



1948

## President's Page

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### Recommended Citation

Traynor, Mark V. (1948) "President's Page," *North Dakota Law Review*: Vol. 24: No. 2, Article 8.  
Available at: <https://commons.und.edu/ndlr/vol24/iss2/8>

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## BENCH AND BAR

### PRESIDENT'S PAGE

The Freedom Train will make several stops in North Dakota in April. The Local Bar Associations and the District Bar Associations in the respective cities where the train will make its stops are taking the lead in proper ceremonies for the occasion. This is as it should be, for the members of the bar in this country have always been the leaders in advocating the principles of Freedom. We need this activity now more than ever before.

In connection with the visit of the Freedom Train to North Dakota, your Bar Association, through its American Citizenship Committee, is sponsoring an essay contest for high school students. This is only one of the educational functions conducted by your Bar Association. We believe it will be worthwhile.

Our Estate Planning Panel has been rendering a worthwhile service. These men, Adrian McLellan, Phil Vogel and John Crary, have given generously of their time and abilities, without compensation, for this service. They will attend the Northwest District Bar meeting at Minot on April 27th, and I highly recommend this panel program to any of the other District Bars. Get in touch with George A. Soule of Fargo, and I believe arrangements can be made.

Your president attended the House of Delegates meeting of the American Bar at Chicago in February. It was a very interesting and educational meeting. The percentage of members of our State Bar who are members of the American Bar is too small. The president of the American Bar attended our state convention in 1947 and the present president, Tappan Gregcry, will attend our 1948 meeting in Grand Forks. I hope that we can report to him at that time a substantial increase in membership in the American Bar from North Dakota.

While I am on the subject of the State Bar meeting, make a note in your diary to lay your plans to attend the state meeting at Grand Forks on August 4th, 5th and 6th.

This and subsequent issues of Bar Briefs will be under the supervision and direction of our Executive-Director. In this work he has had the cooperation and very fine assistance from the Dean and the Professors of our University Law School.

Not only that, but the students themselves have spent much time and research in preparing many of the articles appearing in Bar Briefs. We want to take this opportunity to express our deepest appreciation to all of these parties for such assistance. You members of the Bar can also help to make Bar Briefs a better publication. The activities of members of the Bar that are outstanding are of interest to all of us. Send in such items to the Executive-Director at Grand Forks. With the cooperation of all of you, therefore, we hope to make Bar Briefs one of the best State Bar publications in the Country.

MARK V. TRAYNOR,  
President.

#### WILLISTON LAWYER NAMED OUTSTANDING YOUNG MAN OF THE YEAR

The North Dakota Junior Chamber of Commerce Distinguished Service Award to the Outstanding Young Man of the Year was presented to Arley R. Bjella, Williston Lawyer, in special ceremonies at Williston January 19th which were carried over a state-wide radio net work.

Mr. Bjella, long active in Junior Chamber of Commerce work, and a veteran of World War II, was chosen for this signal honor by the special committee of prominent North Dakotans from entries submitted on a state-wide basis by Junior Chamber chapters.

The Distinguished Service Plaque was presented to Bjella by the Jaycee State President, Roy Herhusky of Dickinson. Also presented at the award ceremonies were Melvin Berg of Mohall, runner-up, Norman Leever, Devils Lake, third place candidate, and Warner Litten of Fargo, who placed fourth.

Among the factors considered in the selection of the 1947 Outstanding Young Man, were included interest in community welfare, participation in community activities, leadership qualities and evidence of personal or business progress.

Mr. Bjella is a member of the National American Legion committee, on Veterans Housing, and in 1947 headed one of North Dakota's most successful housing projects in Williston. He is first vice-president of the Williston Chamber of Commerce, first vice-president of the Williston Rotary Club, a member of the Board of Good Samaritan Hospital, and secretary of a special committee to construct an Old People's Home in Williston.

In addition, Bjella served on the Williston Irrigation Committee, the Buford-Trenton Irrigation Committee and is currently State Chairman of the American Legion's Housing Committee.

Mr. Bjella, a graduate of the University of North Dakota Law School, is State's Attorney of Williams County, and a son of State Representative and Mrs. Asle Bjella of Epping. He has been prominent in the activities of the State Bar Association and the Williams County Bar Association as well.

A veteran of the late war, Bjella enlisted in the United States Army as a private, and served with the Judge Advocate General's Department, rising through the ranks to the grade of Captain upon his discharge in 1945. He took part in the prosecution of offenders operating the infamous Dachau concentration camp in Germany while overseas.

#### HOMESTEADS \* ‡

The Constitution of North Dakota in Section 208 provided that "The right of the debtor to enjoy the comfort and necessities of life shall be recognized by wholesome laws, exempting from forced sale to all heads of families of homestead, the value of which shall be limited and defined by law; and a reasonable amount of personal property; the kind and value shall be fixed by law. This section shall not be construed to prevent liens against the homestead for labor done and materials furnished in the improvement thereof, in such manner as may be prescribed by law." This constitutional provision is a mandate of the people acting in their sovereign capacity requiring the legislature to protect the homestead from forced sale. In *Dieter v. Fraine*, 20 N. D. 484, 128 N. W. 684 (1910) the court held that "the homestead exemption is declared in favor of the head of the family in a representative capacity, and is not intended only for the benefit of the individual who stands in that relation, but for the protection and preservation of the home for the benefit of the family as a whole."

The homestead as described in the N. D. Rev. Code (1943), sections 47-1801 to 47-1803, may be rightfully classified as a

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\* The recent pamphlet "Do You Need a WILL," prepared and issued by the Public Information Division, North Dakota State Bar Association, has raised some legal question as to an apparent ambiguity in the section "What Happens When There Is No Will." To clarify this the following memorandum by Dean O. H. Thormodsgard, of the University of North Dakota, is published.

‡ For applicable statutory provisions see *infra*.

declared homestead. However, where no homestead has been selected, or in case a homestead was selected by the survivor out of the separate property of the decedent, the decedent not having joined therein, the court selects, designates and sets apart and causes to be recorded, a homestead for the use of the surviving spouse and minor children, or in absence of a surviving spouse, then for the use of the minor children. This homestead may be properly classified as the probate homestead. N. D. Rev. Code (1943), sections 30-1602 to 30-1603.

A declared homestead may be conveyed or encumbered in a manner provided by section 47-1805, which requires an instrument executed and acknowledged by the husband and wife. A homestead is not strictly an estate. It is an exemption. It may be said to be a mere interest or right in the home indefinite in its duration, which may continue for the joint lives of the husband and wife and then to the surviving spouse and in some cases until the youngest child reaches majority. *Ruble v. Grafton National Bank*, 64 N. D. 129, 250 N. W. 784 (1933).

The general rule is that the interest to the homestead vest in the surviving spouse, in the case of a declared homestead, by the right of survivorship and not by descent. In section 47-1801, homestead is defined as an exemption. In section 47-1803 the legal concept that the homestead is an exemption is again used. In section 30-1602, the legal concept that the homestead is an estate is used, even though in section 30-1601, paragraph 1, it provided that "Homestead" shall have the meaning set forth in section 47-1801. The clarity of the North Dakota statutes would have been greater if the exemption theory had been consistently followed throughout all the sections.

The property subject to the "homestead" descends in case of intestacy like other property under section 56-0104. It may be correctly stated that the homestead vests in the survivor for life or until marriage or in absence of a surviving spouse, then to the use of the minor children. For example, H and W had one child, X. H was owner in fee of two separate tracts of land, Oakfarm and Willowacre. Oakfarm was selected by H as the homestead. H died intestate. W under the law would inherit an undivided one-half interest in fee of Oakfarm and also in Willowacre. X would inherit an undivided one-half interest in fee in Oakfarm and also in Willowacre. However, the homestead in Oakfarm would survive in W for life or until

her remarriage. In other words, both W and X each secure an undivided one-half interest in Oakfarm subject to the homestead in W for life or until her remarriage.

#### APPLICABLE STATUTORY PROVISIONS

*N. D. Rev. Code (1943) § 56-0104 —*

When Children, Issue, Descendants, etc., Survive, Surviving Spouse Is Entitled to:

1. (a) and (b) one-half if decedent leaves only one child or lawful issue of deceased child; one-third if decedent leaves more than one child living and lawful issue of one or more deceased children.

When Children, or Other Heirs, etc., Do Not Survive, Surviving Spouse is Entitled to:

2. (a) and (b) The whole not to exceed value of fifteen thousand dollars and one-half of excess of such value if decedent leaves no issue; the whole not to exceed value of twenty-five thousand dollars and one-half in excess of such value if decedent leaves no issue and no parent; the whole if decedent leaves no issue, parent nor brother, nor sister, nor children of deceased brother or sister.

Homestead and Exempt Property—Widow's Allowance—Marital Rights During Coverture:

3: Husband, as head of family, or, if he does not do so, his wife may select, if in a town plat—a homestead to the value of \$8,000 from his separate property and if not within a town plat a homestead not to exceed 160 acres, or from her separate property with her consent. Only one spouse may claim such homestead. (*N. D. Rev. Code (1943) §§ 47-1801, 47-1802, 47-1803, 47-1818.*)

Rights of the Surviving Spouse:

4. The Surviving Spouse is Entitled to:

(a) To homestead estate of decedent for life or until remarriage. (*N. D. Rev. Code (1943) § 30-1602 (1).*)

(b) To homestead as above, selected by court if none was selected during decedent's life; §§ 30-1602, 30-1603.

(c) Absolutely to decedent's exempt personal property and to other property selected by survivor not to exceed value of fifteen hundred dollars. (*N. D. Rev. Code (1943) § 28-2211.*)

The above property interests are exempt from decedent's debts except those enforceable against them during his lifetime.

(d) The entire estate may be used for family support if value does not exceed fifteen hundred dollars, subject to encumbrances on it at decedent's death. These property interests are subject to expenses of last illness, funeral and administration.

(e) Subject to above homestead rights, real property constituting homestead descends or may be devised like other realty.

See *In re Druhl's Estate*, 61 N.D. 168, 237 N.W. 697 (1931) the court held homestead right of surviving spouse is separate from and not affected by the right of survivor to take real property subjected to homestead, either as heir or under will.

Allowance to Widow:

5. If personal property set apart for survivor under section 28-2211 is insufficient, widow and children or widow or children entitled, in court's discretion, to reasonable allowance for family's maintenance during settlement of estate. Allowance may, in court's discretion, take effect from decedent's death.

## EUGENE FRANCIS COYNE

On February 12, 1948, death claimed Eugene Francis Coyne of LaMoure, who at the time of his death was serving as one of the Judges of the District Courts of the Third Judicial District. Judge Coyne had undergone a major operation from which he was apparently recovering, but complications developed and his death came after he had been confined in a Fargo hospital since the early part of January of this year.

Eugene Francis Coyne was born on August 31, 1887, at St. Paul, Minnesota. He received his early education in St. Paul and was later graduated from the St. Paul College of Law. After graduation he was admitted to the bar in Minnesota and North Dakota and in 1912 he came to LaMoure where he entered into the general practice of law. During the years of his general practice at LaMoure he served several years as city attorney and was State's Attorney of LaMoure County for ten years. He was a member of the North Dakota and American Bar Associations.

In January of 1942 he was appointed by Governor Moses as one of the judges of the District Court, Third Judicial District, to fill the vacancy which had been created by the resignation of Judge Geo. M. McKenna of Napoleon. Judge Coyne completed the unexpired term of his predecessor in office and in 1944 he was elected to a six year term by the voters of his district.

From the beginning it was apparent that Judge Coyne was eminently well fitted for the position to which he had been appointed and he won the immediate respect of the public and the members of the bar by his absolute integrity and his thorough knowledge of the law. His tenure on the bench was particularly characterized by his fair, courteous and considerate treatment of all litigants and attorneys who appeared before his Court, and it is to be deeply regretted that his untimely death has deprived us of the services and understanding of this man who showed such unmistakable promise of a long and distinguished career upon the bench. He was an untiring student of the law and each and all could be assured of a fair and courteous hearing before his Court, no matter what their theory of the case or their understanding of the law.

Judge Coyne was active in the service of his community and during the years of his general practice he served for two consecutive years as Chairman of the LaMoure County Chap-

ter of the American Red Cross. He was also a member of the LaMoure Community Club and was actively interested in the work of the Boy Scouts. He was a member of the Catholic Church and a trustee of the Holy Rosary Catholic Church at LaMoure. His funeral services were conducted in that church by Father F. W. Lyons of Fargo, and he was buried in the LaMoure Catholic Cemetery.

He is survived by Mrs. Margaret Coyne of LaMoure, his widow; Mrs. Michael Coyne of St. Paul, his mother; Mabel Coyne of Bottineau, North Dakota, a daughter; Phyllis Coyne of Great Falls, Montana, a daughter; Mrs. J. A. O'Dougherty of Minneapolis, a daughter; Mrs. F. J. Rajkowski, Jr., of St. Cloud, Minnesota, a daughter; Miss Florence Coyne of St. Paul, a sister; Miss Lillian Coyne of St. Paul, a sister; and Mrs. Tom Milan of Arcadia, Wisconsin, a sister.

Judge Coyne will be remembered by those who knew him as a man of varied interests and of many intellectual attainments. But before those things, he will be remembered as a man who was possessed of a profound and sympathetic understanding of his fellow man. He was a friendly man. He had a genuine regard for the people he knew, and those who came to know him felt the same way towards him.

#### LAUREAS JOHN WEHE

Laureas John Wehe, well known North Dakota Attorney, died at his home in Bismarck, North Dakota, on January 14, 1948. Death was attributed to heart disease.

Mr. Wehe was born in Chicago, Illinois, on November 6, 1873. His father was Charles Louis Wehe, and his mother was Paulina E. Dolch Wehe. Mr. Wehe was one of eleven children in their family.

Mr. Wehe came to Dakota Territory with his parents in the year 1882 and settled near Bartlett and later moved to Lakota. He attended the University of North Dakota and graduated with a B.A. Degree in 1898 and with an L.L.B. Degree from the School of Law in 1904 in which year he was admitted to the North Dakota Bar.

His early practice found him associated with General W. H. Standish. After one year of partnership practice he moved to Edmore. In 1910 he moved to Devils Lake where he practiced law until 1919. In 1919 he moved to Bismarck where he served as a member of the Workmen's Compensation Bureau and in



latter years continued his practice of law in Bismarck until his death.

Mr. Wehe was a member of the Presbyterian Church, the Elks, and was past president of the Bismarck Lions Club.

Mr. Wehe is survived by his widow, now of Aberdeen, South Dakota. He is also survived by the following brothers and sisters: Charles L. Wehe, Jr., Herbert C. Wehe, and Elida P. Wehe of Grand Forks, North Dakota; Sebelia E. Wehe, New York; Mrs. Edward H. Ray of Long Beach, California; Mrs. J. Z. Stansberry, and Alice G. Wehe of Portland, Oregon.

Mr. Wehe was a well known North Dakota lawyer and was always active in the profession. He was instrumental in promoting the adoption of the North Dakota Statutes for the prevention of nepotism. He faithfully attended meetings of the State Bar Association and was an active member. His passing marks another milestone on the journey into the great beyond of the early practitioners of North Dakota.

#### GEORGE W. THORP

George W. Thorp, prominent Fargo Attorney, died of a heart attack at his desk in his office in the Pioneer Life Building in Fargo, North Dakota, March 12, 1948. He had been in poor health for several months.

George W. Thorp was born at Morrisville, Vermont, May 10, 1878, the son of Mr. and Mrs. Edgar W. Thorp. He was the only son of an only son. His father was a lawyer and practiced law at Wadena, Minnesota, and at Forman, North Dakota. While living at Forman, George read law with his father and taught school. George was admitted to the Bar in 1900 in which year the family moved to Jamestown where George and his father engaged in the practice of law under the firm name of Thorp and Thorp. In the year 1902, his father died in his law office just as George did.

George continued the practice of law at Jamestown until 1922 during which time he served six years as State's Attorney of Stutsen County and several years as Jamestown City Attorney. In 1922 he moved to Fargo where he entered the firm of Divet, Holt, Frame and Thorp. Later he was in the firms of Divet, Shure, Murphy and Thorp and Thorp, Wattam and Vogel. In 1945 he retired from the latter firm for individual practice.

In 1928 Mr. Thorp was appointed Assistant United States

District Attorney in which capacity he served for several years. In 19v6 he was appointed Assistant City Attorney at Fargo. In 1945 he was named United States Commissioner.

Mr. Thorp was a trial lawyer of exceptional ability and enjoyed court work. He took an active part in civic affairs and served as local chairman of the Belgian Relief Fund, Inc., formed in 1940.

Mr. Thorp is survived by his widow, now Secretary of the Fargo City Commission, and by Miss Margaret Thorp, a daughter by previous marriage, residing at Bozeman, Montana.

Funeral services were conducted by Rev Ward F. Boyd in the First Presbyterian Church on March 15, 1948. Active and honorary pallbearers included prominent North Dakota citizens in the legal profession. The remains were buried in Riverside Cemetery at Fargo.

