in order that the work may become the work of the profession as a whole.

INCORPORATION OF THE BAR

Last month we poked fun at the arguments of the New York attorneys who opposed incorporation of the Bar. We still feel that the character of the opposition deserved the light treatment. The following from the American Bar Association Journal, however, is entitled to more serious and respectful consideration: "It is universally held by all the decisions that a lawyer is an officer of the court, that he owes to it a special allegiance and resulting duties of a well defined character, touching not only his demeanor in the court room, but the determination of his qualifications for admission to the bar, and his accountability to discipline for every act done in the exercise of the privileges and prerogatives bestowed upon him by the license to practice. It has been held that because of the fact that lawyers are officers of the court, the legislature invades the judicial province when it attempts to prescribe the qualifications which will entitle an applicant for admission to the bar to a license, and that such laws are therefore unconstitutional and void. (In re Day, 181 Ill. 73) Since, therefore, lawyers are officers of the courts and are a part of the judicial institution, why is it necessary to seek for any further grant of power from the legislative department? Has not the judicial department inherent power to deal with the question of the organization of all its officers, the creation of subdivisions, geographical and functional, and the assignment of special duties to spe-

cial subdivisions or groups? It is already firmly in possession of the power to examine for admission and to disbar, and it usually exercises these powers with the aid of examining committees and grievance committees. Is there any essential part of the proposed plan to incorporate the bar which cannot be accomplished at once by the co-ordinated effort of judges and lawyers? Without attempting to discount the opinions of those who think the legislative integration method the best in their particular states, under the conditions there prevailing, we venture to suggest that in a large number of the states bar integration, as a means of dealing with problems of admission, discipline and the like, may be accomplished effectively through recourse to the judicial power."

Delegates from State and local Bar Associations gathered at Washington, D. C., in April at the call of the American Bar Association for the purpose of making a survey of the situation and discussing the questions involved. The only resolution offered and adopted reads: "The Conference recommends to the various state and local bar associations throughout the United States that compulsory, all-inclusive incorporation of the Bar is a matter that should primarily and properly be determined by each state in accordance with its own existing conditions and its own traditions."

SALARIES AND TERMS OF JUDGES

The matter of adjusting the salaries and terms of Judges of the Supreme and District Courts of North Dakota is assuming definite shape. The various committees which have had the matter in charge are now engaged in the preparation of the proper constitutional amendments to submit to the voters of the State.

The amendments will incorporate the following provisions: An increase of the terms of District Judges to six (6) years; an increase of the terms of the Supreme Court Judges to ten (10) years; a change in the salary provision so that the salary may not be decreased during the term.

This will leave the matter of salary to the Legislature, where it will be subject to change according to existing conditions with the foregoing reservation, and appears to be generally preferred over a definite stipulation of salary in the constitution.

It is hoped to have the petitions ready for signature circulation in a short time.

LOCAL BAR ASSOCIATION MEETINGS

The work of the Committee on organization of local associations within the State Bar Association is evidently bearing fruit. Among the more active of such local organizations is that of Cass County, of which Mr. H. G. Nilles of Fargo is President.

Although an organization had been maintained there for a number of years, meetings were infrequent, interest was lagging, and attendance was limited. Since the 1925 annual meeting, however, to which mem-

bers of the Fargo Bar attribute much of the "new enthusiasm," the Cass County unit has been holding regular luncheon meetings at the Fargo Commercial Club.

These meetings are held on the first Thursday of each month. Programs are in charge of a special committee, which serves for a period of three or four months. The hour-and-a-half-limit of the Service Clubs is observed, and particular attention is given to the problems and general welfare of the younger practitioners. As a result, a spirit of camaraderie, of frankness and good-fellowship is being developed that augurs well for a finer fraternalism among the members of the legal profession of that county.

A speaker is presented at every meeting, and evidence of the constructive nature of the programs is contained in the announcement of some of the more recent speakers, viz: Hon. A. G. Divet, who spoke on the subject, "Reasons for the Law's Delays"; Hon. Andrew Miller, Judge of the U. S. District Court, who discussed, "Practice in U. S. Courts"; and Hon. Geo. F. Shafer, a summary of whose address on "Remedies for the Law's Delays" was published in last month's issue of Bar Briefs.

It is hoped that the foregoing will impress other communities with the importance and worth-whileness of trying out the experiment of establishing local units of the State Association, not neglecting of course, the important feature of keeping Bar Briefs informed as to the activities.

FRANK W. AMES

Frank W. Ames of Mayville, died of pneumonia on May 25th last. He was born at Wiscasset, Maine, on December 16th, 1851. He was graduated from Trinity College, Hartford, Connecticut, in 1876, and studied law in the office of H. C. Robinson of that city. He was admitted to the bar in Connecticut in 1879, and Dakota Territory in 1880. He first resided at Caledonia, in Traill County, and was clerk of the district court of that county from 1880 to 1885. He served as state's attorney of Traill County from 1889 to 1892, and as state senator from 1889 to 1903. He served as reporter of the supreme court of this state from 1904 to 1912, Volumes 12 to 21 inclusive of the North Dakota Reports having been issued during his term of office. After the county seat of Traill County was removed from Caledonia to Hillsboro, Mr. Ames moved to Mayville, where he continued to practice until his death. He was widely known and highly respected. A son and daughter survive him.

1926 ANNUAL MEETING

BISMARCK

SEPTEMBER 9TH AND 10TH