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MEMORIAL

BISMARCK, NORTH DAKOTA

NOVEMBER 22, 1968

The Supreme Court of the State of North Dakota this day convened in special term at 10 a. m.

Present: The Honorable Obert C. Teigen, Chief Justice; the Honorable Ralph J. Erickstad, the Honorable Harvey B. Knudson, the Honorable William L. Paulson, Associate Justices; and Luella Dunn, Clerk. The Honorable Alvin C. Strutz, Associate Justice, being out of the state, was unable to attend.

Now the following proceedings were had:

CHIEF JUSTICE TEIGEN: This is a special term of the North Dakota Supreme Court and was called for the purpose of honoring Mr. J. H. Newton, who for over half a century has served as Clerk of this Court and as its deputy clerk, and who for half a century served as Secretary of the State Bar Board. Mr. Newton's attention to his duties as Clerk has gone far beyond the clerical and it is difficult to realize the full quality and the value of the service which he has rendered to the State, to the Court, and to the legal profession.

After more than fifty-five years of service to the State, Mr. Newton, on September 24, 1968, made a decision to retire, effective as of January 1, 1969, and planned to apply some time to the writing of a history of the North Dakota Supreme Court as his memoirs; however, death overtook him on the 29th of October, 1968, before he had an opportunity to write his memoirs. The State suffered a great loss because I am sure, had he been given the opportunity to write, it would have been a very interesting writing and no doubt would have had great historical significance.

The Court, on October 7, 1968, in accepting Mr. Newton's resignation, spread upon its minutes a resolution of recognition for his long and his unselfish service to the Court, to the legal profession, and to the State, which resolution the Court had planned to formally present to Mr. Newton in an appropriate ceremony before his retirement became effective; however, his untimely death intervened. Similar action had been taken by the State Bar Board and by the State Bar Association.

We have present here today Judge James Morris, Retired, who was a member of this Court for thirty years, and who on this

occasion is representing the Supreme Court of North Dakota. We also have present Mr. William R. Pearce, President of the State Bar Board, and Mr. Kenneth G. Pringle, who is President of the North Dakota Bar Association. The Court will now recognize these men in the order in which I named them, that they may present to Mrs. Elsa Newton, the widow of John Henry Newton, and who is present here today as our guest, these resolutions of recognition.

We now recognize Judge James Morris.

JUDGE JAMES MORRIS: May the Court please and Mrs. Newton. I here have a copy of the Resolution that the Chief Justice has mentioned which was entered upon the minutes of this Court on October 7, 1968, and it is this Resolution that I now have the privilege of presenting to Mrs. Newton at the direction of the Supreme Court.

This resolution reads:

BE IT RESOLVED: That the Supreme Court of North Dakota causes this expression of gratitude and appreciation for J. H. Newton's more than fifty-five years of excellent, efficient, patient, and loyal service to the Court and to the State to be inscribed upon the permanent records of this Court. During all of his years of service he has been painstaking in the performance of his every duty.

WHEREAS, J. H. Newton has continuously served the State of North Dakota devotedly and unselfishly as Deputy Clerk of the Supreme Court from April 1, 1913, to March 1, 1917, and as Clerk of the Supreme Court from March 1, 1917, a period of more than fifty-five years, which service has earned for him the gratitude, respect, and affection of the entire legal profession of the State of North Dakota, the judges of the District Court and the Supreme Court, the clerks of the District Courts, and the County Courts with Increased Jurisdiction, and the people of the State of North Dakota; and

WHEREAS, J. H. Newton during his long and faithful service of over a half century, unequalled in North Dakota, and perhaps in the nation has been painstaking in his performance of his every duty and

WHEREAS, J. H. Newton has tendered his resignation as Clerk of this Court, which has been regretfully accepted;

NOW, THEREFORE, BE IT RESOLVED That the Supreme Court of North Dakota cause this expression of gratitude and appreciation to J. H. Newton for his more than fifty-five years of excellent, efficient and patient and loyal service to the Court and

to the State to be inscribed upon the permanent records of this Court on this 7th day of October, 1968.

Obert C. Teigen, Chief Justice
 Alvin C. Strutz
 Ralph J. Erickstad
 Harvey B. Knudson
 Wm. L. Paulson

Now Mrs. Newton in behalf of, and in the name of the Supreme Court, it is my pleasure to present to you this printed Resolution with the signatures of all of the members of the Supreme Court thereon.

MRS. NEWTON: Thank you very much. In behalf of my late husband, J. H. Newton, and myself I wish to thank the Supreme Court and the State Bar Association for presenting this plaque to me. I wish only that J. H. could have been here. This will always have a special place in my home. Henry would sure have loved to receive this but I guess the good Lord had different plans—I wish I could talk but—I wish to thank Judge Morris for his many kindnesses that he has shown me and also Mrs. Dunn who is Henry's successor. I have a little poem here I would like to read—I thought it was real appropriate.

I can not say, I will not say,
 That he is dead. He is just away.

With a cheery smile, and a wave of the hand,
 He has wandered into an unknown land.

And left us dreaming how very fair
 It needs must be since he lingers there.

And you — O you who the wildest yearn
 For the old time step and the glad return—

Think of him faring on as dear
 In the land of there as the love of here;

He is not dead, he is just away.
 In the land of there as the land of here.

Think of him still as the same, I say;
 He is not dead — he is just away!

James Whitcomb Riley

Thank you.

CHIEF JUSTICE TEIGEN: We acknowledge your thanks and your kind remarks, Mrs. Newton. And thank you, Judge Morris.

MRS. NEWTON: Thank you.

CHIEF JUSTICE TEIGEN: We will now recognize Mr. Wm. R. Pearce, President of the State Bar Board.

MR. WM. R. PEARCE: May it please the Court and Mrs. Newton.

Coincident with Mr. Newton's duties as Clerk of this Court for over fifty-one years he has served as Secretary of the State Bar Board and it is difficult to express the appreciation of the Members of the Bar Board, and I know I speak for all of the many members over the years past, for what Henry did for that Board. And so the State Bar Board has adopted a Memorial Resolution which I would like to read.

WHEREAS, J. H. Newton served for over fifty-one years as Secretary of the State Bar Board of North Dakota and during all of that time and during the tenure of the many members of this Board he faithfully and conscientiously discharged the duties of that office; and

WHEREAS, J. H. Newton earned the respect and affection of all who knew him and particularly the lawyers of North Dakota, most of whom now practicing signed the Roll of Attorneys under his aegis and

WHEREAS, J. H. Newton's long record of unselfish service to the courts of justice came to a close with his death on October 29, 1968, to the sorrow of all who knew him;

NOW, THEREFORE, BE IT RESOLVED by the State Bar Board of North Dakota that this memorial to J. H. Newton be recorded in the permanent records of this Board in tribute to a good and faithful friend on November 22, 1968, *justiciae soror fides*, that is to say — faithfulness is the sister of justice. We would like to present that to you Mrs. Newton.

MRS. NEWTON: Thank you, it will always have a special place in my home.

CHIEF JUSTICE TEIGEN: Thank you, Mr. Pearce. We now recognize Mr. Kenneth G. Pringle, President of the North Dakota Bar Association.

MR. KENNETH G. PRINGLE: May it please the Court, Mrs. Newton.

My only regret this morning is that I was not privileged to present this certificate of recognition to Mr. Newton personally as had been intended when the Resolution was passed at our Executive Committee meeting back in October. However, the certificate is as it was drawn and passed at that meeting and is worded as it would

have been had it been presented to Mr. Newton personally. Mr. Newton had a place in the hearts of every lawyer, I think, in this state. I know of no lawyer who had anything but the kindest words and the best feeling for Henry during all the years that he served and it is a pleasure this morning to present this certificate to you which is from the State Bar Association and states:

This is to certify that as a distinguished member of the legal profession, J. H. Newton is hereby recognized for outstanding service and unequalled record of achievement as Clerk of the Supreme Court of North Dakota. This well deserved recognition is presented by fellow members of the State Bar Association of North Dakota at a special session of the Court held prior to retirement after fifty-five years of service as Clerk. In Witness Whereof the State Bar Association of North Dakota has caused these presents to be signed and sealed this 19th day of October, 1968. Signed by myself as President and by J. Philip Johnson as Secretary. I now present this to you.

MRS. NEWTON: Thank you for your kind words.

CHIEF JUSTICE TEIGEN: Thank you, Mr. Pringle.

On the 29th day of October, 1968, the State of North Dakota, this Court, and the legal profession sustained a very, very great loss. The death of our late Clerk of this Court, Mr. J. H. Newton, who also served as secretary of the State Bar Board, removed from the ranks of the citizens and the officers of North Dakota one of the outstanding citizens and officials of this State.

It is, therefore, indeed fitting and proper that his memory should be revered and cherished. For this reason we have called this Special Term of this Court so we may have appropriate exercises to afford an opportunity to present a memorial to the memory of John Henry Newton. We shall now recognize Mr. Milton Higgins, who represents the State Bar Association of North Dakota.

MR. MILTON K. HIGGINS: If the Court please. I would like first to say that I very much appreciate the opportunity to present this memorial on the life of John Henry Newton. I learned to know him quite well and enjoyed the close acquaintance with the judges of the Supreme Court and of Mr. Newton as Clerk during the eight years in which I was in the Attorney General's office, part of which and during part of which, we moved into this building. However, I have a particular burden in this matter — I realize that as the oldest active practitioner in the city that my selection was one due more to my age than any recognition of particular merit as a speaker. And I have a realization that I follow in some giant steps because I was one of those relatively few members of the Bar who were present at the time in this room when Attorney Ben

Bradford of Minot gave one of the finest addresses in the memorial to Judge A. M. Christianson that I have heard or that I ever read. Being permitted by the Chief Justice to read my efforts here, and I am amazed that his delivery was so splendid, I am consumed with curiosity as to whether this was the result of weeks of work and polishing or whether he was able to stand up in the tradition of Webster and some of our magnificent men of the Bar and give it extemporaneous. It was splendid!

JOHN HENRY NEWTON
(1891 - 1968)

Although most of us, members of the Bar of the State of North Dakota, knew either from personal experience, discussion among lawyers or the memorial in the spring number of the *Law Review* in 1967, that John Henry Newton was "getting along in years," to use the vernacular, his recent death came as a great shock and surprise to all except perhaps this Court and the immediate members of his family. Although we knew that physically he had suffered some impairment in recent years, his interest in the affairs of the Bar, undiminished by time, and his obvious mental alertness and his marvelous memory which had persisted over so many years left us unprepared for his sudden hospitalization and death.

Born at Williston on the last day of July, 1891, the son of George and Annie Newton, his 77 years of life extended, less two years, over the entire history of our state. This era is certainly one of the most interesting periods that the people of our state have enjoyed, extending as it does from shortly after the arrival of the Great Northern Railroad at his natal city and from a time when farming, in its usual sense, had not begun in the county of Williams, to the present when millions of barrels of oil have been discovered and produced within the bounds of his county, airplanes have replaced the saddle horse of the early day rancher and the ox-cart of the beginning farmer as means of transportation, and hundreds of underground "silos" across all of northern North Dakota clear to the Red River contain enough atomic explosives to reduce to radioactive rubble every major city from Hong Kong to Leningrad, pre-set to various such targets and guided electrically and immutably by the stars.

Since his birth, Garrison Dam has created a lake with a shoreline of more than 1500 miles and the billions of tons of lignite coal, scarcely used as fuel by the early settlers are now beginning to burn in modern steam plants in lighting and heating the homes, and raising the burden of excessive toil from the shoulders of men and women as far away as Omaha and St. Paul.

Thus in the fullest sense of the word, John Henry was not only a son of the pioneers, he was a pioneer. Few, indeed, of his age not only saw but understood the great changes in occupations, economics and politics that have taken place in this area during his lifetime.

His position in the Clerk's office for more than half a century, of course, brought him into contact with unusual opportunities for observation. He saw often most of the ablest and most prominent men of our state, either as litigants, legislators or lawyers. Under these circumstances, far more than most men he had the right to say, "I knew him when" thus to report upon or even perhaps to boast a little of his acquaintance with some of those "giants in the earth." But he was no "name dropper."

Henry Newton, although a very able and observant occupant of an office in the state capitol for so many decades, was a very modest man. He was always willing to assist with any useful information to members of the Bar, occupants of the Bench, or serious students of history from the great fund of his experience and knowledge but this he seldom, if ever, volunteered. When asked, he was always glad to give freely, and without compensation, any pertinent information proper for him to divulge. He did not "broadcast" in the slang use of that term.

Although the writer thought highly of his friendship and had many a visit during the years when he, too, occupied a capitol office, it was not until he read it in one of Usher Burdick's tales of early North Dakota history that he learned his father had worked, as a young man though perhaps after his buffalo hunting days, at the ranch home of George Grinnell in southern Williams County and had been the only employee of several present who had dared the drunken rage and the cocked rifle of George Grinnell whose three year old son, scantily clad, had toddled out into a much sub-zero night and disobeyed his insane declaration that anyone who went out to rescue such an idiotic infant would be instantly shot by him. This statement made with rifle in hand was one that would have cowed most men, under the circumstances. But George Newton, realizing that the child could not live in the storm, even if it could be found, for more than a few minutes, defied Grinnell and told him that in that event he would have to shoot because he was going after the child, which he did, clearly saving its life.

John Henry must have been extremely proud of his father's heroism on this occasion and yet I never heard any mention of it from anyone until I inquired about it of him having read it in the book, hence he had seldom related it.

I, for one, very much regret that I did not think to ask John

Henry to write up any details of the heroism and adventures that his father as one of the last of the buffalo hunters must have known and related to his son or some members of the family, at least. If the public has lost those tales, due to the reticence of a modest son, the Bar, and the public through the Bar, have certainly been the beneficiaries of the excellent memory of a remarkable man in his knowledge of North Dakota law.

Although I, like most members of the Bar, like to assist the young lawyers in getting their start in coping with the intricacies and the problems of the law, appellate and otherwise, nothing I have ever told young lawyers is, I am sure, half as helpful as my constant recommendation that "when the digests fail phone John Henry Newton." Ever since I first met him in the year of my admission to the Bar, in the old brick capitol building, in the summer of 1923, I have realized what a remarkable memory he had and how glad he was to share it with those who would inquire. This I have passed on to every young lawyer, I am sure, with whom I have discussed appellate practice. John Henry was known to me, as I am sure to most members of the Bar, as a "walking encyclopedia" of North Dakota decisions. I have related to many that if they were unable to find in the digests a North Dakota case which they remembered reading but with title, volume and page no longer within memory, the last resort should be a telephone call to Mr. Newton.

It was, I think, fairly common knowledge that he had an index of his own, often containing a helpful personal comment or two of his that, together with his almost unbelievable accurate and retentive memory, enabled him to declare whether a given point had been decided by the Supreme Court of his state, usually the title of the case, and quite often the volume and page. He was thus an unofficial, but remarkably accurate source of information on matters that were sometimes considered of so little import when the decision was written, as not to be shown in the syllabus of the case and yet can become very important in some other case, perhaps decades later.

For this I know his services were much esteemed by the more experienced lawyers and have been the subject of admiring commendation between them in many discussions that I have heard over the years in various conversations and conventions.

Particularly in those days before the publication of the Dakota Digest when we had nothing but the three volumes of the appallingly poor Hill's Digest, was he of great help to me and, I am sure, to dozens of other members of the Bar.

It is my experience and doubtless that of many other lawyers

that a call to Henry Newton, if it did not bring immediate information, would usually result in a prompt, obliging and comprehensive comment on our Supreme Court decisions within an hour or two.

He was an almost ideal "public servant" in the best sense of that term with the "passion for anonymity" that one of our presidents has declared to be a most important attribute of an assistant. Above all he was a warm and friendly man with no trace of arrogance about him. I am sure he was most helpful over all the years of his office in establishing the high esteem of the court he served as being fair and considerate, though necessarily firm, which it has so long enjoyed. He never forgot that the noble mission of the courts is to achieve justice and made this clear to all who dealt with him.

The purpose and the achievement of his career is best stated it seems to me in Sam Walter Foss' "The House by the Side of the Road" with which I conclude:

THE HOUSE BY THE SIDE OF THE ROAD

There are hermit souls that live withdrawn

In the peace of their self-content;

There are souls, like stars, that dwell apart,

In a fellowless firmament;

There are pioneer souls that blaze their paths

Where highways never ran;

But let me live by the side of the road

And be a friend to man.

Let me live in a house by the side of the road,

Where the race of men go by—

The men who are good and the men who are bad,

As good and as bad as I.

I would not sit in the scorner's seat,

Or hurl the cynic's ban;

Let me live in a house by the side of the road

And be a friend to man.

I see from my house by the side of the road,

By the side of the highway of life,

The men who press with the ardor of hope,

The men who are faint with the strife.

But I turn not away from their smiles nor their tears—

Both parts of an infinite plan;

Let me live in my house by the side of the road

And be a friend to man.

I know there are brook-gladdened meadows ahead,
And mountains of wearisome height,
That the road passes on through the long afternoon
And stretches away to the night.
But still I rejoice when the travelers rejoice,
And weep with the strangers that moan,
Nor live in my house by the side of the road
Like a man who dwells alone.

Let me live in my house by the side of the road
Where the race of men go by—
They are good, they are bad, they are weak, they are strong,
Wise, foolish — so am I.
Then why should I sit in the scorner's seat
Or hurl the cynic's ban?
Let me live in my house by the side of the road
And be a friend to man.

Sam Walter Foss

CHIEF JUSTICE TEIGEN: Thank you, Mr. Higgins. The Court will now recognize Mr. Kenneth G. Pringle, President of the North Dakota State Bar Association.

MR. KENNETH G. PRINGLE: May it please the Court. Speaking for the lawyers of North Dakota I would move that this Memorial be spread permanently on the records of this Court.

CHIEF JUSTICE TEIGEN: The motion is granted and the Court orders that the Memorial that has been given this day be spread at length upon the records of this Court and that copies thereof be printed and furnished to the members of the family of J. H. Newton, who has been memorialized here today.

Court is adjourned until the further order of the Court.

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