

# BAR BRIEFS

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## STATE BAR ASSOCIATION OF NORTH DAKOTA

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### HAPPY NEW YEAR!

1924 is dead. 1925 is here, and on its way.

Whatever the dead year may have brought to the Association or its members, the New Year will not be what it ought to be unless what has been is the inspiration to what is and what is to be.

The failures of the past, if any there be, may be the very stepping stones to the achievements of the future. The successes only sharpen desire for more and greater success.

From an Association standpoint 1924 marked a distinct step forward. More members of the Association became interested in its affairs. More zeal was displayed by those placed on committees. More time was given, more talent freely devoted, by individuals for the good of all.

Much of this intensive effort, interest and zeal came in direct response to the activity of Committee Chairmen. That activity, again, gained much of its initial impetus through the enthusiasm of the immediate Past President, L. R. Nostdal. And his enthusiasm was largely the creation of the opportunities that presented themselves by reason of the changed status of the Association.

There must be no let-up for 1925. There will be none, if the President "carries on" with his election pledges, if the present response of Committee Chairmen continues, if current reports of individual industry and enthusiasm are expressions of fact instead of hope.

Happy New Year! And full speed ahead!  
"SECK"

## PRESIDENT CUPLER VISITS MINNESOTA BAR

"At the invitation of the Hennepin County Bar Association, I had the honor of representing the North Dakota Bar at their meeting held in Minneapolis, December 18, 1924, which was called to act upon the Bill proposed by the Minnesota State Bar Association to the coming legislature of Minnesota for the reorganization of their Bar Association.

"Since 1920 the Minnesota State Bar Association has been endeavoring to have passed by the Legislature a law similar to ours. At the 1923 session of their legislature a bill was introduced, but on opposition from a certain group of attorneys it was not passed. A new bill has been drafted in an endeavor to meet these objections which chiefly related to the power of the Association and its Board of Governors to discipline and disbar members of the Association.

"I was requested to explain the plan of our organization and our experience with it. I told them of the successful operation of our Association under the compulsory plan of organization.

"At the invitation of the committee in charge of the bill for the Ramsey County Bar Association I met with them at St. Paul on the 19th inst., and gave them my observations of the successful operation of our plan of organization.

"The bill to be introduced at the coming session of their legislature is essentially the same as our Bar Board and Bar Association Acts, and provides for an annual license fee from every practicing lawyer. The Meetings at Minneapolis and St. Paul, with few dissenting voices, endorsed the bill, and similar meetings are being held in the several judicial districts of the state, and, I have no doubt will result in similar endorsement of the bill and of the plan under which we are operating.

"I extended to the Bench and Bar of both cities fraternal greetings, and was asked to convey to North Dakota Bench and Bar their greetings and best wishes.

"The suggestion was made by them that a joint annual meeting of the Minnesota and North Dakota Bar Association be held at some time in the future, and that we cooperate in arranging for speakers, and that an exchange of speakers at annual meetings be considered. I mention this as an evidence of the very cordial feeling which exists toward the Bench and Bar of North Dakota."

A. W. Cupler,  
President.

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## BAR BOARD REFERENDUM

The referendum balloting for recommendations to the Supreme Court for the appointment of a successor to Hon. C. J. Fisk on the State Bar Board was closed on the 20th of December. At that time 277 ballots had been cast. The total number of names listed on the ballots was 154. A large number of these received only one or two votes each.

The vote was canvassed by the Secretary and certified, under oath, to the Committee appointed by President Cupler. The Committee then reported to the President and the President to the Supreme Court.

Those receiving ten or more votes each were as follows: Tracy R. Bangs, 15; George Bangs 12; H. A. Bronson, 10; Horace Bagley, 10; A. W. Cupler, 11; A. G. Divet, 18; S. E. Ellsworth, 13; C. J. Fisk, 194; John Knauf, 22; Aubrey Lawrence, 33; W. A. McIntyre, 10; B. F. Spalding, 14; C. L. Young, 12; Alfred Zuger, 12.

Subsequent to the closing of the ballot 13 additional ballots were received, which did not change the result, and showed the following distribution among those listed above: George Bangs, 1; A. W. Cupler, 1; A. G. Divet, 2; C. J. Fisk 9; John Knauf, 2; W. A. McIntyre, 1.

The members of the Bar Board holding over are S. D. Adams and C. L. Young. Later the appointment of Judge Fisk has been announced.

#### CODE REVISION

The President of the State Bar Association appointed a Committee to outline a plan for the revision, compilation, or codification of the statutes. The last compilation was made in 1913, and the last codification in 1895. There have since been held five regular, and two special legislative sessions, resulting in additions to the statutes, of over two thousand pages. The enactments of the Session of 1925 will be included in the compilation.

The Committee consists of Sveinbjorn Johnson, Chairman, Chas. M. Pollock, Fargo, Aubrey Lawrence, Fargo, C. J. Fisk, Minot, Geo. A. Bangs, Grand Forks, Ed. Pierce, Sheldon, and S. E. Ellsworth, Jamestown. The Committee met at Fargo on December 20th, and, after canvassing the situation, decided to recommend a compilation of the statutes under the general supervision of the Supreme Court, the Court to make the necessary arrangements for printing and publishing the volume. This plan was successfully carried out in Montana when the latest revision was made. It is understood that Mr. Nestos will include in his message to the Legislature a recommendation that appropriate action be taken for the compilation of the statutes.

Members of the Bar can materially assist the Committee by bringing the facts as to the necessity for the compilation to the attention of their representatives in both houses of the Legislature.

**Hon. Sveinbjorn Johnson,**  
**Chairman.**

### PROBATE CODE COMMITTEE REPORTS

The report of Hon. Horace Bagley, Chairman of the Committee on Revision of Probate Code is that the Committee has decided upon the following course of action:

"To have introduced a bill amending the present Probate Code in the following respects:

1. To provide a uniform form of citation and methods of service thereof and abolishing the order hearing petition;
2. To provide for filing all claims with the County Judge and fixing a day of hearing thereon, on which day said claims shall be adjudicated;
3. To simplify and make uniform the procedure on petition to sell and to mortgage real estate.

"In addition to the above bill, it was decided to introduce a bill to define the liability of executors and administrators for money on deposit in banks in case of failure thereof."

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### LEGISLATIVE COMMITTEE

"The Legislative Committee of the North Dakota Bar Association will meet at Bismarck, North Dakota on Monday, February, 2nd, 1925, at 9:00 A. M. at Supreme Court Library, Memorial Building. All members of the Committee are requested to be present as important matters will be considered. The meeting is called for a two-fold purpose: first, to make plans for introducing bills, carrying out the recommendations of the State Bar Association at the Jamestown meeting; and secondly, to co-operate with any other Committees of the Association which are interested in legislation. It will be recalled that the Legislative Committee was charged with certain duties pertaining to recommendations of the State Association, while considerable legislation was left with the committees which had proposed it. The meeting is fixed at a time when it is hoped most of the routine legislation will be out of the way. There is no legislation in which the Committee is interested that is of a partisan nature, and the Committee will not assist in the passage of or defeat of partisan legislation. Changes must be made in the present laws and new laws must be adopted in order to keep pace with the advancing lines of civilization.

"The Chairman sent to each member of the Committee the recommendations made at the State meeting in Jamestown sometime ago, but only a few of the members have replied. It is to be hoped that all members of the Legislative Committee will take the trouble to reply to the communication within the next few days."

J. F. T. O'Connor.

Chairman

### RETIRING CHIEF JUSTICE COMMENDS ASSOCIATION

The following represents a portion of the letter transmitted recently by Hon. H. A. Bronson, retiring chief justice of the Supreme Court, to the President of the Association:

"Already, the Bar Association has made auspicious beginnings towards the attainment of its potential possibilities. A spirit of co-operation, interest and activity is manifested by the Committees of the Association and the membership at large. Through this co-operation, interest and activity, substantial results are already in evidence for the Bench and Bar of this State in the better and more efficient administration of justice.

"Now, to promote the betterment of the work of the Association, and the better co-operation and interest of its membership, there appears, through your initiative and that of your Executive Committee, a beginning in the field of journalism through the publication of a monthly journal, prepared, edited, and published by lawyers, members of the Association. This, at least, is the attainment of one objective which for some time I have inherently desired to see accomplished.

"As the New Year is nigh at hand, I desire to express my expectant wish that the Association, under your guidance and that of its Executive Committee, may gather unto itself, in the New Year, greater strength and still greater attainment of the beneficent purposes for which it has been established and that the monthly journal, just initiated, may enlist the active interest, co-operation and support of the entire Bar of this State."

Harrison A. Bronson

Chief Justice.

In acknowledging this letter, President Cupler expressed the kindly feelings existing on the part of the Bar towards the retiring member of our Supreme Court.

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### COST AND CAUSES OF CRIME

"Estimates presented at the recent meeting of the American Bankers Association fixed last year's losses to the owners of property, as the result of the operations of criminals of all kinds, at a sum that exceeded the total expenditures of the Federal Government in the same year. In other words, the losses resulting from dishonesty reached to between \$3,000,000,000 and \$4,000,000,000. This stupendous sum represents one year's cost of society's failure to measure and cope with crime.

"Justice James C. Cropsey of the Supreme Court of New York attributes over eighty per cent of crime to persons under twenty-five years of age. In his opinion, the average youthful criminal operates upon the theory that the world owes him a living. Justice Cropsey, therefore, finds that moral, instead of mental, deficiencies account for most criminal acts. According to his observations, the criminal proclivities of the young are due to inadequate home training and to the decline of religious

influences. Justice Cropsey says that the young criminal is easily led into radicalism, a fact which shows that his predisposition to crime is in part an outgrowth of his political and economic education.

"The situation presents a major problem for the consideration of the responsible leadership of the country."

The foregoing is from an American Exchange National Bank letter. It may not be amiss, therefore, to point out possible sources of inspiration. We point to some testimony taken by the Lusk Committee in New York a few years ago:

"Q. Do you mean that they teach the children to disregard the law?  
A. I mean that our attitude towards the child would be for him to take his position in regard to the law.

"Q. Then, according to the teachings, a child might arrive, however, at a conclusion that a particular law, being offensive to his ideals, he could disregard it although it is the law? A. If he was prepared to take the consequences. That is up to the child.

"Q. If they are prepared to take the consequences, they are at liberty to feel that they may disregard the specific statutes of the United States? A. If they are prepared to act and take the consequences of their acts, if they are prepared to act according to their consciences and take the responsibility for their acts, that would not be out of harmony with the teachings of the Ferrer School."

Do you wonder that the valedictory peroration of one of the students read like this?

"In the great world-wide struggle which is taking place today, we must take an active part. We must not fail, we must not falter. The ideals which inspired Marx and Engels, Bebel and Lassalle, the ideals which today inspire Debs and Lenine (now deceased), are the ideals which inspire us."

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### UNIFORM INTERPRETATIONS OF CANONS OF ETHICS

Members of the Association have doubtless noted, from the publication of the opinions of the Committee on Professional Ethics and Grievances in the Journal, that this committee has begun to avail itself of the added authority given it some time since. A wide field of usefulness has been opened to it. One of the particular advantages which it is hoped will result from the enlarged power of the Committee in respect to problems submitted from state and local bar association, is a gradual unification of the interpretation of the canons of ethics by bar associations throughout the country. Writing on this point, in an article in the July, 1922, issue of the Journal, Chairman Thomas Francis Howe of the Association's committee said:

"Most, if not all, of these local associations have adopted the Canons of Ethics of this Association, and many of the questions which their

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.