BAR BRIEFS

PUBLISHED MONTHLY AT BISMARCK

—By—

STATE BAR ASSOCIATION
OF NORTH DAKOTA

Entered as Second Class Matter Jan. 15, 1925, at the Postoffice at Bismarck, North Dakota, Under the Act of August 24, 1912

VOL. II AUGUST, 1926 NO. 9

TENTATIVE PROGRAM

ANNUAL MEETING OF STATE BAR ASSOCIATION

BISMARCK, NORTH DAKOTA

THURSDAY, SEPTEMBER 9, 1926

MORNING SESSION

A. M.

9:00 Registration

10:00 Invocation ..... Rev. Paul S. Wright

10:05 Address of Welcome ..... L. J. Wehe, President Burleigh County Bar Association

10:10 Response ..... W. A. McIntyre, Vice-President State Bar Association

10:15 Reports of Secretary-Treasurer and Executive Committee ..... R. E. Wenzel

10:30 Reports of Committees:
American Citizenship ..... Clarence G. Mead
Revision of Codes and Laws .....
.....Hon. Sveinbjorn Johnson
Legal Education and Admission to Bar .....
..... J. A. Manly
Revision of Probate Code ..... Horace Bagley
Revision of Federal Practice ..... E. T. Conmy
Jurisprudence and Law Reform .... Hon. Thos. H. Pugh

11:20 President's Address ..... C. L. Young

AFTERNOON SESSION

P. M.

2:00 Address: Psychiatric Treatment of Criminals .....
..... Hon. Harry Olson, Chief Justice of Municipal Court, Chicago, Illinois.

Reports of Committees:

Criminal Law and Recommendations of State's Attorneys' Association ..... Hon. Geo. Shafer

Law Enforcement ..... H. F. Horner

3:45 Music

4:00 Meeting of the American Law Institute and Conference of Bar Association Delegates ..... Dean O. P. Cockerill, University Law School

4:30 Reports of Committees:

Legislation ..... L. R. Baird

Legal Aid ..... F. F. Wyckoff

Compensation and Fees ..... A. P. Paulson

Constitution and By Laws ..... A. W. Aylmer

Public Utilities ..... Hon. E. B. Goss

THURSDAY EVENING

8:00 Address: The Relation of Law to Social Evolution .....
..... Chancellor Melvin A. Brannon
University of Montana

FRIDAY, SEPTEMBER 10, 1926
MORNING SESSION

A. M.

9:15 Invocation ..... Fr. John Slag

9:20 Reports of Committees:

Co-Operation with the Press ..... Hon. A. W. Cupler

Jury Reforms ..... Aubrey Lawrence

Judicial Council ..... Hon. A. G. Burr

Salaries of Judges ..... Robert Norheim

Terms of Judges ..... John H. Lewis

Powers of Judges ..... W. H. Stutsman

10:30 Music

10:45 Reports of Committees:

Comparative Law ..... Geo. P. Homnes

Uniform State Laws ..... Hon. H. A. Bronson

Local Organization ..... F. T. Cuthbert

Internal Affairs ..... C. S. Shippy

Memorials ..... H. A. Libby

Morgan Memorial ..... Tracy R. Bangs

Ethics of Bench and Bar ..... Hon. C. A. Pollock

AFTERNOON SESSION

P. M.

2:00 Address ..... Hon. Theo. Christianson, Governor of Minnesota

Address: Some Phases of Bank Receivership ..... L. R. Baird

3:15 Music
3:30 The Denver Meeting of the American Bar Association ..... Hon. C. A. Pollock
Election of Officers
Miscellaneous Business
Adjournment

FRIDAY EVENING

7:00 Annual Banquet for Members and Ladies and Guests

Following the afternoon session of each day diversions will be afforded members, their wives and guests, through the courtesy of the Burleigh County Bar Association.

SPEAKERS AT THE ANNUAL MEETING

Judge Harry Olson, who has been chief justice of the Municipal Court of Chicago since 1906, was born in Cook County, Illinois, studied in Washburn College, Kansas, and graduated from the Union College of Law at Chicago. Prior to his election to the Municipal Court, he served for ten years as assistant state's attorney of Cook County. He has long been a student of Criminal Law and Criminology, and in recent years particularly has been interested in the examination of criminals with a view to eliminating their criminal tendencies by suitable treatment.

Chancellor Melvin A. Brannon of the University of Montana, was born in Indiana, is a graduate of Wabash College, and took his doctor's degree at the University of Chicago. He was professor of Biology in the University of North Dakota from 1894 to 1914, was president of the University of Idaho from 1914 to 1917, president of Beloit College from 1917 to 1923, and since 1923 has served as Chancellor of the University of Montana with offices at the state capitol at Helena. Under his administration Montana is trying the experiment of having this one executive head for a considerable group of its educational institutions which for the purposes of administration are denominated the State University. Chancellor Brannon has been active in a large number of civic and scientific organizations.

Gov. Theo. Christianson of Minnesota, prior to his election as governor, was engaged in the practice of law at Dawson, Minnesota, and was prominent there also as editor of the Dawson Sentinel. As a member of the house of representatives in Minnesota for a number of terms he has an enviable legislative record and has proved himself a most efficient executive.

REPORTS AND RECOMMENDATIONS OF COMMITTEES

Local Organization

Chairman Cuthbert has been seriously ill in the hospital, hence no report was obtainable at this time from this Committee.

—0—

Bench and Bar Ethics

This Committee reports that it will present a report very similar to the one discussed last year, and printed in the 1925 annual proceedings.

Terms of Judges

The Committee, after reviewing laws of various other states, concludes that a six-year term, though prevailing in many states, is not long enough. It believes efficiency will be increased with continuity of service, and favors a ten-year term, preferably by appointment.

—0—

Judicial Council

This committee reports study of the proposals made at the last meeting by various groups, urges further consideration of these proposals (including the proposed bill as published in the 1925 Proceedings) between now and the date of the 1926 meeting and some final disposition of the matter at that time.

—0—

Salaries of Judges

A review of the actions of other states, increasing the salaries of judges in those states in recent years, takes up the greater part of this committee's report, which it follows this with the rather modest recommendation that bills be prepared and offered to the legislature increasing the salaries of supreme court judges to $6,500.00 and of district judges to $5,000.00 per year.

—0—

Legal Education and Admission

The Chairman of this committee advises that no definite recommendations for legislation to raise the standard of education for admission to the bar can be agreed upon, and recommends that unless practically unanimous agreement can be reached by the annual meeting no effort be made to change the present situation at the coming session of the legislature. The American Bar Association standards are: 1. Two years of college before admission to law school; 2. Continuous law course of three years, part time courses to total three years; 3. Adequate library facilities for the law school; 4. Full-time instructors; 5. Public examination in addition to degree.

—0—

Press and Public Information

This, a new committee, reports very satisfactory co-operation of the N. D. Press Association, and makes the following recommendations: 1. That a member of the Association be appointed in each county to co-operate with the Press; 2. That the services of such representative be made available to all newspapers of his county, without charge; 3. That correct information, in the way of news articles be supplied to the Press from time to time; 4. That the Press decline to publish news articles concerning litigation, prepared or inspired by a party to the controversy or the attorney; 5. That all attorneys keep the general committee informed concerning inaccurate statement or statements violating the principles enunciated; and 6. That such special committee be continued from year to year.

Uniform Laws

The commissioner on uniform state laws recommended to the American Bar Association the following uniform acts, and the action of the committee was approved by the association:

The uniform federal tax lien registration act

Uniform chattel mortgage act

Uniform act to regulate the sale and possession of fire arms

Uniform act for the extradition of persons charged with crime

A uniform motor vehicle code which consists of the following four uniform acts:

Motor vehicle registration act

Motor vehicle anti-theft act

Motor vehicle operators and chauffeurs license act

Act regulating the operation of vehicles on highways.

—0—

Constitution and By-Laws

This Committee recommends the printing in each annual report of the Constitution and By-Laws and the Code of Ethics.

It offers the following amendment to Article 3 of the By-Laws:

"Article 3. The Executive Committee shall have full power and authority, in the interval between meetings of the Association, to do all acts and perform all functions which the Association itself might do or perform, except that it shall have no power to amend the Constitution or By-Laws."

With respect to the recommendations to the Supreme Court for appointment of members to the Bar Board, it is suggested that Article 9 be amended to give the President power to call a referendum, without petition, in case of a vacancy on the Board, and that other recommendations be disposed of at the annual meeting immediately preceding the expiration of the term of a member of the Board.

The term of one of the members will expire January 1st, 1927.

—0—

Citizenship and Americanization

The report of the committee is quite general, but the following specific highlights appear: The work of the committee reached into nearly every school in 29 out of the 53 counties; it worked in co-operation with the American Legion, Federation of Women's Clubs, Department of Education and other organizations as before; special mention is made of the work of the following members of the Bar: John G. Pfeffer of Fargo, T. L. Brouillard of Ellendale, Geo. P. Homnes of Crosby, and A. G. Porter of Edgeley. The following recommendations are made: 1. Acceptance and approval of the report; 2. Continuance as object of Bar Association program of the movement for improvement of citizenship; 3. Continuance of the plan of the Correlated Patriotic Workers Association; 4. Urging lawyers to recognize the opportunity for such work and accept the duty; 5. Liberality in appropriation of funds for

the purpose; 6. Offering of suitable prizes for essay contests on Constitution in high and grade schools.

—0—

Revision of Federal Practice

In addition to the summary reported in the April number of Bar Briefs this committee reports the Senate Bill (passed) and the House Bill (for consideration in December) with the following changes in judicial salaries:

	Senate	House
Circuit Judges	$15,000.00	$12,500.00
District Judges	12,000.00	10,000.00
Chief Justice, Court of Claims	15,500.00	12,500.00
Other Judges, Court of Claims	15,000.00	12,500.00
Chief Justice Court of Appeals District of Columbia	15,500.00	12,500.00
Other Judges Court of Appeals	15,000.00	12,500.00
Chief Justice Supreme Court, District of Columbia	13,000.00	10,500.00
Other Judges Supreme Court	12,500.00	10,000.00
Presiding Judge Court of Customs Appeals	15,500.00	12,500.00
Other Judges Customs Appeals	15,000.00	12,500.00
Board of General Appraisers	12,500.00	10,000.00

REVIEW OF NORTH DAKOTA DECISIONS

Robinson v. Swenson et al. A loan was negotiated by a resident of this state, and the mortgage executed to his father, a resident of New York. The mortgagee shortly thereafter executed a satisfaction of the mortgage before the son, who negotiated the loan, who was a notary public. Prior to the date borne by the satisfaction the note and mortgage were sold and assigned by the mortgagee to the plaintiff, who also was a resident of New York. This assignment was not recorded for nearly six years after the execution of the mortgage. The son was the agent of the mortgagee to handle his business in North Dakota, and there is evidence showing that plaintiff knew this. The plaintiff entrusted the matter of collecting the paper purchased by him largely to the mortgagee. The defendants paid the mortgage to the son of the mortgagee, who negotiated the loan, but prior to doing so ascertained that the mortgage stood of record in the name of the mortgagee and paid only after the satisfaction was recorded. In an action by plaintiff, the assignee, to foreclose, it is HELD that in the absence of authority, express or implied, to employ a sub-agent the confidence reposed in the agent by the principal is personal and may not be delegated to affect the rights of the latter. From usage or circumstances the power to delegate authority may be inferred. Unless specifically forbidden by the principal, an agent may delegate his power to a sub-agent, when the agent cannot himself and the sub-agent can lawfully perform, and when it is the usage of the

place to delegate such power. A person who negotiates a loan at whose office the principal note and coupons are payable, and who has in his possession a satisfaction executed by the mortgagee, has authority to receive payment of the principal and deliver the satisfaction and payment to such person discharges the debt notwithstanding the notes and mortgage are in the possession of another, who owns the note and has an unrecorded assignment. While non-possession of the evidence of the debt is materially important in determining whether agency with consequent authority to receive payment exists, it does not necessarily control. All facts considered together may repel the presumption arising from retention of the custody of the instruments evidencing the obligations. (Opinion filed July 19th, 1926.)

State ex rel Gran v. Bratsberg, et al. Petitions for the recall of a city commissioner of the city of Minot, signed by the electors of that date was presented to the city auditor. They did not contain, in addition to the names of petitioners and their street and house numbers, any statement as to their age or length of residence in th city of any of the signers. These were certified as sufficient by the city auditor and presented to the board of city commissioners, which board proceeded to examine the same and to hear evidence relative threto, and found that they did not show the age or length of residence in the city of any signer thereon, and that affidavits attached thereto were fraudulent, and that the petitions were insufficient in form and substance. Upon appeal from a judgment in mandamus compelling the board of city commissioners to call an election for the recall of such commissioner, IT IS HELD that the petitions are not invalid because signers failed to add to their signatures their ages and length of residence in the city, and that the city commissioners are without power to review the determination of the city auditor that the petitions are signed by a sufficient number of qualified electors. (Opinion filed July 13, 1926.)

Kellar v. U. S. F. & Co. The plaintiff is a plumber licensed under a city ordinance. He gave a bond saving the city harmless against liability on account of injuries resulting from negligence in carrying on his business. Defendant issued to plaintiff a public liability policy indemnifying plaintiff against loss from liability imposed upon him by law for damages on account of accidental injuries or death suffered or alleged to have been suffered by any person not employed by him at or about his work and as a result of an accident while the policy was in force, and to defend any suit brought against plaintiff to enforce a claim whether groundless or not for such damages. The policy excluded the liability of others assumed by plaintiff under any contract. Plaintiff made an excavation in a street and negligently left a pile of earth near the walk over which a pedestrian fell and was injured. The injured recovered a judgment against the city and the city paid the same and sued plaintiff to recover over on account of his negligence. Defendant refused to defend such action. Plaintiff having prevailed suit is brought on the policy to recover his costs and expenses incurred in the defense. HELD: On demurrer to the complaint, a municipal corporation required to pay

damages to a person injured because of the unsafe condition of its streets, has, unless it also is a wrongdoer, a remedy over, against a third person who is at fault and has so used the streets as to produce the injury and that the claim of a city of a right to recover damages against the insured was a claim contemplated by the terms of the policy in question. (Opinion filed July 19, 1926.)

Klemmens v. Workmen's Compensation Bureau. The wife of plaintiff, and another, owned and operated a garage. Plaintiff, a mechanic, was employed by his wife to balance the work of her partner in the business and was paid out of the wife's share of the partnership earnings. An injury was sustained, a claim made to the Workmen's Compensation Bureau for compensation, and the claim denied. In an action in district court, findings were made in favor of the plaintiff upon conflicting evidence. HELD: The cause is not triable anew in the supreme court and the findings of the trial court are presumed to be correct, and will not be disturbed, unless shown clearly opposed to a preponderance of the evidence, and that the plaintiff is an employee of the partnership and entitled to compensation out of the Workmen's Compensation fund. (Opinion filed July 27, 1926.)

Johnson v. Lindermann et al. In an action by the holder of tax sale certificates after three years from the date of the certificates to recover the rents and profits of the land sold at tax sales, no notice of expiration of the period of redemption having been given, IT IS HELD: That construing Section 2199 of the Compiled Laws of 1913, as amended by Chapter 257 of the Laws of 1915, the holder of a tax sale certificate to entitle him to possession of rents and profits must have taken the necessary steps to cut off the right of redemption. (Opinion filed July 31, 1926.)

Lyness v. Realty Company. Certain directors of a solvent corporation became sureties for certain debts contracted by the corporation, and later some of the corporate property was sold to such directors for the full value thereof, and the debts for which the directors had become sureties were extinguished out of the proceeds of the sale. In an action by a creditor of the corporation to set aside the sales of corporate property to the directors, IT IS HELD: That all the debts under the circumstances do not constitute a violation of the provisions of Sections 4543, Compiled Laws 1913, and that the purchase of corporate assets from a solvent corporation by a director thereof for full value, without fraud, cannot be questioned by corporate creditors. (Opinion filed July 27, 1926.)

Hanson v. Berry. Upon appeal from an order overruling a demurrer to a complaint alleging that a police officer of the defendant city was driving an automobile belonging to the city, which the city had negligently failed to provide with proper brakes, upon a congested street, in the performance of official duties, on the left hand side of the street and at an excessive rate of speed, and by reason of his negligence collided with the plaintiff and inflicted serious injuries: HELD: A municipality is not liable for the tort of its agent committed in the course of the performance of a governmental duty nor for the manner in which it exercises its governmental authority, nor for the failure to exercise it properly;

that though a city may be liable in damages for injuries occasioned by an unsafe physical condition of its streets, it is not liable for an unsafe condition resulting from failure to enforce police regulations governing traffic thereon, and that where personal injuries are caused by the negligent act of a policeman while driving an automobile belonging to the city, and while engaged in the performance of a governmental duty, such automobile being driven in violation of the law of the road and traffic regulations, the city is not liable though reasonable necessity existed for such violations and though the city may have acquiesced in unnecessary uses of its automobiles by officers and employees therein and reckless driving thereof. (Opinion filed July 27, 1926.)

U. S. SUPREME COURT DECISIONS

The Minnesota Laws of 1921 and 1923, treating ore lands as a distinct class of property and imposing upon them a tax that was not extended to other sorts of land or interests in land, held not to deprive the owners of the equal protection of the laws.—Iron Mines vs. Lord, 45 Sup. Ct. Rep. 627.

An insurance company can not be excluded from the right to do business in the State because it pays fees to non-residents for obtaining policies covering risks within the State, and a State Statute so limiting its right to do business violates the fourteenth amendment and is void.—Fidelity Co. vs. Tafoya, 46 Sup. Ct. Rep. 331.

The fifth and fourteenth amendments to the Constitution are not directed against the action of individuals, but are limitations upon the powers of the State or General Governments; and the thirteenth amendment does not protect the individual rights of negroes except in the matter of slavery. Therefore, a covenant, running with the land, providing that the land affected shall never be sold or leased to negroes, raises no constitutional questions. Corrigan vs Buckley, 46 Sup. Ct. Rep. 521.

It is a denial of due process of law for a State to require of a private carrier (particularly truck and motor bus), as a condition precedent to the continued use of the public highways, that it be subject to the duties and burdens of a common carrier. "We are not to be understood" said the Court, however, "as challenging the power of the State, whenever it shall appear that a carrier, posing as a private carrier, is in substance and reality a common carrier, to so declare and regulate the operation accordingly."—Frost Trucking Co. vs. R. R. Commission, 46 Sup. Ct. Rep. 682.

WORKMEN'S COMPENSATION DECISIONS

A county policeman, elected or appointed, is a public officer and not an employee within the meaning of that term under the compensation law. —Goss vs. Gordon County, 133 S. E. 68 (Ga. 1926).

An injury received from an assault of co-employee during a dispute which originated over a difference of opinion regarding the manner of doing work is an injury in the course of employment.—Fey vs. Bobrink, 151 N. E. 705 (Ind. 1926).

The reviewing court can annul the conclusions of the Accident Commission on a question of fact only where there is no evidence to support the finding; where there is a conflict the Commission is the final arbiter. —Coombs vs. Industrial Commission, 245 Pac. 445 (Cal. 1926).

Death of workman on destruction of the building on which he was working by a storm was result of injury in the course of employment but not compensable for the reason that it did not arise "out of the employment" as provided in the law.—Gale vs. Krug Park, 208 N. W. 739 (Neb. 1926).

The fact that an employee was afflicted with tuberculosis as a result of an injury does not put the expense of the cure thereof on the insurer under the provision that requires medical attention beyond the two weeks limit in "unusual cases".—Moore's case, 152 N. E. 66 (Mass. 1926).

An employee's wife, who is voluntarily living apart from her husband, and is not dependent on him for support, cannot recover under the compensation act for the death of her husband through an injury in the course of employment.—Waughn vs. Industrial Commission, 245 Pac. 712 (Cal. 1926).

A city marshal, regularly on duty from 8:30 a. m. to 11 p. m., and subject to call at all hours of day or night, who is injured by accidental discharge of gun he was required to carry, while cleaning such gun at his residence, held to have been injured in course of employment.—Beaver City vs. Industrial Commission, 245 Pac. 378 (Utah 1926).

There must be a causal connection between an injury and the employment, and where death is caused from burns when a burlap bag, worn by a workman to protect his clothing from oil, catches fire while he is in the toilet smoking contrary to orders against such smoking during working hours, the injury and death are not compensable.—Tiralongo vs. Stanley, 133 Atl. 98 (Conn. 1926).

An injured person, who is totally incapacitated, and who is being allowed all necessary curative hospital and medical care as well as compensation for the total disability, is not entitled to further allowance for the cost of means of temporary comfort that could not improve her condition, even though such means (as alcohol rubs) are recommended by the attending physician.—Quinn vs. Poli, 133 Atl. 98 (Conn. 1926).

Widow of deceased employee has no rights higher than those of deceased, and where superintendent shoots the employee, on employer's premises during working hours in self defense, when the deceased quit his job and threatened the superintendent with a butcher knife because he would not immediately pay his wages, this was not an injury in the course of employment. The deceased had abandoned his status as an employee and become a criminal.—Curran vs. Vang, 133 Atl. 261 (Penn. 1926).

NEWS NOTES

The supplement to the Compiled Laws are now ready for distribution.

The Chicago Bar Association annually contributes $15,000 for the work of the Legal Aid Bureau, the amount being raised through voluntary contributions of attorneys.

The Chicago Bar Association, with a total membership of 4,000, reports the casting of 2,433 ballots in the referendum on candidates seeking judicial positions. These Bar Primaries are undertaken in advance of the election, the citizens of that city evidently recognizing the fact that they may well look to the Bar for guidance in the selection of their Judges.

Revision of the rules for admission to the Bar by the Supreme Court of Wisconsin practically follow the requirements of the American Bar Association standard.

The National Women Lawyers' Association meets in New York City September 1st.

Four out of nine Canadian provinces require five years of training (college and technical law) and four others require six years before admission to the Bar.

The following persons were admitted to the bar at the regular July bar examinations held at Bismarck: Geo. V. Coffey, Wm. Thomas DePuy, Edmund Dubs, Arthur J. Gronna, Peter Conrad Hanson, William Jacobsen, Nels G. Johnson, Wm. H. Keefe, William Maurice Kiley, Gordon William LeBree, Lewis J. Mann, Walter Mohn, Frances Mable Ottum, Robert W. Palda, Chas. H. Shafer, Edward O. Slinde, and Lloyd Childs Tinness.

Only two members of the North Dakota bar attended the meeting of the American Bar Association at Denver.

Over four hundred applicants for admission to the bar appeared before the Florida board of law examiners at the recent meeting. Most of these were attorneys from other states.

The Yale University law school has adopted the policy of limiting the number of law students to be admitted to the school and will confine the training to students who are deemed superior by virtue of their records.

The Pennsylvania State bar association recently changed the place of its annual meeting from that first announced to one with more satisfactory golf facilities.

The lawyers' wives of Dallas, Texas, have formed the Dallas Lawyers' Wives' Club.

The American Bar Association at its Denver meeting elected the following officers for the coming year: President, Chas. S. Whitman; Secretary, William P. McCracken, Jr.; Treasurer, Frederick E. Wadhams.

ADMINISTRATION, NOT STATUTES, THE REMEDY

That is the conviction of Hon. Oscar Hallam, Chairman of the American Bar Association Criminal Law Section, as enunciated at the recent Denver meeting, and approval of the statement is being voiced by leading newspapers throughout the country. One of the Chicago dailies insists that the bench and bar of the country could, in a very short time, eliminate most of the evils that make the administration of justice "slow, uncertain, costly and ineffective."

Judge Hallam's recommendations were: 1. Elimination of straw bail; 2. Simplification of indictments and permitting amendments; 3. Eliminating unnecessary continuances; 4. Simplifying the drawing of juries and improving the personnel by limitation of number of challenges; 5. Placing greater power in the Courts; 6. Permitting comment on the failure of the accused to testify; 7. Insanity pleas to be made on arraignment and experts to be called by the Court; 8. Shortening the time of appeal, and requiring them to be heard promptly; 9. Providing increased punishment in gun crimes; 10. Judicial investigation and notice to trial judge and prosecutor before parole.

It ought to be quite apparent to every layman by this time that the various bar associations are giving considerable time and thought to the problem in a sane and serious attempt to improve, by reconstruction where necessary, the machinery of justice. Fortunately, we think, North Dakota's problems are not as serious nor as difficult of solution as those of the more congested centers. It is confidently expected that the 1926 annual meeting will make considerable progress along this line.