



1940

Proceedings of the Annual Meeting of the State Bar Association of North Dakota Held at Fargo, North Dakota August 29-30, 1940

North Dakota State Bar Association

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PROCEEDINGS
of the
ANNUAL MEETING
of the
STATE BAR ASSOCIATION OF NORTH DAKOTA

Held at Fargo, North Dakota

August 29-30, 1940.

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CLYDE DUFFY, President, Presiding.

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August 29, 1940

Morning Session

PRESIDENT DUFFY: The assembly will please come to order, and at this time I will ask the Very Reverened John Richardson to pronounce the invocation.

REVEREND RICHARDSON: Almighty God, our Heavenly Father, who in Thy Divine wisdom hast ordered government for man, and has instituted laws for the happiness and wellbeing of mankind, we plead for our nation at this time; that Thou wilt guide and direct those who are in positions of authority. Remember for good our President, the members of Congress, those who make our laws, and those who interpret them. Grant to them the spirit of wisdom and of a sound mind and true learning. We would ask that Thou bless the World at this time, torn with strife, war and confusion. Grant that righteousness and truth may prevail, and that out of this chaos may come a better day where men will seek to know and understand good will, one toward the other. And how we commend to Thee, oh Heavenly Father, Thy servants as they meet in this assembly. Grant unto them the spirit of illumination that their deliberations may be guided in that spirit and that fellowship may be deepened, and a truer understanding of the Divine and the human law may be theirs. We ask it in the name and for the sake of Christ, our Lord. Amen.

PRESIDENT DUFFY: I take it that one of the more pleasant tasks, perhaps, of the presiding officer of a city is that of welcoming visitors to that city. At this time we will have those words from the Mayor of Fargo, Mayor Olsen. (Applause).

ADDRESS OF WELCOME

MAYOR OLSEN: Friends: I want to say that this organization is one that is evidently very much interested in the opening of their session, as this is undoubtedly the largest gathering that I have had the pleasure of welcoming for some time. Most of them would just as soon forego the procedure of welcoming and responses and the reading of the minutes of the meetings and what have you. But yours is evidently in earnest in the work that they will do at this meeting. The world all loves a good argument and I take it that is why so many of you gentlemen

have taken different sides, and at times like these we are very much interested in what you people do. Of course, we know there are always two sides to every question. I know that we in our city affairs have a lot of problems and the commissioners don't always know how to solve them. We have some right now, and there are good attorneys on both sides who have different answers, so we are still up against it too. However, we are very much interested, as ordinary laymen, in what you gentlemen do. We depend upon you a great deal and when we talk about research, I realize that you have many, many men in your profession who are searching all the time for what you might call "words of wisdom" and with their help we continue to advance in our learning.

The weather is disappointing, but that is one of the things we always have to contend with. We need this moisture and we are glad to get it, but as you are here for two days I am sure that the committees have made all kinds of plans to give you a good time, and we want you to enjoy yourself and at the same time receive a lot of information from your meeting, and at some future time when you come here again I hope you will look forward with pleasure to that meeting with us. I thank you. (Applause).

PRESIDENT DUFFY: At this time we have the honor of having with us the Judge of the United States District Court, and Judge Miller will at this time add his word of welcome and greeting to us. Judge Miller. (Applause).

JUDGE MILLER: Members of The Bar Association:—As Presiding Judge of this Court it gives me great pleasure to welcome you all here today, and to place at your disposal this court room and all the adjoining rooms that belong to the Court for your use in performing the functions and duties of your assembly. I am told I can't call it a bar association convention but that you meet here as an assembly. I don't know the distinction between an assembly and a convention, but I am sure that you can proceed in your usual and ordinary manner just as if you were in a convention, although down at Washington they prefer to call it an assembly.

To you who do not live in Fargo, I join with Mayor Olsen in welcoming you, particularly on the part of myself, and I am sure the local Bar Association of Fargo, and to all of you, collectively and individually, I welcome you to my court room and the rooms that I have placed at your disposal. I believe and hope that you will find them convenient and adequate for your purposes, and that the result of your meeting will be profitable, not only to you as a Bar Association and members thereof but to the general public, who really have a greater interest in the doings of the Bar than perhaps you as individuals have, for if the American manner of life is to be preserved—and I believe it is—you are going to be dominant factors in that preservation. And for the Bench, I just want to say,—that the Bench couldn't get along without the Bar. It flounders enough now, but without the aid of the Bar it would flounder more.

So I welcome you here today, gentlemen. (Applause).

PRESIDENT DUFFY: It is customary for the Vice President of this association to respond to the addresses of welcome. In this case, however, the Vice President also comes from Fargo, and it did not seem quite appropriate that he should respond to a welcome from his own city and, therefore, we will have the response of welcome by a gentleman from Grand Forks. I don't know whether that's a suburb of Fargo or if Fargo is a suburb of Grand Forks. But I assume they are friendly neighbors. We will now hear from Harold Shaft. Mr. Shaft.

MR. SHAFT: Mr. President, Mayor Olsen, Judge Miller, Ladies and Gentlemen:—I am sure that every member of the Bar here present appreciates to the fullest extent the kind, friendly, courteous, gracious words of welcome which have been spoken by Judge Miller and Mayor Olsen, but as lawyers we are bound by tradition and training and practice to examine carefully into any evidence which may be presented, and it seems that we must at this time examine the testimony of these gentlemen in the light of the accepted rules for evaluating the weight and credibility of testimony under any and all circumstances.

In evaluating the testimony and determining what credibility should be given to the evidence which we have heard about the friendly feelings of the Fargo Bar and the people of Fargo toward us we should take into consideration the demeanor and appearance of the gentlemen as they testified before you, their candor or evasion, the interest which they may have in the outcome of this convention, or their lack of interest, the means or opportunities for knowledge which they may have of the subjects concerning which they testified, the reasonableness or the unreasonableness of their stories, and any and all such matters which may or should appeal to our minds as having bearing upon the credibility of the witnesses.

Examined in that light, considering first their demeanor and appearance on the witness stand, I think the two gentlemen who have welcomed us have measured up very high. While the Bar Association may at some previous time have been welcomed by better looking emissaries, certainly they never have been welcomed by more dignified or more impressive emissaries. From the standpoint of candor and fairness I think they register one hundred per cent, but when you consider their interest in the outcome of the convention I presume we should look upon their evidence with a little suspicion, because, of course, Mayor Olsen is interested. He is charged with the responsibility of preserving the reputation of the fair city of Fargo and from some of the things I have heard that is no small task in itself.

Judge Miller, of course, would be charged with some ulterior motive and interest because it may be thought that he expects, through some miracle, that this association may produce more worthy members of the Bar who shall appear before him. So, from the standpoint of interest, we must look upon his testimony with a little caution.

From the standpoint of the reasonableness of the stories they have given out, we must look upon their testimony with a little suspicion. You know the usual purpose and the usual desire of any community in having conventions come is that the people who come to the convention will spend a lot of money in the town, and I think after the past six or eight years I can say without fear of successful contradiction that there probably isn't fifteen cents in the whole crowd here.

As to the means and opportunity for knowledge of the facts concerning which they testified, of course, both these gentlemen are admittedly qualified to speak. Judge Miller knows us all in one way or another in the long experience which he has had upon the Bench, and Mayor Olsen, as mayor of the City of Fargo, has had a great deal of experience, some favorable and some unfavorable, as I understand it, with lawyers. As a matter of fact, I was told that Mayor Olsen said he felt about lawyers much like the widow lady felt who was having so much trouble probating her husband's estate.

Talking about lawyers this lady said, "Lawyers. Don't talk to me about lawyers. I have had so much trouble with lawyers since my husband died sometimes I wish he hadn't died." (Laughter.)

As to the consistency of their testimony with other known facts, I think there can be no question. We have had previous conventions here in Fargo, and Fargo has always proved a good and hospitable host. We all get to Fargo once in a while when there's not a convention here, and we know the fellows from Fargo are always willing to give us of their time and of their libraries and assistance, always cordial, pleasant, happy people to meet. Much more cordial to us when we come down to them than we are when they come out to us in the sticks, in our bailiwicks, to try a lawsuit.

We appreciate the way the lawyers and the people and citizens of Fargo have shown courtesies to the people from the country, and, in that respect, the sentiments expressed by these gentlemen are strictly in accord with well known facts, and so, examining all of the evidence from all of these angles I think we will have to conclude that they are worthy, that they are credible witnesses, uncontradicted and uncontestable, and we must accept their testimony at face value, and so I am going to say now to these two gentlemen who have welcomed us here, thank you for your gracious expression of friendly sentiments toward us, and thanks to the Bar of Fargo for the splendid program which has been arranged and for the good time I know we are going to have, and for the inspiratitonal experience which this is going to be for us all. Thank you! Thank you! (Applause).

PRESIDENT DUFFY: I think now that I should express the thanks of the Bar Association for the wonderful response of the gentleman from Grand Forks.

According to the printed program the president is to make his annual address. The printed program is in error. I do not choose to make an address, and I claim the presidential privilege of violating precedent in that regard. (Laughter.) The constitution of our association says that the president shall make an address in which he shall review the legislation of the preceding year. With a liberal interpretation of the Constitution,—and we now indulge in liberal interpretations of the constitution,—I think I can satisfy that requirement by announcing that Governor Moses succeeded in avoiding calling a special session and, therefore, there is nothing to report.

Now, if I were to speak on something that I knew something about and which has some practical reference to the work of the Bar Association, I would speak about the revision of the Code, a subject which is of primary importance, I think, to the lawyers of the state, and a subject with which I have a slight familiarity.

It has always been my understanding that the mark of an executive is that he should never do himself what he can get somebody else to do better, and I have, therefore, delegated that job of making the speech on code revision to Mr. Kuhfeld, who is much better qualified to make it than I am. It had occurred to me that perhaps I should make a philosophical address on the state of the Union. Then I came to the American Bar Journal of July and I found that Judge Ransom, with whom many of you are acquainted, because I believe he attended the last convention here in Fargo, had already made the very speech I was thinking about making, and, therefore, I concluded that it wasn't necessary for me to make that speech, and I would invite the attention of the lawyers here assembled to that speech and suggest that they read it, and after you have read it you can have my approval thereof and assume that you heard me deliver that address.

Now if there are some of you who do not have access to the American Bar Journal, may I take this opportunity of suggesting to you the value thereof, not only for the opportunity that it would provide for reading the address of Judge Ransom, which I think is a very splendid discussion of the problems of jurisprudence confronting this country and confronting the members of the Bar Association, but it would also enable the members of the Bar to keep closer in touch with the changing panorama of judicial thought in these United States. The digest of the United States Supreme Court decisions contained in each issue of that Journal will, I think, keep one better posted as to the new developments than is possible through any other source.

True, many of you subscribe for the advance sheets of the U. S. decisions, but there are not many of us who take the time faithfully to scan those decisions as they come down, because many of them do not apply to the matters in which we are particularly interested, and many of them do not apply to those greater changes in constitutional conception which mark this as an epoch in American jurisprudence, but the review of those outstanding decisions in the American Bar Journal would serve to

keep one advised regarding those great changes. When we consider what momentous changes those really are, it does seem that it is of primary importance that we, as members of the Bar Association, and as lawyers and as citizens should keep abreast of those changes and developments.

Who of us who attended law school a quarter of a century or more ago would have dreamed that it would be constitutional for the federal government to fine a farmer because he raised or sold more than a certain amount of farm produce, tobacco, or anything else?

Who in those days would have dreamed that it would be constitutional for the federal government to impose a penalty upon a coal operator because he sold coal at less than a certain price?

Who would have believed at that time that it would have been constitutional for the federal government to fix the hours of labor in the multitude of local organizations and industries throughout these states, and who would have thought then that the Supreme Court would have drawn a distinction which says that it is a violation of law for an employer to refuse employment to a man because of union activities, but that it is not an interference with interstate commerce for the employees to take possession of the plant and cease production entirely?

Now, it is not my thought to discuss whether these changes or conception are improvements or retrogressions, but the point is that they are great changes in the legal conception as long viewed by the courts and by the administrations and by the members of the bar as compared to those with which we were familiar in our younger days. It becomes a matter of vital importance to all of us to understand those changing conceptions, and for that reason it has seemed to me, and that is why I have urged heretofore, and why I have asked the American Bar Association to send applications to the registration desk so as to make it convenient for the lawyers here assembled, who do not now belong to the American Bar Association, to sign those applications in order to become members of that great organization and to secure the benefit of the information which is available each month through the American Bar Journal.

There was one clause in the Constitution of the United States that was emphasized in the days when I attended school. I believe that it was to the effect that all powers not hereby granted to the federal government were reserved to the states or to the people thereof. That clause has gone the way of all flesh, whether for the better or for worse. We do not have the abridged powers of federal government which we have previously understood to have been represented by the peculiar form of our Constitution. In the interests of more effective government we have interpreted the Constitution as giving to that government all necessary power to accomplish anything that might be necessary for the welfare of the people of the country. That marks a tremendous change of concept, a change with which all of us need to be familiar.

In that connection may I say that we have a section in our statute which goes beyond any concept that has thus been promulgated as far as the federal government is concerned. We have a section in one of our recent statutes that gives to a federation composed of representatives of this state and other agricultural states the power to do anything and everything which they in their judgment may find necessary to promote the peace, happiness and prosperity of the people engaged in agriculture. That undoubtedly is about as broad a delegation of power as any we have heretofore witnessed. I do not believe they have gone beyond the function of recommending thus far, but I hope that with that power they will be able to evolve a scheme which will bring peace, happiness and prosperity to the people engaged in agricultural pursuits and that the rest of us will share in that happiness and prosperity.

There is another development of recent days with which the American Bar Association is also concerned, and with reference to which I would call your attention for a moment. That is the development of the administrative law. The development of administrative bureaus with power to act as accuser and prosecutor and jury and judge and executioner, without a review by the courts, if the findings are sustained by substantial evidence. And I would call your attention to the statement of the Chief Justice of the United States, who recently said that in too many instances the examination and trial afforded by some of those agencies amounted to a hunt for some evidence to sustain a preconceived policy, and with a review limited as it is to determining whether there is substantial evidence to sustain the findings and the result is that if they have one witness testifying to a fact that would sustain the preconceived policy and nineteen witnesses testify to the contrary, the agency may find that the evidence of that one outweighs the evidence of the nineteen, and the court upon review cannot say that the evidence of the one does not afford substantial evidence.

The results of that extension of administrative power and decision has resulted in the effort by the American Bar Association to secure the passage through Congress of a so-called Walter-Logan Bill, providing a uniform method for the review of decisions of administrative agencies. That bill has passed the House of Representatives by an overwhelming vote. It now lies in the committee of the United States Senate. A majority of the committee has reported in favor of that measure but by some method of obstruction, which seems to sometimes prevail in our highest legislative assemblies, a vote on that measure has been prevented. It has not come for debate upon the floor of the United States Senate, and apparently in the attention now being given to the problems of national defense it is probable the measure will be permitted to lapse and die during the present session unless the organized Bars of the United States take active interest, and take such a forcible interest and bring sufficient pressure upon the individual members of that Senate as to force a vote on the measure. I don't know of anything that

would be of more vital importance to proper judicial administration than the passage of a bill along those lines.

One of the more pleasant functions of being president of your association has been the opportunity to meet with Bar Associations and with lawyers from other parts of the country. Last year it was my good fortune to attend the Montana Association meeting at Billings. There I became acquainted with Dave Simmons from Texas, and, as a result of that acquaintance, we have Dave with us this afternoon. I can assure you that you will listen to a treat when you hear him.

Last week I had the pleasure of attending the South Dakota convention at Huron and the opportunity of meeting a man, who will next week or the week of September 9th, I believe, be elected President of the American Bar Association, Jacob Lashley of St. Louis. I also had the pleasure of listening to Harvey Harrison of Arkansas who addressed the banquet in the evening, and I assure you that that was worth a trip to Huron for alone. Mr. Harrison offered some advice and while I cannot advance it in the same way that he could, with all the glory of the southern orator, yet I think that I should pass on a couple of his most engaging thoughts.

One was when he suggested the advisability of lawyers reading the decisions of the Supreme Courts, because he said it was always advantageous for the lawyers to get a layman's view of the law. He also engaged in a vigorous defense of the art of larceny. He called attention to the fact that if larceny were abolished the lock and key industry would suffer an immediate decline, resulting in the throwing out of employment of thousands of men who are engaged now in making locks and keys to prevent larceny. But not only that. It would throw out of employment large numbers of men now engaged in law enforcement activities, which would throw out of employment men who are engaged in guarding prisons in which the perpetrators of larceny are confined. Not only that but it would throw out of employment those engaged in making steel bars with which the perpetrators of larceny are confined, and he suggested as one of the remedies for unemployment the federal government should set up an alphabetical administration of some variety to promote more and better larceny in order that more people might be engaged in these various arts. Then he went on finally to suggest that preachers talk against sin and if there were no sin there would be no occasion for preachers; that doctors devote themselves to trying to prevent disease, and yet if there were no disease there wouldn't be any use for doctors, and that lawyers meet in these conventions and solemnly consider and discuss how to improve the morals of the community and how to improve the administration of the law and how to eliminate crime and many other things, and he said if all those things were accomplished the demand for lawyers would be very much reduced, indeed, and then he said in a cockeyed world like that he thought it was probably appropriate for a Democrat to vote the Demo-

cratic ticket in spite of the fact the Republican Party was the only party that had nominated a Democrat for President. (Laughter)

I can assure you it was a very pleasant occasion. I am still looking for the fellow who was supposed to make my speech. Is Mr. Kuhfeld here yet?

VOICE IN AUDIENCE: Yes, he's here.

PRESIDENT DUFFY: That's fine. At this time I reserve the balance of my time for any observations that may come to me during the course of this convention, and I will now call upon Mr. Kuhfeld to tell us something about re-codifying the laws of North Dakota. Mr. Kuhfeld. (Applause).

Address of Mr. Kuhfeld published in the Red Book furnished each member.

PRESIDENT DUFFY: Thank you, Mr. Kuhfeld. I think that the members of the Bar will now understand why Mr. Kuhfeld was chosen as the chief reviser by the Supreme Court, and I may say, that while Mr. Young and I do some work all right enough, and I mentioned that visiting these neighboring councils was one of the pleasures and compensations of being president, I can assure you being a member of the Code Commission is not one of the compensations of being president, and I hope that I can pass on that job to my successor as President of the Association.

I know that he will look forward to it with great joy and happiness, but neither Mr. Young nor myself would have had any conception of how to go about the mechanics of this job. We would know what was wrong with each individual statute, we know how to re-write an individual statute to say what we think the legislature intended to have it say.

The mechanics, which have been explained to you, of dividing this thing up on cards and making cross references and parallel tables and all the rest of it is something that I suppose probably no other lawyer in North Dakota would have understood as Mr. Kuhfeld would, because of the fact he had had book publishing experience before, and by visiting with South Dakota and refreshing his previous experience with the experience that South Dakota had in revising their Code he, in the course of about two weeks, accomplished the mechanical set-up which it took the South Dakota Commission six months to accomplish. I am sorry we did not get under way sooner and have finished the job.

I might say, when I was down in South Dakota, in Huron, the one criticism made of the South Dakota Code was the index. At the present time there is a lawyer in Deadwood who is, on his own responsibility, preparing a new index for the South Dakota Code. The project was endorsed by the rest of the South Dakota Bar, which instructed the governing body,—I for-

get what they call it down there,— to ask the legislature of South Dakota at the next session to appropriate sufficient funds to have this new index published. So we hope that when we get our work done it won't be necessary to get a new index prepared by somebody else at the next session of the Legislature.

I wonder if you all appreciated the unconscious humor in one remark of Mr. Kuhfeld when he said in reading the decisions of the Supreme Court, "we had to pay particular attention to indexing those where the Supreme Court said a statute meant something other than what the person reading it would understand it to mean." (Laughter). Well, there are some lawyers perhaps who have had that experience before. At least they have suspected that condition of affairs.

May I say I had one other interesting experience here that was not mentioned. The Judicial Council and the three members of the Code Commission, in connection with this revision, had the pleasure of listening to fifteen Supreme, District and county Court judges argue for a day and a half. I suggested to the Chief Justice that morning that if it was as painful to members of the court to listen to us lawyers argue as it was to me to listen to fifteen judges argue then I can sympathize with all members of the Bench. (Laughter)

We have with us today two, at least two,—I suspect there are others,—but at least two in front of me, two distinguished visitors. One of these needs no introduction. As a member of this Association, and as Governor of this state, I assume that we all know him for better or for worse. But he has with him another distinguished gentleman with whom we are not so well acquainted. At this time, therefore, I am going to ask Governor Moses to introduce to the assemblage the distinguished visitor from across the border. Governor Moses. (Applause)

GOVERNOR MOSES: President Duffy, Governor Tupper, Members of the Bar Association: It was my great pleasure during one of my travels—and like your President I have had a good many travels thrust upon me during the past year and a half—it was my pleasure last July to participate in the opening of the Provincial Fair of the Province of Manitoba at Brandon. I spent a very delightful day at Brandon and came back with the realization of the very splendid agricultural progress that has been made by the people of the Province of Manitoba, and also with a very keen desire to have an opportunity to go back and see more of the way things are being done in our neighboring Province of Manitoba, and to meet more of the fine people of Manitoba.

During my visit to Brandon it was my honor and great pleasure to meet His Excellency, the Lieutenant Governor of the Province of Manitoba, who is with us this morning. When the people of Fargo and the different portions of the Red River valley decided to inaugurate Governor's day at their Red River Valley fair here they extended an invitation to Governor Tupper of Manitoba to come to Fargo to visit the Red River Valley fair,

which is being observed here this week, and to learn for himself something of what is being done on this side of the border.

We are very fortunate in North Dakota, in the Red River valley and in Fargo, to have Governor Tupper with us today as a guest of the Fair Association, the City of Fargo and the State of North Dakota. We, as lawyers, gentlemen, are doubly fortunate. We have with us today not only His Excellency, the Lieutenant Governor of Manitoba, but we have with us a practitioner of law, a man, who for more than fifty years, has been a member of our profession and a distinguished and leading member of the Bar in the Province of Manitoba.

I think I voice the sentiment of everyone here, Governor Tupper, when I say that we in North Dakota, and we in the United States, value the long years of friendly relations and associations which we have had with the people of Canada, and in particular with our friends in the Province of Manitoba. During these days, these days that are, indeed, days of danger, days of great trouble, and days of great privation for our friends to the north, and these are days of danger and trouble to us here in the United States also, I think that feeling of sympathy, that feeling of brotherhood, that feeling of a deep and abiding friendship built upon the peace of more than one hundred years, built upon that common understanding, built upon a common heritage of law and order and a Democratic form of government has deepened, and in welcoming you here to the Annual meeting of the Bar Association of our State, and in having the pleasure of introducing you to the President and to its members, I want to assure you that that feeling of brotherhood is strong and sincere in the hearts of everyone of us, and now, Mr. President, and members of the Bar Association it is my great honor to introduce to you, His Excellency, Lieutenant Governor Tupper of Manitoba. (Applause)

GOVERNOR TUPPER: Mr. President and Gentlemen of the Bar of North Dakota: I had little idea when I left home of the trouble I was running into. I may say that I thought the engagement which I accepted with great pleasure, tendered me by the President and Members of the Red River Valley Fair Association was quite sufficient to take up my attention and thoughts, but, as you know, a lawyer never knows what he is going to be up against, and he's got to be prepared for surprises and it is no use pleading he hasn't had notice or chance to prepare or anything else of that kind because that's all "eyewash," as they say. But I must say, I am glad to be here this morning. Not on account of the extravagant and undeserved references made to me this morning. I can account for those right off by telling you that His Excellency Governor Moses has only known me for a very short time,—not quite a month, I think,—so that you can understand you've got to accept those things with some reservations. (Laughter) As lawyers, of course, you don't believe all you hear anyway. (Laughter)

I am glad to have wandered in here this morning, because I have been greatly interested in what I heard. It is not the first time that I've wandered down into the States, as I had to come through the States the first time when I went to Manitoba. I couldn't get there any other way. But I attended the meeting of the Minnesota and Wisconsin Bar as a representative of my Province in the last War. I don't hesitate to admit my age because it has already been given, my professional age anyway, but it was years ago, and I remember that your ex-President and ex-Chief Justice, I think it was Taft, was present at that meeting, and I enjoyed it very much, and I therefore know what kind of welcome you give strangers, and I don't say foreigners because we are neighbors and cousins and brothers-in-law, and all sorts of things. (Laughter)

We in Manitoba don't consider we are going into a strange country when we come down here to visit you, but I just refer to that to show that I have taken an interest in bar matters. And, of course, I went over to England in 1924 when the American Bar Association were guests of the British Bar, and we also were supposed to be hosts, but they didn't need us. They did everything so well and completely that I am sure it was a very happy visit for the American Bar Association.

However, we, of course, are differently situated. We have a Code patterned after the Code in the Province of Quebec, which was the first, common law before in all other provinces. Now we have a uniformity of law committee which our Bar Association works with, and they try to prepare the statutes and after they have threshed them out we pass upon their reports and then they are submitted to our legislatures. However, the law of Manitoba is different from the law in Saskatchewan and all the rest of the provinces. Ontario we follow to some extent, but if we think they have passed a good statute we will adopt it, but we want the same statutes if possible in all the provinces because it will be a great advantage. But it is very difficult to get them to agree because the other Bar Associations may have different opinions. Each province appoints commissioners but if we get a dozen together from all the provinces we do pretty well. For their meeting each local governor gives them an allowance, to apply upon their expenses, and they meet once a year before the main Bar Association meets, and they go over the work together, for about a week and then they present the results of their labors, this is then passed upon and the legislatures, are asked to approve and pass them. The Province of Quebec doesn't accept our recommendation because they have a code of their own. The criminal code is the only thing we have that applies to the whole Dominion, so that is uniform in all the provinces. It is difficult to secure uniformity because the provincial legislatures most of the time refuse to adopt them. I don't know whether your American Bar Association has a committee that draws, acts and submits them to the different legislatures to secure uniformity all over the country. Of course, we have a revision

every ten years in our province. Our advocate was just revised the other day to try to bring it up to date and approve it and while our local bar association is, of course, interested in that, we confine our efforts to our own province.

Just one point I would like to mention in connection with the war. Just before I left home I read a very interesting pamphlet issued by Sir John Angel, celebrated barrister in England, a very able man, and he replied to the charge of the Germans that England or Britain, with forty-five millions of people owned three-fourths of the world and that they "hogged" the business so to speak, and although they couldn't use it they kept other nations from having land they wanted for colonization. That they, the Germans, were crowded and wanted to send people over to those countries and that England in holding on to land she couldn't use herself and not giving it to her neighbors was taking a very selfish position. Of course, we will have to admit the first part; that it is correct, but the second part is entirely different, because Britain doesn't own the Empire, that is, it doesn't own the commonwealth, doesn't own the Dominion. It has no estate, so to speak, in any of those countries whatsoever and receives none of this from them. They charge that we take these lands and dominate them and strip them of everything they have and take all revenue and everything else. That is not true. England doesn't get one cent from her Empire, doesn't exact any tribute, nor even use the same kind of money as the Dominion. As far as the Dominions are concerned, England doesn't own them, but in connection with the debt from the last war, that Britain owed the United States, its been asked, "Why doesn't she give the United States some of these lands that she owns, some of these colonies, some of the Dominions? She has more than she knows what to do with. Why doesn't she settle up her debt?" The point is, she doesn't own those countries and she can't give away what she doesn't own. Those countries have an equal status with Britain, and Britain has no power or authority over Canada. Canada passes such laws as she desires, even passes laws in connection with the tariff that work against Britain. She can give other nations advantages that she needn't give to Britain, and all that sort of thing. The conditions are all changing. England has been freeing for years these peoples so they can carry on their own business without consideration of her at all. The Statutes of Westminster in '31 settled Canada. The others had been settled. Until this war came on people knew if Great Britain were at war the Dominions were at war. Why? Because Great Britain owned the Dominions and the colonies had to do what they said, but we found in this last war that Canada could remain neutral if she liked. And she was neutral until the bill was passed declaring war against Germany in the Dominion House of Parliament. Look at South Africa. By only a small majority she decided to go to war with Germany, and if the majority had gone the other way why, of course, she would have remained neutral. Ireland is neutral,

and the German representatives are in Dublin today and their embassy is carrying on there just the same as always. Therefore, it all comes to this, England has no estate. These independent states, they are all free and the people in them own the land as we do in Canada and we the people own Canada.

Therefore, I say that unless she owns these dominions and states she can't trade them or give them away or anything, and the fact that we are an autonomous and independent state ought to answer the question, "Why is Britain keeping all these lands? Why doesn't she give them away and let the nations of Europe settle them and divide them up?" She can't divide up what she does not own.

I am sorry to have taken so much of your time. (Applause)

PRESIDENT DUFFY: Governor Tupper, we are indeed, delighted to have had you with us and to have heard your expression here today. We are deeply indebted to you for your remarks.

Now we have another visitor that I want to present at this time. He is going to speak to you this afternoon. He's not going to be allowed to say anything now. I just want him to stand up and have you look at him, know who he is. Then as we go over to lunch I want you fellows to come up and shake hands with him, because he's just as good a fellow as he looks to be. Dave Simmons, will you stand up? (Mr. Simmons stands) (Applause)

At this time I think I should announce the appointment of a special committee on resolutions. On that committee I am going to name Halvor Halvorson of Minot, John A. Layne of Fessenden and John Knauf of Jamestown.

Also at this time I am going to call upon George Soule with reference to announcements for the events that are to follow, and I may say that George is the fellow that is responsible for everything that's been done around here so if you like the convention you can thank George, and if you don't like it you don't need to blame me. George Soule.

MR. SOULE: Mr. President. I heard Harold Shaft's talk this morning so I know how much to believe of what you have just said, and I have the utmost confidence that all the rest of you here present will likewise know the percentage you should believe of what the President has just told you.

I would like to make a few brief announcements. This afternoon we have some sectional meetings. We are particularly interested in those meetings, and to show our interest we have given each of you a red book that contains outlines that will be followed by the speakers during the sectional meetings this afternoon and tomorrow morning. We wish each of you would bring your books with you to those sectional meetings this afternoon. The Registration Committee has a desk at the east

end of the hallway and are very anxious to have all of you register. Please be sure to do so when you leave.

The banquet tickets are on sale at the same place and you are urged to get your tickets because the Committee has to tell the caterer how many are going to be there tonight.

Immediately following the adjournment of this meeting there is a special meeting of the First Judicial District Bar. The meeting will last for just a few minutes and is for the election of officers, so when the President adjourns this meeting the First District will stay here for a few minutes. I thank you, Mr. President.

PRESIDENT DUFFY: As I understand it we will have our lunch over at the Elks club, which is just in the rear of this building, and I believe that we have now reached the stage where we may adjourn this session. We will re-convene here at 1:30 and immediately after the address by Mr. Simmons we will have the sectional meetings, as you will note on the program, and following that speech we will find out how many want to go to each of these different sections in order that we may know how large a room is required for each section. At this time we will stand recessed until one thirty, except the members of the First District, who will remain in session.

AUGUST 29, 1940

Afternoon Session

PRESIDENT DUFFY: At this time I am going to call upon Judge Bronson to read his report on Uniform Laws. Judge Bronson.

JUDGE BRONSON: Mr. President, Gentlemen of the State Bar Association. The Report of the Committee on Uniform State Laws is as follows:

REPORT OF COMMITTEE ON UNIFORM LAWS

Your Committee on Uniform Laws reports:

North Dakota has heretofore adopted a total of 21 Uniform State Acts which largely have been literally adopted as recommended by the National Conference of Commissions on Uniform State Laws.

As the Code Commission are now revising the statutory law of this state for purposes of a new North Dakota Code, the suggestion has been made to the Code Commission that the Uniform States Acts, which North Dakota has adopted, be made uniform in the sense of following Uniform State Acts as proposed by the National Conference, at least to the extent so far as consistent without substantive change.

Many years have now elapsed since the National Conference proposed certain Uniform State Acts, such as the Negotiable Instruments Act which this state adopted over forty years ago and

which now has been adopted in every state in the Union; and such as the Uniform Sales Act and the Uniform Warehouse Receipts Act, both of which this state enacted in 1917.

In the course of the years, the National Conference has recognized, in the development of the law, some amendments as proper to these acts, and have recommended some amendments to the Sales Act and to the Warehouse Receipts Act, which already have been adopted in some other states.

Thus consideration in this respect is expected on the subject matter by the Code Commission when these acts are finally considered and recommended to the legislature in the proposed new Code.

For many years now, the North Dakota Commissioners on Uniform State Laws have been Clyde L. Young of Bismarck, Judge S. E. Ellsworth of Jamestown, and the undersigned, chairman of this committee. Continuously, during these years, North Dakota has been represented at the meeting of the National Conference of Commissioners on Uniform State Laws by one or more of the North Dakota Commissioners. This conference holds its annual meetings, continuing for nearly a week, and just preceding the annual meeting of the American Bar Association. This year it will be held at Philadelphia, Pa., Sept. 2 to 9, 1940.

This conference is composed of three, and in a few cases of four or five, Commissioners from each of the States, Territories, and Insular possessions of the United States, including the District of Columbia. It is considerably supported, financially, by funds of the American Bar Association and by appropriations of many of the states, to the conference and for the expenses of its Commissioners in attending the meetings of such conference.

North Dakota, during all of the years, never has appropriated any funds either to the conference or for the expenses of the Commissioners in attending its meetings. North Dakota Commissioners have always paid their own expenses in performing their duties and attending the meetings of the Conference.

The question might well be asked, what usefulness does this conference serve in our body of statutory law in this country.

It may be said that there are many organizations now in the field seeking uniformity in substantive law, in adjective law, and in laws of reciprocity between and among the states and with the Federal Government.

Mention may be made of just a few of these agencies. The American Law Institute in its field of work of course is outstanding in this respect. There are Insurance Agencies, Utility Associations, Crime Organizations to prevent crime, Commercial and Trade Organizations, Aviation and Highway Organizations, and a multitude of others, specially concerned with securing some uniformity of law among the states in certain fields of commerce and business engagements, and as well in transportation and

criminal matters. There is the Council of State Governments, the Commission on Interstate Corporation, the Commission on Interstate Crime, and many other similar organizations.

Just now, particular attention is being directed towards the laws existing in so many states which are so termed trade barriers, or barriers to travel, or commerce between the states. Then there is a field of Interstate Compacts between the states on mutual matters affecting them as well as the Federal Government, one of which we know about such as the existing Interstate Compact between the states of Minnesota, North Dakota and South Dakota concerning water conservation and development along the Red River Valley. Then there are the Interstate Compacts which involved the construction of the monster Boulder Dam near Los Vegas in Nevada.

Thus, in these days, when unity of preparation and unity of action and cooperative ideas are necessary for our national preparedness, the conference which concerns itself with uniformity of law, as a principle, in certain fields of law, is at least of some importance.

Respectfully submitted,

W. B. ARNOLD.
 HAROLD SHAFT.
 JOHN W. KEHOE.
 T. H. H. THORESON.
 JOHN A. WALSH.
 HENRY G. OWEN.
 H. A. BRONSON, Chairman.

And supplementing this report, and having heard the Honorable Lieutenant Governor of Manitoba this morning concerning the work in the field of uniformity across the border, it is well to bring home to your attention the fact of this conference of commissioners on uniform state laws which has functioned for some forty-three years, which now has over seven hundred of its acts adopted in the various states of the Union, and which now at the next meeting, which comes next week and which I expect to attend, in Philadelphia, will have up for consideration, among other things a uniform real estate mortgage foreclosure act which has been prepared, supplemented, and which has been solicited to be enacted by the Federal Housing Administration. Then we have several acts which concern uniformity, on trade barriers between states, and other fields and agencies in that connection.

Mr. President, I move that the report be received and filed.

MR. BURNETT: I second the motion.

PRESIDENT DUFFY: You have heard the motion. Is there any discussion? All in favor of the motion signify by saying aye? Contrary? Carried.

And this time I am going to call on Dean Thormodsgard for his report on Legal Education. Dean Thormodsgard.

DEAN THORMODSGARD: Members of the North Dakota Bar Association and Friends. This report is signed by O. B. Burtness, Carroll E. Day, C. J. Murphy, S. T. Rex and myself as chairman.

REPORT OF COMMITTEE ON EDUCATION AND ADMISSION TO THE BAR

Your Committee on Education and Admission to the Bar reports:

The Council on Legal Education of The American Bar Association was created in 1893. Very little was accomplished until in 1921, when upon the recommendation of Hon. Elihu Root the "Standards of The American Bar Association" were adopted. Forty-one states now have a requirement of two years of college education or the equivalent as an essential part of a lawyer's training. Three states, Pennsylvania, Delaware and Kansas require a college degree, before a student may study law. Recently, in Wisconsin, the Supreme Court has decided to require three years of pre-legal education of all law students. Twenty-four states now recognize law school study only when pursued in "Approved" law schools. One hundred and two law schools have been Approved by The American Bar Association out of 180 law schools. Of these ninety-one are members of The Association of American Law Schools.

In 1938, the House of Delegates passed an additional standard as to Approved law schools: "It shall be a school which in the judgment of the Council of Legal Education and Admission to the Bar possesses reasonably adequate facilities and maintains a sound educational policy; provided, however, that any decision of the Council in these respects shall be subject to review by the House of Delegates on petition of any school adversely affected." Under this standard, the Council on Legal Education will have broad discretionary power to determine the kind and character of minimum standards for Approved law schools. The ultimate test for any law school will be, are its law graduates adequately trained for the performance of their duties as lawyers?

The lawyers of tomorrow should receive in college and in law school that kind of a training which will help them to perceive and understand modern social problems. It is reasonable to assert that the administration of justice is the solution of social problems. There has always been on the part of some, a tendency to regard the law as a set of fixed rules of concepts waiting to be used. There are too many persons, whose views as to the legal process is that of a slot machine. They believe that the creative work in the common law has been performed and that all a lawyer must do is to find the law as printed in a digest. This kind of attitude, in the past on the part of lawyers, gave rise to the Court of Equity. Similar views in the last half century caused the rise of administrative tribunals.

Human conduct and human relationships remain never constant, so our law is never certain and predictable. Even the

North Dakota Codes, Session Laws and Digests of adjudicated cases show how the law has changed in this state. Not only should the law student be trained in the principles and concepts of the common law and in equitable principles, he also should be introduced to the topics of legislation and statutory interpretation. Administrative law should be equally emphasized as constitutional law. Code pleading and practice should be supplemented by federal practice and procedure. This shift and added responsibility on the part of law schools makes it imperative that the pre-legal education should adequately train the students in English, History, Government, Economics, Accounting, Statistics and Philosophy. There is a vital need for three years of pre-law study for all law students.

In an autocracy the need for lawyers is limited but this is not true in our form of government. Government by men issue administrative orders and executive decrees. In a representative form of government, democracy cannot survive without lawyers, for the spirit of a free republic is law. Law teaches the control and regulation of man's relation to the state and the relation of men to each other. The object of law is to secure liberty to the individual and at the same time to control it in order to give security and equal rights to all. Under a representative government, the individual should be protected against uncontrolled discretion on the part of the government officials; he should have the right to be tried before independent judges and unbiased jurors; and he should have the opportunity to secure counsel of trained men in the law. The function of the University of North Dakota School of Law is to train men and women who will aid and adapt the government to the social needs of today and at the same time to help preserve personal liberty and free democratic institutions.

The special function of the School of Law of the University of North Dakota is to train men and women for service in North Dakota. We must search out the best talent and develop it and use it. The best students from our school are the men who most readily find a place for themselves in the society of North Dakota. If in this state were to maintain no facilities for training lawyers, we could expect to get only new men who could not find positions elsewhere.

We believe that North Dakota has a definite interest in maintaining a law school with ever increasing standards and efficiency because we believe its efforts are definitely reflected in the type of service the citizens of our state will receive at the hands of the lawyers practicing here.

O. B. BURTNES.
CARROLL E. DAY.
C. J. MURPHY.
S. T. REX.
O. H. THORMODSGARD, Chairman.

I move this report be accepted and filed.

Seconded from the floor.

PRESIDENT DUFFY: All in favor of the motion signify by saying aye? Contrary the same? Carried.

We have with us today another distinguished visitor, who secured his distinction in North Dakota and then went to our sister state of Minnesota to carry forth that distinction. Most of you, I dare say, know him as the former practitioner in North Dakota, former Assistant Attorney General. I want to ask John Thorp, now general counsel of the Federal Credit Administration in St. Paul to stand up and say a few words on behalf of his experiences abroad. (Applause).

MR. THORP: Mr. Chairman, I did not expect this honor, although I am pleased with the privilege. I told some of my friends today that I had a special invitation from the President of your Association to attend this meeting, and fearing he might call on me I wrote back and told him I was not going to be here, well knowing at the time that I expected to be present. (Laughter)

Mr. Chairman, I have been away from North Dakota in the service of the Farm Credit Administration for approximately twelve years, during which time I have maintained a constant practice of law in North Dakota, for the reason that while we operate in the four states of North Dakota, Wisconsin, Minnesota and Michigan we have had many suits in North Dakota. And you may well know when he asks me to say something about my experiences abroad that they have naturally been many, scattered over the four states where we have had to do with such a variety of courts, such a variety of judges, and it has been a privilege, indeed, for me to gain the experience which has been mine, not only in the four states of this district but throughout the United States. It has been my privilege to present cases in the Supreme Courts of many states beyond these four.

Now as to the Bar, again I want to say that in my capacity as general counsel for the Farm Credit Administration in St. Paul, we have employed a tremendous number of lawyers throughout these four states. I believe at one time we had in excess of seven hundred on our list. That was at the height of the depression in '34 and '35, and the quality of work done by the members of the Bar of your state, in my experience and from my observation, measures up with that of the other states. I say the quality of the work. I don't say that entirely in attentiveness to business I will be perfectly frank and say that the lawyers in Michigan are perhaps much more attentive to business than the lawyers of any of the four states. But I think it is a credit to this Bar when I make this statement that the quality of the work we received from the lawyers of this state is very good.

Now, Mr. Chairman, I didn't come to deliver an address. I came merely to visit with my friends, to renew my acquaint-

anceship with the members of the Bar, see the old state again, and I hoped I would see the sun shine again because I haven't seen it for several weeks, but I find you gentlemen are in the same position I am. I saw the sun for thirty minutes this morning between St. Cloud and Elk River,—I admit it took all of thirty minutes to drive that far. We drove up from St. Paul today.

Mr. Chairman, may I express my appreciation for the opportunity of attending today. I realize I am merely a guest of this Association and that I don't have the absolute right of attending, which once was mine, and I hope throughout today and tomorrow I shall be able to meet all my friends and I thank you. (Applause)

PRESIDENT DUFFY: We are certainly glad that you were able to be with us on this occasion.

And now may I say to you, Dave Simmons, that I think the attendance here is the finest tribute that could be paid to you. Nothing that I could say would be half as emphatic as the attendance that we have here at this convention. I am told the registration now is over two hundred and ninety, which represents more than half of the Bar of North Dakota. It exceeds by more than fifty the registration at any Bar Convention in the past, and I dare say before the day is over that registration will be well in excess of three hundred. Now, when the attorneys of North Dakota turn out in that fashion to hear you speak, as I say, that is all the testimony as to what they think of you that is necessary, and at this time it is my pleasure to present to the members of the Bar, David Simmons of Texas, Past President of the Texas Bar Association, member of the Board of Governors of the American Bar Association, and a darned fine fellow. Dave Simmons. (Applause)

MR. SIMMONS: Mr. President: I want to say in preliminary, before I read this speech, because as much as I hate to read a speech and as much as you hate to listen to the reading of one, I know and you know that it is a small compliment to you to invite someone to come fifteen hundred miles and when they arrive have them just casually make some remarks.

I do want to say in defense of Clyde Duffy before I start, Clyde said he heard me speak in Montana last fall and, therefore, he invited me. I want to tell you but I couldn't talk then, Clyde got in right after my speech. That's why I'm here today.

I don't need to have him tell me that this is a very great compliment to have this many lawyers appear, a compliment, I am laboring under no misapprehension, a compliment to the manner in which he has conducted his year of office, and a tribute to the interest you have in your profession. North Dakota, of course, was the first integrated bar. Texas, you will

be interested to know, is the newest integrated bar. We struggled for several years to get an integrated bar. We heard what had been done elsewhere. We couldn't seem to put it over. Finally we decided we were not going to get an integrated bar and decided we would put life into the voluntary bar, and so we turned our attention to that. Texas, of course, is a rather large state. Its a little bit difficult when you have a meeting in Dallas to get many fellows out from El Paso, which is 800 miles away, or Houston, which is 824 miles away. But we started in and finally by supreme effort we arrived at the point where we have fifty-five per cent of the lawyers in Texas as dues paying members. We set up a central office with a staff in charge of a lawyer, full time, started publishing a monthly magazine, and the other things progressive bars had been doing for so many years. The Legislature paid no attention for many years to our recommendations at all and suddenly when they came to, and we came to and found we had over half of the lawyers in the state actively enlisted, we presented a bill and they passed a bill, giving the Supreme Court new rule making power,—this was the last session two years ago, and we have been going like a house afire ever since. We had our meeting in Fort Worth, Texas last month. We didn't register half the lawyers, Clyde. I don't know if we will ever get to that point. But we registered 2,027 at our meeting. I think that is pretty good. Its the largest state meeting ever had in any state of the union. A good many states have larger bars than we, and we think it is because we have in the last few years become conscious of the obligation of the lawyer and his responsibility to the job.

Now you remember this morning Clyde asked me to stand up, but he wouldn't let me say anything. I am sorry because Governor Moses was here. I had the pleasure of meeting him back in the days when we Democrats in Texas knew what Democrats were. (Applause) We heard a lot about the Dakotas back in those days, and we heard about some new Moses who had arisen to lead the people. We have had lots of them. We have had some in Texas since then. A Republican from Kansas came down with a band a couple of years ago and was elected Governor. He is still governor, and he hasn't been such a bad governor at that, although he started in to sell flour and ended up by being governor. (Laughter) Now most of these prophets led the people, as of old, they led them into the wilderness. Remember? (Laughter)

I mean no offense to Governor Moses, and he has the right of rebuttal, but it took somebody beside the Moses's of old to lead the people into the promised Land. Moses could lead them all through the wilderness, but it took someone else to get them over. Now Clyde did his very best this morning to head me off on this speech. You remember when he started to make a speech on your Code, but he found somebody else that would make it and then he thought something about philosophy, but he read an article where that had already been covered in the

American Bar Association Journal, so no use paying any attention to that, and that was surely a tip, Clyde, that would have embarrassed most anyone, but when you come as far as I have, why, you just go ahead and do the best you can, even on philosophy. Now the philosophy I wish to talk about is one that has become quite practical. That is the philosophy of force. We haven't had in this world— (The Ladies arrive)

I really missed a great opportunity there. Last year I happened to be in New York City when some fellow took me to a show. The name of the show was a little bit forbidding, especially to me, coming as I do from the Bible Belt. The name of it was, "Hellzapoppin." One thing they had in it that was unusual, if anyone came in just a little late, somebody on the stage would rush out and meet them, bring them down the aisle and put them into their seat, to the very great embarrassment of the person who was a little late. So I want to assure these ladies they aren't late at all. I just started in the very first line of my speech.

THE PHILOSOPHY OF FORCE

History, looking back on us from some future time, will record its judgment of this age. It will note the war to end all wars that failed in its objective; the industrial and mechanical revolution that threw civilization into high speed and lifted it into the air; and the clash of ideas that marched and counter-marched between the extremes of anarchy on the one hand and the totalitarian state on the other. In my opinion, the clearest interpretation of the tragic events of this age will be given by that historian who understands the philosophy of force.

Each person, consciously or unconsciously, believes in a government of reason or a government of force, a government by consent or a government by violence. The problem is approached from the point of view of the governed or from that of the governors. The governed are looked upon as citizens or as subjects of government. The administrators are either the servants or they are the masters of the people. There should be fewer laws so that the people may develop their personalities and act as they choose so long as they do not injure others, or there should be more laws to regulate the thoughts and activities of all the people. People have rights, to be expanded and protected by the state, or they have only duties, to be assigned by, and performed under the command of, the state. We believe that the pen is mightier than the sword, or that war is more important than peace; that those who live by the sword shall die by the sword, or that those who go forth as conquerors shall have eternal fame. In short; we render unto God the things that are God's and remember that He has given unto men the talent,—buried in the earth though it may be by many—to understand and appreciate truth as opposed to error, justice instead of wrong, liberty in the place of chains, beauty instead of filth, love instead of hate and fear, or we fall down and render unto Caesar the things that are Caesar's, and worship power, might and conquest, forgetting the

blood and slaughter and the prostrate form of the Republic which he and his kind have always trampled in the dust. When the people of this earth shall grow up mentally, they will recognize conquerors and their lesser prototypes for what they actually are—criminals driven by an unholy lust for power.

The fanaticism abroad in the world today in political and governmental matters appears to be derived in part from the philosophy of force and part from pagan religions of the past. How else may we describe those isms, political and economic, that carry their message with fire and sword and seek to turn nation against nation and class against class? In nations where the highest forms of religion have flourished, and where men have envisioned a just and loving God, and at least have been exposed to doctrines proclaiming the brotherhood of man and the spiritual and temporal dignity and rights of the individual, we are confronted with spectacles which cause us to doubt whether there has been any substantial improvement in the nature of man in the mass since those historic times when the conforming majority, with howls of glee, hurled the unfortunate minority to the lions, burned them in the fire, or drove them into exile. The spirit of ferocity manifested is the same, and it matters little whether it acts to appease the supposed desires of some tribal god whose spokesmen demand blood and slaughter as the price of atonement, or whether present-day prototypes of those spokesmen spread death and terror in the name of their particular ideology, usually a race, class or condition of society, which suddenly conceives itself superior to its fellows.

No class or nation has a monopoly of virtue, and the right of life, liberty and the pursuit of happiness is not entailed to any group. The assertion that one is a super race and hence entitled to abolish minority rights and to impose political and economic bondage on one's neighbors is a pretension which the civilized mind will not allow. The delusion of grandeur may satisfy one's ego but convinces the neighbors that one is a mental case. "God's chosen people" are always self-chosen, and the validity of the choice is always denied by those beyond the pale. An unexpired fury has pursued one hapless race for twenty-five hundred years and should constitute a sufficient warning for those who scorn their neighbors and have one law for the chosen and another for the stranger beyond the gate.

When an individual, by mental aberration, self-hypnotism, or mere covetousness, decides to exalt himself in power and possessions at the expense of the rights and property of his neighbor, he must be restrained, either by reason or by force. So, too, with groups and nations manifesting the same traits. It is but another chapter in the eternal conflict between right versus might, good against evil, justice against injustice, reason opposed to force, or, to use that magnificent phrase: a government of laws rather than a government of men.

Man is a predatory animal and exceedingly hard to train. The law of the jungle, an eye for an eye and a tooth for a tooth.

might makes right, are deeply ingrained both in man and in his creature, the state, and so as best it may, reason must bind them down by laws so that the individual, the family, the minority, the neighboring nation, may have some protection for their rights.

Once men dreamed of a reign of law, national and international. With the spread of education to all peoples, and with the encouragement of religion and philosophy, there was reason to hope that patient effort would raise the ethics of mankind to a point where the nations of the earth might dwell together in peace and harmony. Such an consummation presupposes, of course, just and equal laws, universal and uncontrolled education, enlightened religion and a philosophy harmonizing man's relationship with his fellows and the universe. Those objectives, seemingly so desirable, are the very ones in danger of destruction in this flaming world, and are the particular anathema of those groups and nations who seek to block the onward march of civilization and democracy. To them, education is merely a means of propaganda, any religion that teaches justice and the rights of the individual must be rooted out, and the only philosophy recognized is that which magnifies the aims and ethics of the elect and minimizes and degrades all others. The concept of law has been equally perverted. For instance, Marx rejects the idea of impartiality of law. Lenin taught that law is "the expression of the will of the class which has won the victory and keeps the governmental power in its hands." Law, to the totalitarians, is merely an instrument of the rules, and has nothing to do with the protection of rights. It is a convenient weapon used to wreak vengeance on persons not attuned to those in power.

To those who believe that total war is a new invention of the totalitarian states of today, I suggest that in their spare time they read the history of the totalitarians of the past. Peaceful trading nations, who have forgotten that force can be answered only by force, concentrating on the accumulation of goods, losing the simple virtues which made them great, have through the ages fallen easy prey to the "have-nots" beyond their borders. The impregnable Maginot Line, like its predecessor, the impregnable Wall of China, fell when the enemy circled the end of the wall with lightning speed. In the long list of ruthless invasions, we may remember the Scythians, the Assyrians who "came down like a wolf on the fold," the Huns, Bulgars, Magyars, Turks, Tartars, Mongols—these were total wars, lacking chivalry, courtesy or the so-called amenities of civilized warfare. Their conquests were made easy by the mass terror which preceded them. They all had one thing in common,—a brutal disregard for what we consider the fundamental rights of other peoples. Their leaders, contrary to general belief, were by no means ignorant men. Some were men of military genius. We need not delve into ancient history. No more striking comparisons can be found than those of the thirteenth century, when in the West chivalry, pageantry, form and ceremony marked the Crusades, while in the East Genghis Khan swept like a scourge over Asia. That military genius, his successor in leadership if not in title, Subotai,

led his hordes to central Europe. Using spies, captives, and fifth columns, he obtained advance information about every army in Europe. He used fast, light troops to harass and disorganize the enemy and heavily armored troops to flank and deliver the knock-out blow. By striking behind the lines, spreading fear and terror, he first disorganized and then crushed his foes. He developed the pincer strategy, now used by Germany so successfully. Encountering five great armies raised by the Poles, Silesians, Austrians, Bohemians and Hungarians, by flanking movements, by the use of the pincer, aided by terror, stealth and rumor, he attacked and destroyed them with lightning speed. In control of a greater empire than any known since that day, the Mongols turned back because of troubles in the dynastic succession within their government. There are those who wishfully hope that modern conquest may cease from the same causes. Also, in passing, we might mention a curious item from history. The robber nations of the past and their cities have disappeared from the face of the globe. The Mongols' capital, Assyria's Nineveh, Babylon, all the others, have disappeared and left not a trace behind. You will recall that the Prophet Habakkuk foretold it that way. He foresaw the doom of the unjust conqueror, the teacher of lies, who by force gathered unto himself the wealth of other people and built his nation on blood: "Because thou hast spoiled many nations, all the remnants of the people shall spoil thee."

Certainly many remnants of the people are now being made, but whether there will be enough left of them to spoil the spoilers is a dark secret of the future. How so many people permitted themselves to get in a position where they could be so easily spoiled would make a long speech in itself. The present concern of our people is that we search out the reasons which led to the collapse of the others, so that we, in our turn, shall not become one of the remnants who hopefully look to high Heaven to bring down the tyrants.

We mentioned the Maginot Line a moment ago, and would like to add this footnote. It has been better for the French people if it had never been built. The money it cost was as nothing to the false sense of security it gave to the French nation and the opportunities it gave to the French politicians to point with pride to the unconquerable barrier which separated them from their potential enemies. Thus lulled, they laughed at the frenzied activity going on in Germany and Italy, scorned the new weapons that were being forged because they were confident that they lay behind a bulwark that was proof against any aggression.

Do our eyes deceive us when we read in the daily newspapers, and do our ears play us false when we hear over the radio the debates and speeches from Washington iterating and reiterating that we lie behind two impregnable oceans, that we are immune to attack, and that those who now belatedly desire to prepare against a war which may not spend itself abroad are but hysterical and have been thrown into a panic by a conflict which must stop at the farther shore? Have they forgotten that the

impregnable Atlantic was crossed by the British in 1814 with the primitive methods of transportation then at hand, and Washington was captured, and the Capitol from which they speak was burned to the ground? Not the width of the Atlantic, but the friendly navy that has ruled it for the last hundred years has been the decisive factor in keeping the broils of Europe from spreading to this hemisphere.

To what end should America re-arm herself? First, for defense. Because, as someone has said, even now it may be later than we think. But over and above the necessity of re-arming for defense, we must re-arm to command the respect of those who expect soon to own the world. Once they respected us because we were rich and powerful and efficient; now they despise us because they think we are rich, and weak and inefficient. Ten years of mass unemployment, ten years of mass inefficiency, ten years of drifting, have left their mark on us within and have brought us the scorn of those abroad who ten years ago were weak and futile themselves, but now, in their brutality, they have become bold and speak of us with contempt. Those are blind, indeed, who miss the significance of the remarks of the dictators directed at democracy these past twelve months,—at the democracy of Czecho-Slovakia, of Finland, of France, of Britain, and of America. Remember Mussolini's recent war declaration where he said, "Black Shirts, we take the field against the plutocratic and reactionary democracies This gigantic conflict is only a phase of the logical development of our devolution. . . . It is the conflict between two ages and two ideas." Quotations from Hitler, from Stalin, and from Japan could be given at length.

It is a conflict between two ages and two idea. Compared to the nations of Europe, while we may object to the word "plutocratic", certainly we are rich, so the only point at issue in his statement is the adjective "reactionary" as applied to democracies. Theirs is revolution, indeed, but a revolution in reverse. The age to which they would bring Europe is but another Dark Age, and the ideas which lead them have been known from the earliest dawn of history.

When the war broke out last fall, the appeal to the arbitration of the sword was not the last recourse of men who had exhausted every effort in an endeavor to find a peaceful solution for the problems that lay before them, because the agencies of peace were at hand and unused. No call was made to the World Court to decide the disputes about boundaries, no action was called for on behalf of the League of Nations which in many instances had acted as umpire in holding plebiscites to determine the wishes of people as to whether they remained as citizens and subjects of one nation or were turned over to another, the permanent Court of Arbitration at the Hague was still available as an agency of arbitration, and this nation is still a member of that body. It is undisputed that no appeal was made to any of these, nor to that other commonly used agency, the special commission agreed to by nations in dispute. The reason given by the aggres-

sor nations for failing to arbitrate or call upon any of these numerous peace agencies was that these matters involved questions of national honor, which could not be arbitrated. In most instances you will remember they gave no reason, but appealed immediately to force and the weapons of destruction to settle issues which have been settled many times by nations disposed to peace. The answer, of course, is that they did not choose to submit their acts, their conduct, and their contentions to the arbitrament of justice and the councils of reason. They hoped, and thus far their hopes have been realized, that by using threats, force and might, they could coerce lesser peoples into disgorging, or in rendering up to them, territory and supplies to which they know they are not entitled. The trouble is not with the principles of international law, not with the want of agencies of conciliation, but the trouble is that willful men at the head of these nations refuse to recognize reason, right and justice in the world, and, instead, demand the right by force and aggression to settle every issue that their minds may conjure up to convince their people at home that they are great leaders carrying their chosen people into higher realms of life than that to which the ordinary run of mortals outside their territories are entitled. However dark the outlook may be now, the time will come when Truth and Justice will stand supreme in controversies between nations in exactly the same manner it does now in the most peaceful and civilized countries in disputes between man and man. Unfortunately that day is far in the future and may never come within any reasonable period of history unless we recognize our destiny as an agent to that end.

When we are confronted by a great world emergency, precipitated by ruthless force organized in governmental form by those who incessantly proclaim their hatred of democracy, what must we do? We must do what this nation has done before in time of crisis: close ranks; re-arm ourselves physically, mentally, morally, spiritually; stand on guard; face the danger without flinching, and be prepared to make any sacrifices for which the situation may call.

I want to interpolate here by saying that the other day a young man came into my office and said that he was faced with the problem that he would be shortly called out for a year's training. I told him I thought it was the grandest opportunity a man could have. When I was in my senior year in law school, not quite twenty years old, my whole class volunteered in the other war. Many of us went into the aviation service, when flying an airplane was more like riding on a kite than it was one of these fast ones they have today, and there wasn't a single man who came back from that experience,—and most of us were out practically two years,—that wasn't a better man, a better citizen, better able to study law in school and understand the problems of government than when he went away.

The politicians, of course, vote appropriations readily and in large amounts, but, as usual, reluctantly hold back from voting taxes to pay the bill or for drafting men to man the machine.

There are those who earnestly insist that conscription is contrary to the principles of democracy. The essence of democracy is simply the exercise of power by the people. The limitations on that power are self-imposed. Volition, as opposed to compulsion, in the duties and responsibilities of citizenship, is not a hallmark of democracy. We are entirely familiar with compulsory education, and know that the safety of democracy depends upon it. Jury service is the selective and compulsory. Taxation is not a voluntary contribution to government, but is a compulsory draft on capital or income. Historically, if one is interested, we recall that conscription originated in the democratic city states of ancient Greece, was continued by republican Rome, and was introduced to modern times by the first French republic. The handful of professional soldiers which suffices in times of peace, becomes woefully inadequate in periods of national emergency. Voluntary enlistment in such times penalizes the patriotic and puts a premium on individual selfishness. If some answer that selective compulsory service is all right in time of war, but not otherwise, we ask: When does war commence? No war was declared against Norway, nor The Netherlands, nor Belgium, nor against the long list that includes Poland, Finland, Austria, Czecho-Slovakia, China, Albania, Lithuania, Latvia, Estonia, Bessarabia, or ancient Ethiopia. These nations were not conquered in war, we are blandly told, they were merely taken in "protective custody" for their own good.

These are different times. War is planned in secret, and sometimes carried on in the same manner against the victim nation. The armed forces are no longer the only weapons of war. Trade is used, currency is manipulated, treason is employed. Only when the knockout blow is to be delivered is the military force now used.

It is not my purpose to debate the merits of universal or compulsory military training in times of peace. Each man and each woman approaches that problem largely from a personal standpoint. Some believe in peace at any price, some within the military ages and who would not care to volunteer feel the draft at the back of their necks, some in this great melting pot of ours are allied by blood and by the closest ties with those nations against whom our defenses are prepared. There are those who say that the voluntary system, if given a fairer trial, can do the job. I noticed within the past ten days a statement from the army's high command that the enlistment quotas assigned on the basis of population to the various sections of the country have been filled in only one—the South—Southwest. Since I live in that section it interested me to note in one of the great national polls taken this month that that section approved by the highest ratio the principle of selective military training for defense. My own state of Texas was recorded with the highest ratio in the Union. North Dakota was in the top ten percent, with 71% in favor of such a system. The opposition may call it totalitarian, they may call it what they will, but even the people who do not know the historical background feel that it is essentially demo-

cratic when all are subject to be called for the defense of their nation. When I say the people who do not know the historical background, I might add that the politicians who do not know the historical background play upon the narrow prejudices of the people for and against. Inefficiency in the selection of our public servants has been a major fault of democracy. Comparatively, the nation has been rich and we could afford such inefficiency. We have selected men to state and national offices many times because they said they needed the job, not because they were qualified to render efficient service in that particular position. The average citizen has been so busy about his workaday affairs that too often he has left the selection to special interests, pressure blocks and racial groups who knew exactly what they wanted from that particular office while the average citizen with no axe to grind was content to let the matter take its course. But before I drift off into a speech in favor of the short ballot and the concentration of the attention of the electorate on the policy-making offices of government, perhaps I had better finish my thought on the history of military preparedness in so far as it relates to the principle of democracy.

One might almost assume from what we read in the papers and hear on the radio that the American citizen has no obligation to render military service to his country. The Constitution itself provided for organizing, arming and disciplining the militia. The second amendment says that a "well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed." Most people remember that amendment only in so far as it relates to the right of the people to keep and bear arms. Entirely lost sight of is, then, the provision for regulating the militia, and the axiom that a militia is necessary for the security of a free people. And so we stress the right to bear arms and forget that the purpose of the arms is for service in the militia. For too long the people of this country have talked about their rights, freedom, privileges and immunities as citizens of democracy, and have largely ignored the corresponding duties, obligations, and responsibilities. What is the militia? It isn't the regular army and it isn't the National Guard. Most people seem to think that militia and National Guard are synonymous terms. If you think so, I suggest that you pick up the nearest volume of Webster's dictionary, and just in case you do not have one handy, I will give you the definition from the small dictionary which, with a few other books of daily use, stand on the corner of my desk: "MILITIA—a body of citizens enrolled as a regular military force for periodical instruction, discipline, and drill, but not called into active service except in emergencies. In the United States, it includes all able-bodied male citizens between eighteen and forty-five and is divided into two classes, the organized militia of the individual States, and the reserve militia, the organized militia being now called the National Guard." If you are between eighteen and forty-five, are you surprised to learn that you are in the militia? Most people are. Since when, you may ask, have those between those ages in

this country been subject to military training and instruction? Since the beginning of this government. When the Second Amendment was passed, the language obviously needed defining. Congress in 1792, as the first exercise of its power under Article 1, Section 8, Clause 16, defined the militia as all male citizens in the country between eighteen and forty-five and provided that they are subject to call and training when needed.

This was no new departure for men trained in the Anglo-Saxon tradition. From the earliest dawn of the history of those people, every free man had been subject to military service. The record shows that as early as the time of Alfred the Great the organized division of the people of England was into tithings, hundreds, and ridings, all local groups of freemen whose responsibilities were in part military. Every free man had three public burdens, the first to keep and bear arms, the second to construct and repair fortresses, and the third to make and repair roads and bridges. Through the ages those obligations have remained, to be performed when necessary and subject to discharge in such manner as the representatives of the people might select. I suspect that in the history of North Dakota if you had an unfriendly and warlike neighbor to the north, all three of those burdens would have been imposed on every freeman, but having a friendly power as a neighbor, the chances are that the only burden, other than for service in time of actual war, has been to build roads and bridges, and now most of that is performed by contract and is paid for by the freeholder through taxation rather than through the rendition of personal service. The point I make is that the obligation is there whether necessity calls for its discharge in person or not, and I labor the point by reiterating that the training of the militia is an historical peace time function for service in time of emergency at home or abroad, or perhaps, to be more exact, I should say to suppress insurrection and to repel invasion.

But the main thing to remember is, we must make ourselves strong, so that those who respect only strength will tread softly when we demand in the name of Right and Justice that they cease their aggressions against small nations whose only offense is that they are helpless and weak.

In its essence, the democracy is a government of consent, of reason, of live and let live, while the basic policy of the dictatorships is built on force and fear; on the will to power, on the unenlightened virtues extolled by paganism. Should a democracy, as it may consistently do in a period of emergency, vote total power over both the military forces and the economic life of the nation to a commander-in-chief no responsible leader could be found who would direct that power against weak and peaceful neighbors, driving them from the land which they and their ancestors had cultivated for hundreds of years, depopulating the cities at the point of a bayonet and dumping millions of the terrified survivors into waste and swamp lands where they might perish at their leisure, while behind them the disciples of force

rejoice at these new acquisitions which have come to them as a result, not of efficiency, but of that philosophy which has appeared and reappeared in the pages of history from its earliest dawn. Man's inhumanity to man still makes countless millions mourn.

The proper function of government is to protect the inalienable rights and liberties of man. Our form of government is dedicated to the task of establishing justice, preserving order against both internal and external violence, and of providing liberty not only for us, but for generations yet unborn. If in truth civilization is a compact between the dead, the living, and the unborn, certainly the people at any given moment of time have only a limited right to change the possessions that come to them from the dead. The doctrine of waste is applicable, and should be used to restrain this or any other generation from destroying the art and literature of the ages, the accumulations of capital, the tangible and intangible rights and liberties that have been gained by the blood and agony of generations of men and women.

The time has come for America to shake off its self-imposed shackles, and rise to its full height. We must arm for the cause of Truth and Justice. We may not have to fight. We pray to Heaven that we will not. But if the dictators have determined, as they have proclaimed, that they lead a world revolution, and that the world is too small to hold our concept of man and his government and also theirs, we must take the only course left open to us. When Armageddon comes, let us stand ready. Those who march against us carry the banners of Fear and Hate. To them man is nothing, the State under their leadership is everything. Their left wing proclaims, "There is no God"; their right wing asserts that their leaders are gods themselves. We face them carrying the standards bequeathed by those who gave their lives that the soul of man should not perish and that the noblest attributes of his mind should be free. "Justice," "Truth," "In God We Trust," "Liberty Under Law," and "A Government of the People, by the People, for the People,"—these are the devices on our banners. Let it be our part to see to it that if that hour comes, we are worthy of them. We will let the event abide the day, confident of the result that we will crush the tyrants while we rend the chains with which they have bound their victims.

(Applause)

MR. KNAUF: Mr. President, I move you that the address just delivered be printed in our regular Bar Journal; that enough more copies of it be printed in pamphlet form so as to provide for sending it to every teacher and professor in every school, public, parochial and religious within this state, a pamphlet copy of this address, and that Mr. Simmons be made an honorary member of the Bar Association of North Dakota.

Seconded from the floor.

PRESIDENT DUFFY: You have heard the motion. I think I will ask you, in addition to voting on that, that we rise as a

testimonial of our appreciation of the speech that has been given. (Everyone stands) (Applause)

May I say to the ladies that we are delighted that you arrived just as you did.

I have just received word, before I go into the matter I am going to bring up, that another of our distinguished guests has come. I wouldn't say he has arisen. I would say he has come. Anyway, he is a very good friend I just met last week, but he and his good wife are awfully good friends of ours down in Huron, South Dakota, and made our visit down there a very great success, and I have great pleasure now in presenting him to you, and asking him to say a few words. Mr. Morgan, President of the South Dakota Bar Association. (Applause)

MR. MORGAN: Mr. President, Ladies and Gentlemen: We thought we treated Clyde pretty well down in Huron. The last thing before he left he says, "You come up to our Convention, and I'll guarantee to show you a good time." Well now, I thought that we owed him a good time after convention hours and then he promised me specifically he wouldn't call on me to make any speech or anything of that sort, so I am looking forward still to the good time after convention hours, although I am going to stay here and drink in as much as I can during the Convention. (Laughter.) And maybe I can bring back something of additional value to the boys down in South Dakota. I can say we drove through plenty of rain to get here, but seeing so many friendly faces and looking forward to today and tomorrow I feel that any effort we made will be amply repaid, and I am awfully glad to be with you and I bear you greetings from the Bar of the State of South Dakota. Thanks. (Applause.)

PRESIDENT DUFFY: I was about to say we are now to enter upon the innovation in our State Bar Convention,—the sectional meetings, which you will observe upon the program, and I am going to now call upon George Soule to give us a few additional directions with reference to the operation of these sectional meetings.

MR. SOULE: With reference to these sectional meetings, we will have to divide into three groups. You see the names of the meetings on your programs. Now in order that we may properly divide you we would like to see a showing here of hands as to how many intend to attend the meeting on Code Revision? (Showing of hands)

How many plan on attending Some Problems of Probate Law? (Showing of hands)

How many plan on attending the section on the Frazier-Lemke Bankruptcy Law? (Showing of hands)

When the President recesses those on Probate Law should gather over to the right hand side of this room, and the

men in charge of that group will then proceed. Those interested in the Frazier-Lemke Bankruptcy Law meeting should come over to this corner of the room and go out through this door and we will have someone there to show you where to go. Those interested in Code Revision should go out that door and the committee will lead you back into the jury rooms in the rear of the court room. In other words, the Probate Law will be on this side of the room, the Frazier-Lemke Act meeting, out through this door, and Code Revision out of that door. Thank you.

PRESIDENT DUFFY: It has been suggested that some of the members wanted to attend two sectional meetings, meeting at the same time. Now, we intentionally arranged it with the thought in mind that perhaps that would happen, because we wanted you to miss something so you would come back next year for another institute, feeling there was something left.

The general session will stand adjourned. We convene, I understand, for a President's reception at the Elks club. They tell me that the only purpose of a President's reception is to try to inveigle you down to the Elks temple so we can get started eating at six o'clock and get through to go out to the review at the fair grounds. So with that understanding you will know why it is a President's reception. I hope you will all be down there to be received at 5:30. We stand in recess.

FRIDAY, AUGUST 30, 1940

Morning Session

PRESIDENT DUFFY: The assembly will now be in order, and at this time we will ask the Very Reverend William T. Mulloy to pronounce the invocation.

FATHER MULLOY: Come O Holy Ghost, replenish the hearts of Thy faithful and enkindle in them the fire of Thy divine love. Send forth Thy Spirit and our hearts shall be recreated, and Thou shalt renew the face of the earth. Let us pray: O God, who by the light of the Holy Ghost has enlightened the hearts of Thy faithful, grant by the help of that same Holy Spirit that they may be all truly wise, and that they may enjoy the help of Thy holy consolations through Christ, our Lord. Amen.

PRESIDENT DUFFY: I don't know what is detaining our members this morning. There must be some breakfasts going on yet. I am now going to call on Judge Burr for the report of the Memorial committee.

JUDGE BURR: I have a rather extensive report, but I am not going to read the various obituaries. I want to read the names of the decedents and with your permission I would like to read three out of the group, those that represent some different features of life.

REPORT OF MEMORIAL COMMITTEE

Your Committee on Memorials begs leave to report:

A long year has rolled around since our last meeting, and Death has been busy in our ranks. From the young manhood of thirty-four years to the ripe old age of eighty-six years, men have been selected to appear before the last Tribunal to answer for the deeds done according to the flesh. Men of varying schools of thought, professing somewhat differing faiths, representing different types of educational systems, springing from separate racial stock, coming from dissimilar schools of inherited tendencies; and yet, all men, all Americans, are representing the best traditions of the profession.

If we could detach ourselves from the sentiments which are generated by the thought of the death of these men, we would find a survey of their lives to be a most interesting, even fascinating, story. All similar, yet dissimilar; common traditions and principles; individual applications; a strange mixture of the nobility of life and the frailty of human nature.

We, your committee, realize that members of the Bar are charged popularly with lack of sentiment at times; with taking a cold, matter-of-fact, so-called practical view of facts; and being accustomed to weigh and judge motives. To some extent this is true; but this characteristic prevents us from being led astray by sentimentality, and yet enables us to weigh more accurately the motives and words and acts of our associates. So we find, reversing the decision of the immortal bard, the good that men do lives after them; the wrong is oft interred with their bones. As time passes and we get a better perspective, we realize our own frailties; charity, deep affection, and profound respect are generated, and the fine qualities of the departed are the things which loom large in our vision.

We have searched diligently for all records which could be obtained showing those who were called hence since our last meeting; and our list consists of

H. H. MCCULLOCH
GEORGE F. DULLAM
D. J. MCLENNAN
J. A. MCKEE
HENRY W. PHELPS
JAMES T. MCCULLOCH
WESLEY E. MATTHAEI
WILL H. CARLETON
HENRY LEUM
THOMAS F. McDONALD
NELS O. DOLVE

arranged in the order in which they were called Home. These men were were living in this state at the time of death. In addition, we have furnished a sketch of two young men who were born and reared in North Dakota, and who practiced in this state until a

short time before their death—John Kenneth McDonald, who died in California; and Cecil John Lynch, who died in Michigan.

Through some strange oversight, we omitted from the list of last year a grand old man who was endeared to all those who practiced in this state, and particularly in his relationship to the federal courts—Mr. J. A. Montgomery. In this report we have included a sketch of Mr. Montgomery.

Just as the report was being filed, word came of the death of Hon. Otto E. Sauter, first judge of the old Seventh Judicial District, and predecessor of Judge Kneeshaw, who died in Redwood City, California. If time permits, a supplemental report will be made.

In this report we begin with Mr. Cecil John Lynch, who died on September 15, 1939.

Thus closed the earthly career of these Brethren, so far as our official record in the Bar Association is concerned. The physical form passes, but memory remains, becoming sweeter and dearer as the years go by. We get a better perspective of the men with whom we fought, with whom we associated, with whom we had our controversies. They were our friends; and because of this, our lives are richer. Will you rise and stand silently while we thus salute the dead

“Then brim the goblet and quaff the toast
To a friend or two,
For glad the man who can always boast
Of a friend or two;
The fairest light is a friendly face,
The blithest tread is a friendly pace,
And Heaven will be a better place
For a friend or two.”

(See Memorials following proceedings)

RESOLUTIONS

BE IT HERE AND NOW RESOLVED, That in the death of the honored members of our profession, not only those who were at their decease residents of Dakota but those as well who had moved from our midst and are remembered former practitioners amongst us, we have lost friends and brothers, and we desire hereby to express our deep appreciation of our regard for them and the services rendered by them not only to North Dakota but to those states to which some had removed; and we express our profound sympathy for the members of their families and their loved ones from whom they are separated;

BE IT FURTHER RESOLVED, That a copy of these biographies and these resolutions be sent to the families of the deceased members, and that the originals be filed with the secretary of

the Bar Association, to become permanent records of our association.

A. G. BURR,
S. D. ADAMS,
ALOYS WARTNER, JR.,
JOHN MOSES,
Committee on Memorials.

(Audience stands)

Mr. President, I move this report be received and filed as a memorial and be made a part of the records of this meeting and that copies be mailed to representatives of the families of each of the deceased lawyers.

MR. WARTNER: I second the motion.

PRESIDENT DUFFY: All in favor of the motion will say Aye. Carried.

We will now have the report of the Executive Committee.

(Report of Executive Committee read by Secretary McBride)

REPORT OF EXECUTIVE COMMITTEE

During the past year the Executive Committee held only three meetings, transacting other necessary business by mail, thus carrying out their policy that holding down the number of meetings held down the expense.

The first meeting was held at Jamestown following the annual meeting, and thus was no additional expense. Routine business was transacted, and the date of the next meeting was set far enough in advance to give the President an opportunity to consider the regular committee appointments, and also the larger task of recommending the chairmen, sub-chairmen, and committee personnel to assist the Code Commission in their work.

The second meeting was held at Bismarck, at which time President Duffy submitted his committee appointments for approval, and the full list of these appointments is contained in the appendix of the annual number. The yearly budget was set up and adopted, as follows:

Bar Briefs—Monthly	\$ 400.00
Bar Briefs—Annual	400.00
Executive Committee Expense	300.00
President's Expenses	200.00
Annual Meeting	300.00
Printing and Postage	150.00
Bar Board Referendum	50.00
Secretary-Treas.-Editor	1,200.00
Ethics and Internal Affairs	200.00
Code Revision	1,500.00
Miscellaneous Expense	300.00
Legislative Expense	25.00
Americanization and Citizenship	25.00
Total	<u>\$5,050.00</u>

This budget, with the Code Revision appropriation deducted, shows the amount of the regular budget, as the Code Revision appropriation is not a part of the regular budget and is taken care of outside of our regular annual income.

Action expanding Bar Briefs for six issues from four pages to eight pages was taken following the resolution adopted at the annual meeting. And in connection therewith the Secretary was authorized to secure bids for the publication thereof, and to accept the one which he considered the lowest and to the best interest of the association. This resulted, as nearly as your Secretary can estimate, in a saving of about \$60.00 over the preceding year, considering the amount of matter published. The net increase in the cost of publication for the year being only \$85.25. Perhaps the most important business transacted at that time, was the appointment of the committees to assist the Code Commission when and if called upon to do so. There were seventy-eight main and sub-committees appointed, consisting of over two hundred members; these committees are working and acting in co-operation with the Code Commission at this time.

A resolution was passed at this meeting indorsing the Logan Senate Bill, which provided for an appeal and regular trial before our courts of appeals from the decisions of Administrative bodies and departments, and I am sorry to report that thus far, this very meritorious measure has been stifled in the Judiciary Committee of the U. S. Senate.

Bar Briefs, this past year, in addition to carrying the President's page, has published the syllabii of all decisions of our Supreme Court, and in seven issues, four pages of case notes from the University of North Dakota Law College.

Most of the District Bar Association meetings this year were attended either by your President or Secretary, and we are glad to report good attendance, a fine spirit and good programs.

The Secretary was instructed by the committee to summarize parts of the annual proceedings in the annual number of Bar Briefs, and while the result was generally satisfactory there were some exceptions.

After discussion and consideration the committee decided to accept the invitation of the Cass County Bar Association to hold the annual meeting of 1940 at Fargo, the date for it to be set later.

After some discussion it was decided to have your Secretary act in assistance to the Committee on Ethics and Internal Affairs in taking care of complaints against members, with the result that twelve complaints have been fully settled, five are in the process of settlement and little or no progress has been made on two. This shows that members have been willing, in most cases, to make satisfactory adjustments.

August 28th, 1940.

The final meeting of the year was held last evening here in Fargo, at which time the report and accounts of the Secretary-

Treasurer were read and approved, subject to the report of the auditing committee, and the auditing committee found such accounts to be true and correct.

Committee on discussion of the fee schedule decided to leave it unchanged. The Secretary was authorized to prepare and publish with the annual number of Bar Briefs, an index covering all numbers appearing each year.

Requests to appear on the program on the annual meeting were not granted because the program has been completed, and would have to operate on a fast schedule to conclude it in the time allotted. Other routine business concluded the session.

Signed,

M. L. MCBRIDE, Secretary.

MR. MCBRIDE: I will follow that with the financial statement.

SECRETARY-TREASURER'S FINANCIAL STATEMENT
FOR THE FISCAL YEAR

FROM JULY 1, 1939, TO JUNE 30, 1940.

Balance Last Annual Meeting	\$3,055.86	
Balance 1938-1939 Account	313.35	
	<hr/>	
Balance for New Administration	\$2,742.51	
Cash on Hand July 1st, 1939	\$3,055.86	
Received From Last Annual Meeting,		
Refund	46.36	
Received From 1939 Dues State Bar Board	337.00	
Received From State Bar Board Dues 1940	3,269.50	
	<hr/>	
Total Amount Received During Year.....	\$3,652.86	
Cash on Hand July 1st, 1939	3,055.86	
	<hr/>	
Total Amount	\$6,708.72	\$6,708.72

Expenditures

		Budget
Balance 1938-1939 Account.....	\$ 313.35	
Bar Briefs—Annual Number.....	349.63	\$ 400.00
Bar Briefs—Monthly	325.17	400.00
Executive Committee Meetings....	289.28	300.00
President's Expense	119.25	200.00
Printing and Postage	151.75	150.00
Secretary-Treasurer-Editor	1,200.00	1,200.00
Miscellaneous	289.46	300.00
Annual Meeting	14.38	300.00
Code Revision	432.06	1,500.00
Ethics and Internal Affairs.....	186.85	200.00
Bar Board Referendum	none	50.00

BAR BRIEFS

Legislative Committee	none	25.00	
Citizenship Committee	none	25.00	
Total Expenditure	\$3,671.18	\$5,050.00	\$3,671.18
Balance on Hand June 30th 1940			\$3.037.54

Fargo, N. Dak.
August 28, 1940.

We the undersigned, the Auditing Committee appointed to audit the account of the Secretary-Treasurer do hereby report that we find the accounts true and correct and do hereby approve the same.

HUGO P. REMINGTON, Chairman.
EVERETT E. PALMER.
B. F. WHIPPLE.

Mr. President, I move that these reports be accepted and filed and published in the annual number.

MR. WARTNER: I second the motion.

PRESIDENT DUFFY: You have heard the motion. Any discussion? If not, all in favor of the motion will say aye. Contrary the same. Carried.

Just before we recess for the sectional meeting, I want to say that we have another distinguished visitor here of whom I am particularly proud. Because it was due to his associations with me that he became such a great lawyer and moved to Duluth in order to give greater expanse to his abilities. Andy Wheeler will you stand up? I know he won't make a speech. (Applause)

We will now be in recess for the sectional meetings until one thirty this afternoon.

AUGUST 31, 1940

Afternoon Session

PRESIDENT DUFFY: The assembly will be in order.

We have here the report of the Committee on Public Utilities, of which Charlie Murphy is chairman, the report of the American Law Institute Committee, of which Charlie Vogel is chairman, and the report of the State Bar Board, of which C. L. Young is chairman. Mr. Young, I believe, is here, but his report is principally a financial statement. The other two chairmen are not here. These reports will be made a part of the record and published in any event, and it occurs to me that perhaps the assembly may prefer to make a motion that they be made a part of the files without being read rather than having them read by the Secretary.

MR. C. L. YOUNG: Mr. President, I make a motion to that effect.

MR. WARTNER: I second the motion.

PRESIDENT DUFFY: You have heard the motion. All in favor of that motion will signify by saying aye. Opposed? Carried.

REPORT OF COMMITTEE ON PUBLIC UTILITIES

This is a special committee. Since the writer has been chairman we have tried to find something to do that might be of interest to the lawyers of North Dakota. The results have been nil. The active member of the Code Commission advises that he expects to submit the results of his labors on Public Utility Laws to our committee for suggestions and if he does we may be able to do something to justify our existence.

The subject of Public Utilities will likely be on the agenda of politicians during the "open season" just ahead of us. We will undoubtedly learn about many of the vices as well as the virtues of men who have been prominent in this field of business. There will be "smearing" and "white-washing" by chattering cheap politicians. This phase is of course political but it may not be amiss to sound a warning, even to members of the so-called learned profession, to beware of misrepresentation and propaganda put forth by unscrupulous men who desire either to stay in office or get into office. Many of this ilk do not know what patriotism means. They are thinking of a payroll and the plaudits of the mob. We must not believe all we see in the paper or hear over that modern instrument of torture—the radio.

Speaking generally the situation of railroads, power companies, and other utilities nationally has changed little from their situation as outlined in the last report of this committee. The railroads are still anxiously waiting to be bailed out as was promised in campaign speeches made seven and a half long years ago. It is true both branches of Congress, after several years' debate and filibuster, passed Senate Bill 2009 providing for the reorganization and consolidation of railroads, and vesting jurisdiction in the Interstate Commerce Commission for rate-making and regulation of all competitors of the railroad in the transportation business. If enacted into law this measure would enable the railroads to eliminate a large proportion of the present duplicating and unnecessary railroad lines and facilities. Naturally this would reduce a large proportion of the present employees and would permit extensive economies in operation and elimination of expense. The representatives of the railroad Brotherhoods vigorously opposed the Bill. They were perfectly willing to have the Interstate Commerce Commission make rates for, and otherwise regulate the competitors of the railroads, but they refused to support this bill unless it had a provision that there would be no reduction of employees. The big saving through reorganization of facilities would be in saving the expense of employees. Obviously the law would be useless if the railroads were required to continue to pay men for not doing any work. This would be a wastage comparable to the boondoggling of our New Deal govern-

ment. The competitors of the railroads, especially water carriers who have been enjoying huge subsidies from the Government for years, also opposed the passage of this reorganization bill and they obtained plenty of sympathy and assistance from political supporters. Notwithstanding this opposition both houses of Congress passed this measure and a conference committee, appointed to reconcile some minor discrepancies, reported the bill for passage. It came up about a month ago in the House and the opponents were able to marshal enough votes to return the bill to conference committee for the purpose of considering the insertion of the labor saving clause. For a time it looked as though the bill might be considered dead, but a compromise was worked out by which it was agreed that employees should be protected and paid for a maximum of four years after their service was rendered unnecessary by consolidations that might be made. With this proviso the bill was again reported and passed by the House last Tuesday. It is hoped and expected that the Senate will act favorably upon the bill in a few days, and unless something unforeseen happens the President will approve the bill.

Another thing affecting carriers by railroad and truckers is that of increasing water transportation by means of government subsidies. In many cases where river channels are widened and dock and dam facilities provided, it becomes necessary to rebuild railroad bridges. Uncle Sam went madly on appropriating hundreds of millions of dollars for waterways which naturally takes away business desperately needed by these other carriers, and at the same time made no provision for rebuilding railroad bridges. A bill was introduced and passed almost unanimously requiring the government to pay this bridge cost. Why should the hard-pressed railroads get whip-sawed at every turn? If we are to have the luxury of poor waterway service which is wholly unnecessary it would be no more than just for the government to pay the expense of new bridges. The President vetoed the bill. I presume this was to prove that he believed the railroads should receive help and encouragement in their hour of distress. We all remember a certain campaign speech in which this thought was expressed. Fortunately Congress had enough courage to pass this bill over the veto which helps some.

And so the railroads are still hanging on, more than one-third of the mileage in receivership and operated under the supervision of the Courts, and most of the others in the red and undoubtedly will be in bankruptcy at no distant date.

Power companies doing business in North Dakota are not being harrassed to the point of extinction although there is a rather constant drive for reduction of rates and increase of taxes. The government has also started a program for rural electrification in some localities in North Dakota and if this continues it may result in substantial loss of profit to the power industry. This same movement has been started all over the United States, and so long as the present administration remains in power the drive will go on.

Thoughtful citizens will have to begin to pay attention to the dangers confronting the classes of private business to which reference has been made. We are apt to have a famine of taxes. Unless there is a change of policy the day is probably not far distant when there will be no income to pay taxes. Of course this would not faze the modern tax spender. He would then resort to confiscation of the capital of our citizens and keep merrily on his boondoggling course.

Respectfully submitted,

C. J. MURPHY, Chairman.

NEAL WILLIAMS.

W. H. STUTSMAN.

E. T. CONMY.

F. J. VAN OSDEL.

P. R. BANGS.

F. E. HARRIS.

REPORT OF AMERICAN LAW INSTITUTE

Your Committee on American Law Institute Reports:

The 18th annual meeting of the American Law Institute was held in Washington on May 16th. Director William Draper Lewis reviewed the accomplishments of the past year and gave an outline of the work for the immediate future. Mr. Lewis advised the approximately 700 members of the Institute that the work on the Restatement of the Law of Torts has now been completed. The Institute is working on two volumes on Real Property which will probably be completed some time during 1941. A tentative draft has been drawn on Suretyship, and some work has been done on Pledges and Liens. This task should also be completed during 1941. Professors Scott and Seavey of the Harvard Law School have been named as reporters for the Restatement of the Law of Judgments. This work has apparently just begun and a tentative draft will not be presented to the Institute before the summer of 1941.

The Youth Correction Authority Act, which has been discussed for some time, was approved by the Institute without controversy.

Professor Morgan of Harvard Law School presented to the Institute a tentative draft of a Code of Evidence. The draft advocated by Professor Morgan and his advisers received considerable criticism at the hand of Dean Wigmore. Dean Wigmore advocated a definite affirmance or repudiation of the various concrete rules of evidence as they have been adopted by the majority of the jurisdictions. The draft finally accepted by the Institute was of a more generalized character.

All in all, it appears that the Institute is making regular and noteworthy progress. The frequency with which the Restatement

is being cited by our Courts indicates that it is making a permanent place for itself.

Respectfully submitted,

Committee on American Law Institute.

CHAS. J. VOGEL.
OTTO HAAKENSTAD.
L. R. NOSTDAL.
HARRY C. LYNN.

Fargo, N. Dak.
August 28th, 1940.

REPORT OF THE STATE BAR BOARD

In accordance with a custom now well established, the State Bar Board submits the following report:

Financial Report

Balance July 1, 1939	\$3,198.29
Collections: License Fees	5,540.00
Total	\$8,738.29
Disbursements July 1, 1939, to June 30, 1940	\$4,538.81

Balance June 30, 1940	\$4,198.48
Included in the above balance is the amount due the State Bar Association for period covered by this report, vouchered but warrant not issued, 152 licenses @ \$6.50	988.00

Distribution of Disbursements

State Bar Association	\$2,618.50
Salary and Expenses of Secretary	328.95
Per Diem and Expenses of Members of State Bar Board	668.07
Attorneys Fees and Expenses in Disbarment Proceedings	315.51
Postage	58.90
Supplies	35.64
Printing	168.06
Clerical Hire to Secretary and Members of Bar Board....	320.00
Miscellaneous	7.50
Judicial Council	17.68
	\$4,538.81

During the year from July 1, 1939, to June 30, 1940, there was only one admission to the Bar. The reason for this unusual situation is that the 1939 annual examination was held prior to July 1st, and during the year ending on that date two classes of applicants were admitted.

The 1940 examination was held in July, so those who were admitted as a result of the examination, were admitted during the year which will be reported at the next annual meeting of the

association. During the year the Supreme Court, after trial in a disbarment proceeding, suspended one member of the Bar. Four complaints were referred to the Board by the Supreme Court and these are in process of investigation. One case has been pending since the last report. Final disposition of this is about to be made.

Respectfully submitted,

C. L. YOUNG.
C. J. MURPHY.
H. G. NILLES.

We will now have the report of the Committee on jurisprudence. Judge Hutchinson.

JUDGE HUTCHINSON: Mr. President and Members of the Bar:—

REPORT OF COMMITTEE ON JURISPRUDENCE AND LAW REFORM

Your committee on Jurisprudence and Law Reform makes the following report:

For several years this committee has been interested in the recodification of our statutes. The work of recodification is now in full progress. Many committees of the Bar and Judiciary have been appointed to assist, and the present meeting of the Bar will be devoted largely to the consideration of the many problems which must come before the Code Commission for decision.

Last year your committee attempted to obtain the opinions of the general public as to defects and beneficial changes in the administration of justice by submitting a questionnaire to a few representative citizens. Your committee summarized the views of the public as follows: "Law's delay, top-heavy system, cumbersome in the jury system, and apathy on the part of the general public."

We believe that all lawyers agree that the public wishes a more speedy and more economical administration of justice. Dissatisfaction on the way courts perform rather than a desire to reduce the courts' jurisdiction in favor of administrative agencies seems to be the feeling of the public generally. Unless the administration of justice is both speedy and economical, real justice is denied. It is well to remember that the judicial branch of our Government is the bulwark of our democracy. However, unless courts can dispose of issues with dispatch and efficiency the people will find other means of settling disputes.

In this work of recodification and preparation of rules of procedure, the lawyers and judges in North Dakota have a wonderful opportunity to bring together the best that experience all over our country has demonstrated. Elihu Root once said, "The standard of public service is the standard of the Bar, if the Bar is to live; the maintenance of justice to rich and poor alike, prompt, inexpensive and efficient justice."

Among the rules of procedure being considered by the committee appointed by the Supreme Court is the rule providing for a pre-trial. This pre-trial procedure is not entirely new. For many years it has been used in some form in England for the purpose of simplifying the issues before the preparation of pleadings. It has been used in our own country in such cities as Boston, Detroit, Cleveland, Dallas, Los Angeles and San Francisco. Its use is provided for in the Federal Courts under Rule 16 of the Rules of Civil Procedure. A number of states have now adopted the Federal Rules in almost their entirety. Experience thus far favors the pre-trial rule. In fact, the criticism has been negligible. Your committee is of the opinion that a pre-trial rule should be embodied in our rules of procedure. No particular form of rule is recommended. However, to be effective it should be compulsory, at least to the extent that it can be ordered by the trial court. The trial court should also have power to order a pre-trial hearing at any time after issue is joined, and to order judgment if after hearing it is found that there is no real issue for trial.

It is the opinion of your committee that the pre-trial rule properly administered is the best answer that has been found to the criticism of the courts' delay, the unbusinesslike methods of procedure, the triumphs of technicality, and the prohibitive cost of litigation. Its adoption will do much to strengthen public confidence in our courts.

Respectfully submitted,

WM. H. HUTCHINSON.
G. GRIMSON.
A. G. BURR.
A. J. GRONNA.
JAMES MORRIS.

I move that the report be received and filed.

Seconded from the floor.

PRESIDENT DUFFY: All in favor will signify by saying aye. Contrary the same. Carried.

MR. KNAUF: Your committee on resolutions reports that the resolutions were drawn and signed and they are in the hands of the chairman.

PRESIDENT DUFFY: They are on the Secretary's desk.

MR. KNAUF: I move they be printed as filed.

MR. WARTNER: I second that motion.

PRESIDENT DUFFY: It has been moved and seconded that the report of the Committee on Resolutions be filed and printed as part of the proceedings.

MR. DIVET: Unless the Convention takes action on them they do not become the resolutions of the meeting.

MR. KNAUF: I made a motion that they be accepted and adopted by the assembly.

PRESIDENT DUFFY: The motion is that these resolutions which the committee has drawn up and laid upon the Secretary's desk be accepted and adopted and printed in the proceedings of the assembly. Is there any discussion of that proposition?

MR. DIVET: Mr. Chairman. I don't know anything about what is in the resolutions. For that reason and that reason alone I would vote against them. That is the only sensible thing for a man to do, if a resolution is presented and he doesn't know what it is, is to vote against it.

PRESIDENT DUFFY: I think it would be preferable to have a member of the Committee read these resolutions, so that the assembly may know what they are adopting, if Judge Knauf hasn't any serious objection.

MR. KNAUF: Layne is number two on the committee and its up to him to read the report.

MR. HANLEY: I would suggest it would be all right for the Secretary to read them.

PRESIDENT DUFFY: I think, in view of the Alphonse-Gaston act which has been put on here,—and this is the first time I have ever seen Judge Knauf when he refused to take the lead,—we will have the Secretary read them.

REPORT OF COMMITTEE ON RESOLUTIONS

Your Committee on Resolutions submits the following:

This assembly of North Dakota lawyers is most appreciative of the splendid reception they have received from the City of Fargo, for the kind words of its mayor, Hon. Fred O. Olson, and the exceptional entertainment made possible through the efforts of the Cass County Bar Association.

We also want to extend to the Honorable Lieutenant Governor Tupper of Manitoba, to the Hon. David A. Simmons, the Hon. John Thorp, and to the Presidents of the Bar Associations of the States of Montana, South Dakota and Minnesota our appreciation for their visit with us. We are especially grateful to Mr. Simmons, of Houston, Texas, for his very appropriate and entertaining address.

We further compliment the General Committee and George Soule, the Chairman thereof, on the arrangements generally, and in particular the plan of sectional assemblies. The Cass County Bar's efforts have made this the outstanding meeting of the North Dakota lawyers, since history runneth not to the contrary.

These resolutions would be amiss were we to fail in recording our appreciation of the administration of our Past President, Clyde Duffy, his untiring work, as well as the work of the Secre-

tary and various committees which he ordained, undoubtedly having much to do with bringing together here the largest attendance ever enjoyed at a Bar meeting. We offer our sincere congratulations to Mr. Duffy, Secretary McBride and his staff of officers

We also wish to extend our thanks to the Press, the Hon. Andrew Miller, Judge of the United States District Court of North Dakota, through whose courtesy we have been permitted to meet in the very beautiful and spacious Federal Court Room, to W. S. Hooper, custodian, and staff, and to all the other officials of the State and the City of Fargo, and its citizens, who have contributed so much to our enjoyment.

Dated this 30th day of August, 1940.

HALVOR L. HALVORSON, Chairman.
JOHN KNAUF.
JOHN A. LAYNE.

PRESIDENT DUFFY: It was on account of the references to the retiring president that I was so anxious to have this read to the assembly. (Laughter) I don't know whether modesty should require me to put the motion for acceptance, but since the report compliments all of the officials I presume I may as well put it as any other official. So those in favor of accepting, approving and printing those resolutions will say aye. Contrary the same. Carried.

The chairman of the Committee on Unauthorized Practice is not here, but I think we should have that report read, and I will ask the Secretary to read it.

REPORT OF COMMITTEE ON UNAUTHORIZED PRACTICE

To the North Dakota Bar Association:

Your Committee on Unauthorized Practice begs leave to submit the following:

The committee work has been carried on mostly through correspondence and no claim is made for expenses. However, the chairman is still of the opinion that the work of the association can be materially promoted if the suggestion made a year ago to set aside a certain amount each year were acted upon. There may be a time when the committee will have to spend a considerable sum in connection with this work, and when it may not be convenient to spare the funds.

During the past year there have come to the attention of your committee several forms of unlicensed practice.

1. The activities of an ex-banker who has been carrying on a collection and insurance business, has drawn contracts, deeds and wills and perhaps given legal advice from time to time. After some correspondence with this party and some of the attorneys living in that community, we are informed he had ceased activities and the case requires no further attention.

2. The case of an undertaker who advertised to have had much experience in connection with insurance matters and who offered to read and report on life insurance policies without charge. After the exchange of some letters, this party finally agreed to discontinue the "ad" as well as the services. We understand that he is keeping his promise.

3. Our attention was called to the fact that two collection agencies were still using the "Final Notice Before Suit" form in notifying debtors that they held accounts for collection. In both cases they promised to discontinue the use of the form and so far as we know, they have done so. However, we are watching their activities and if the abuse is renewed, further steps will be taken.

4. One case of an attorney who furnished a layman with legal length paper bearing the name and address of the attorney. This paper was used by the layman in preparing Summons and Complaints which were served on the spot and in some instances at least the original Summons was then sent to the attorney for signature, the Complaint being verified by the plaintiff. In the case coming to our attention the attorney denied having given his lay friend authority to make use of his name in this manner. After the attorney signed a sworn statement to that effect, the matter was brought to the attention of one of the District Judges and after a record had been made, this particular action was dismissed. The attorney then agreed to recall all of the paper bearing his name and see to it that the offense was not repeated. So far as we know this has been done.

5. The case of a party who, according to reports, was admitted to practice law in South Dakota and after being disbarred, moved to North Dakota. He never made an attempt to be admitted in this state. However, he seems to have carried on more or less of an active practice for some years. The manner in which he carried on this practice can perhaps be best explained by quoting his own words. We are omitting the names and addresses of the attorneys referred to in the communication. This is done for the reason that at the time this report is being prepared, we are waiting for confirmation of the information contained in the report. His communication insofar as it is pertinent to this matter reads as follows:

"In addition to the occupation above set forth I am agent for a number of non-resident land owners and as such have had occasion, time and again, to engage in legal work for and on behalf of these people, but at no time have seen fit to do so and whenever it has been expedient for any of them to go into court I have advised them that I was not competent to appear for them and that they would have to employ an attorney for that purpose. During the years of 1937 and 38 I have had employed Mr.—— of ——, when he went into the Attorney General's office I employed Mr.—— of —— and he has at this time four cases pending in the District Court for and on behalf of people whom I represent and it is I who has employed him as such attorney.

"Prior to Mr.——'s service I have had employed Messrs.—— of—— and Mr.—— of —— and way back in the early days I had Mr. —— of——.

"I am also at this time administrator of two estates of deceased persons in Grant County and as such I employ no attorney, no attorney appears in the case and no attorney fee is charged to the estate. As I interpret the law a person is not required to be admitted to practice law in this State to appear in a Court of Record on his own behalf and as to that question I have received counsel of reputable attorneys and am informed that my interpretation is correct."

6. A number of cases involving the activities of members of the banking fraternity in the preparation of leases, deeds, mortgages and particularly making income tax reports have been called to our attention. However, in view of the expense involved we have not deemed it advisable, or even possible, to carry on an active campaign against this class of encroachment.

7. Last but not least we have had brought to our attention a number of instances of soliciting cases under the Frazier-Lemke Act. These cases were all solicited by laymen and then turned over to the attorney. One member of the Bar wrote us that he had information of about 350 cases being filed in Fargo within the period of a few weeks, and in each case the same attorney appeared for the petitioner. These cases had been solicited by three parties and they usually collected from \$25 to \$50 per case and sometimes more. The attorney did none of the soliciting and the papers were usually prepared by the agent. However, it is generally understood that the attorney approved of the solicitation.

In another Frazier-Lemke case coming to our attention, it was reported that the petitioner had paid a total of \$50. The petitioner was operating a coal mine and insisted that he had so advised the solicitor but was assured that he was qualified to file and receive the benefits of the Frazier-Lemke Act. The proceedings were dismissed for the reason that only farmers could file under it. This complaint came through the office of a State's Attorney.

In view of our experience in the case of Murphy vs. Townley et al, we have "turned thumbs down" on all of the Frazier-Lemke cases. We believe the State Bar Board has the power to correct the abuses in connection with the Frazier-Lemke cases by proper discipline of the attorneys who permit the use of their names, and the Board should take action.

As to the complaint coming from the office of the State's Attorney, we suggested that criminal proceedings be instituted.

In conclusion, we wish to again call your attention to the fact that the major part of the unlicensed practice of law in North Dakota can be eliminated through active and aggressive action of the State Bar Board, and until the Board is willing to discipline attorneys who lend aid to the lay practitioner, there isn't much

use in spending time or the money of the association trying to stop the unlicensed practice of law in this state. About all that the members of the committee can do is to try to deal with individual cases as they develop, and this has been done.

Respectfully submitted,

CHARLES G. BANGERT, Chairman.
C. F. PETERSON.
J. A. HYLAND.

PRESIDENT DUFFY: Is there a motion in connection with this report?

MR. O'DONNELL: I move it be adopted.

MR. HENDRICKSON: I second the motion.

PRESIDENT DUFFY: You have heard the motion. Is there any discussion? If not—

MR. KNAUF: Mr. Chairman, right now in our county, and I know in La Moure County, laymen are going about soliciting and sending out letters advising farmers of what they claim to be the farmer's right, way beyond the decisions of our court, and way beyond the true status of the farmer under the Frazier-Lemke Act. In my county I know of hearings which were had when certain lawyers from Bismarck appeared in seven or eight cases during the day, at \$5.00 per hour, where the amount paid on the initiation of a case under the Frazier-Lemke Act would be anywhere from \$50.00 up to \$600.00 in a case. Now these men go out and solicit actively to give the farmer legal advice, which they could not in truth receive under the federal act nor through any decent lawyers office. That is being done not only in these two counties, but, I am told, that it is being done practically over the entire state.

Now, I don't mention that because of the fact that it deprives lawyers of business, but because of the fact that the farmers, themselves, are being "gypped," and that their money is being taken from them illegally and under misrepresentation, and it seems to me that this association should take more drastic action than we have ever taken before along that very line.

Personally I do not believe that the Frazier-Lemke Act was ever intended to be an act prepared for or to operate in behalf of a bunch of racketeers, and that is how it is being operated right now over the state of North Dakota, and I dare say in about ninety per cent of the cases that come before the conciliators of the State of North Dakota. It is that way in my county, it is that way in the counties surrounding us, and I would move, Mr. President, that it be the sense of this association that drastic measures be taken by a committee to either be continued or a new committee to be appointed on this problem.

Seconded from the floor.

MR. LASHKOWITZ: I rise to a point of information. I should like to have Judge Knauf tell us what he has in mind when he uses the expression that the committee be empowered to use drastic measures. Specifically what have you in mind?

MR. KNAUF: I just mean this, that a committee be appointed who have a little discretion, not much, but which will use what is generally known as drastic action and do it damn quick.

MR. REMINGTON: Are there two motions before the house?

PRESIDENT DUFFY: Yes, there are. I think, Judge Knauf, perhaps you are out of order with your motion at the present moment. There is a motion to accept the report.

MR. KNAUF: Just defer action on my motion until later.

MR. HANLEY: As a matter of information, does this go into our published proceedings?

PRESIDENT DUFFY: It would go into the published proceedings.

MR. HANLEY: If adopted.

MR. DIVET: I think we are a little loose in our parliamentary procedure. This report that's presented here, I think it's a good report, and it ought to be adopted. Now, if I remember my parliamentary law right, and I think I do, the receiving and filing of a report is a method of sidestepping it. The thing to do with a report is to approve and adopt it if it meets with the approval of the body. Now the motions that are being put here are all to receive and file the report, which doesn't give the sanction of the deliberative body that sits here to it at all. The motion should be to adopt and approve, and then if it is adopted, why then it becomes the voice of the convention. If it is rejected, why it's *functo deficio*, and I think when we are dealing with a report of this kind we should adopt it and then follow up with what should come after that, which may be suggested by the adoption of the report.

PRESIDENT DUFFY: As I understand it, this report only covers what the committee has done in the past. Consequently there isn't any affirmative action required on the part of this assemblage to approve the report. In other words, I do not understand this to be in the nature of a proposal that the body take any affirmative action on the matter, and the affirmative action, I take it, would come under the motion that has been suggested by Judge Knauf, but if there is a motion to amend the preceding motion, to change the words "accept and file" to approve, why I'll entertain an amendment to that effect.

MR. DIVET: The original mover can do as he wants to, but I think "receive and file" is a method of side-stepping well understood in parliamentary procedure.

PRESIDENT DUFFY: Is there anything further?

MR. HANLEY: I want to support the Chair. I think the ruling is absolutely correct. If the report is received and filed it becomes a part of our record.

Question called for from the floor.

PRESIDENT DUFFY: All in favor of the motion, signify by saying aye. Contrary the same. Carried.

Now I will present Judge Knauf's motion, that the committee on Unauthorized Practice be instructed to take drastic action. That motion has been seconded. Is there any discussion of that motion ?

MR. HIGGINS: It might be interesting to those present to know that this solicitation by laymen has been taking place, according to information we have received, to a considerable extent southwest of the river. Just a couple of days ago a new case was brought to our attention. There have been previous cases where individuals involved for one reason or another were not willing to tell their story, at least willing to appear as witnesses in the event any trouble, as the layman puts it, came out of it. But recently there was a case where the individuals involved were willing to come in and state their experience in connection with it. I thought this came before the committee of which Mr. Young is a member. I telephoned him about it and while he said he was interested he said it was a matter for this committee on unauthorized practice. I found out that Mr. Hyland was on that committee and I talked with him about it. I made arrangements to go over and talk with him. I was out of town for a time and didn't sit in on the conference that was had about it. There is a hearing to be before the conciliator on the 10th of September, and I understand there will be members of the committee and someone from our office present and that criminal prosecution is contemplated, among other methods of dealing with that question.

Incidentally it has occurred to us that there is a possibility of dealing with it under the security commission. You will remember that our security law is very broad, indeed, in its terms, and provides that service contracts, whatever that means, among others come within the requirements of that law, and must be approved by the security commission, with certain exceptions. It seems to me those contracts, if they are that, certainly constitute service contracts if they constitute no other kind and might fall in that class. I thought that should be said in fairness to the present members of the committee, who have taken cognizance of it and have made arrangements to get more information on it and plan to take action on it.

I might incidentally mention that the fees charged are from twenty-five to fifty dollars and as high as \$300.00 west of the river. In one of these reports, where bankruptcy was advised and conciliation proceedings had, the only item that was not covered by mortgages, for which there was ample security, was a \$30.00 item,—I don't remember the fee,—but the only thing that could

be wiped out was a thirty dollar indebtedness. All the rest was covered by mortgages.

PRESIDENT DUFFY: I think I should state that I have been in the past a member of this particular committee, and, therefore, I am somewhat familiar with the matter that is now under discussion. I thought that we could take drastic action against the very thing that Judge Knauf has mentioned, and that is that there was no question there was racketeering, originating several years ago, stopped for a short time while the law was supposed to be ineffective, and now resumed in its full glory.

You will recall we attempted to enjoin the head of the organization that is promoting that very thing, and the Supreme Court held that you could not get him on a contempt proceeding, and we have recently had a decision by the Supreme Court in a barber case, as I recall it, that an injunction would not lie to prevent the exercise of a profession by an unlicensed practitioner.

It has seemed to me, therefore, that we are probably prevented from taking any action by way of contempt proceedings, and prevented from taking any action by way of injunction proceedings, because I can't see any difference between practicing the barber trade without a license or practicing law without a license. The only thing that's left is criminal proceedings of some such variety as Mr. Higgins suggested, and I don't know of any drastic action that can be taken, except the action of instituting criminal proceedings against these people.

If anybody else has any other ideas of what drastic action can be taken, and whether any successful prosecution is likely in a criminal action I would be glad to hear any other discussion that there may be regarding this matter.

MR. SHARK: I happen to be familiar with a case in Minnesota that might be used as a precedent in meeting this situation. It appears from the report of the committee that this particular trouble that we are having now arises out of a group of laymen who are doing the actual soliciting, but that the attorney is doing the actual representation. Now I think that if a thorough investigation is made it will be found that this attorney is employing these solicitors or is directly associated with them. Now, the Minnesota Supreme Court, in a case with which I am familiar, held that in a situation like that it amounted to the same thing as an attorney soliciting himself. That is, to employ others to solicit or to have direct connections with those who solicit. That case is entitled In the Matter of the Disbarment of W. G. McDonald, Minnesota case, decided within the last year. This man had an organized office force and field force of laymen who went all over the country, with his central office located in Minneapolis, who solicited personal injury cases, employed them, paid them on a commission basis on a number of cases they brought in, and it seems to me it is clearly applicable to the situation, and I think that angle would bear looking into.

MR. CASEY: Mr. Chairman, I sat here and listened to the report of the committee in which they recommended drastic action be taken. Now that conveyed to me immediately the power of the Bar to disbar those attorneys that were connected with that. Now, I was wondering, Mr. President, if the disbarment proceedings that might be brought against an attorney for that particular reason wouldn't fulfill the bill properly?

PRESIDENT DUFFY: I might say that my experience with this particular set-up is that the attorney operating in the case is not the main figure, such as in the McDonald case to which Mr. Shark has referred. In other words, they have an organization of laymen under the management of the Nonpartisan League, operated entirely by laymen, that solicit the business and then they employ an attorney to go out and handle that particular bunch of cases in the different localities. That is the operative manner of handling it.

The suggestion with reference to this angle of reaching the matter has been considered by the committee and some investigation along that line has been made during the past year. As a matter of fact, the Secretary has spent considerable time trying to secure sufficient evidence to warrant action, and just as Mr. Higgins has stated, most of these people that have paid this money, those who have been victimized by this bunch haven't awakened to the fact that they are being victimized, and they won't furnish you with any evidence, because they still think these men are their friends and that has been the greatest difficulty in securing the cooperation necessary to get real information. I have thought that these people would, in a short time, wake up to the fact that they were being victimized and would cooperate with the members of this committee to secure action, either criminal, disbarment, or something appropriate. Is there anything further?

MR. HANLEY: Along that very line, in reference to the Teppo case. He is a man who is doing nothing but mining coal himself, his own business. He made the complaint to my office. I got in touch with the Secretary and he got in touch with the President. Now, Teppo says he is willing to testify and this is the plan they used. The individual, whom he didn't know, came to him and said he wasn't a lawyer, but if Teppo would give him \$50.00 that he would get a lawyer to handle the matter and put him through the Frazier-Lemke Bill and relieve him of all his debts. At that time Teppo raised the question if that didn't apply just to farmers and he said, "No, it applies to you too", and he was only a coal miner. That's the method they use. They explain they are not lawyers, but that they know all about this bill, and after they get the money they will get a competent lawyer and they will take care of it.

PRESIDENT DUFFY: Any further discussion on the motion by Judge Knauf, that the committee be instructed to use drastic methods in this matter. If not are you ready for the question?

From the floor: Question.

PRESIDENT DUFFY: All in favor of that motion will signify by saying aye. Contrary the same. Carried.

Are there any other reports, Mr. Secretary?

SECRETARY MCBRIDE: The desk is clear.

PRESIDENT DUFFY: Any other reports that any of the chairmen may have?

MR. DAY: Mr. President, the very fine manner that you have used in conducting this convention, and the gracious and cordial method that you have adopted, and particularly the beautiful language that has been employed by yourself has moved the members of this assemblage to do something that might be a lasting token of our appreciation.

Now, under the circumstances it becomes necessary for me to confess that I was appointed by yourself, as a member of a secret committee, to act during the period of your administration, to prepare, edit little speeches, little remarks that might be used by yourself during the year and during this convention, and to prepare an elaborate cross index so that any type of remark might be readily turned to. Now, knowing you would not care to accept any money or property obtained under false pretenses, your committee divided the money that was raised, but I think that it is only proper to publicly acquaint and inform you of this fact, so that you may know the wisdom of your judgment in picking the men on that committee that you did. By way of explanation, I might say that the committee did not anticipate yesterday that Mr. Morgan would come in late, hence the hesitation in regard to the remarks introducing him yesterday. The committee, however, did and does greatly appreciate the gracious manner that you did deliver the remarks in and have, as a token of that, saved out a little, and present you with this cigar that you may smoke in reading over the various remarks as they come in printing to you. (Applause.)

PRESIDENT DUFFY: I really appreciate the magnificent work that this committee of mine has performed. I was afraid that they were going to pass over this opportunity. I knew that I wouldn't get any of the money if Carroll Day was on the committee, but I was afraid I wasn't even going to get a cigar out of it. I shall certainly look forward to being able to return home, getting a very comfortable chair, and enjoying the rest of the night with a cigar like that. (Applause.)

Is there any business, new business, to come before this assembly?

MR. METZGER: I arise to say that I have been pleased with the effect of these sectional meetings that have been had at which various questions of law have been discussed. I am sorry I wasn't able to attend all of the meetings. Doctors take post-graduate courses in medicine and I have often wondered if there

are any of us who have lapsed so far that possibly a post-graduate course in law might not be of some benefit to us, and these in a small way savor of post-graduate courses in law. I feel they should be continued at future meetings of this association, and with that in mind, and in order to get the sense of the assembly on this question, I move you, Mr. Chairman, that these special discussions on law be continued at future meetings of this association.

PRESIDENT DUFFY: You have heard the motion. Is there a second?

Motion is seconded from the floor.

PRESIDENT DUFFY: You have heard that motion. Is there any discussion on it? If not all who are in favor of continuing these legal institutes or discussions, round table discussions, will signify by saying aye. Contrary, the same. It is carried.

May I say in that connection that Herb Nilles conceived the idea, I believe, with the assistance of some of the younger attorneys down here in Fargo, presented it to the Executive Committee, and we thought it was a good idea to try out this year, with the thought that this would be sort of a preliminary try-out, and next year Mr. Nilles could carry forward his idea to greater perfection. I am delighted with the success we have had this first year, and I believe with the experience we have gained this year with Herb Nilles and George Soule leading the way that these institutes will become a very vital and valuable feature of our conventions. ◊

Is there any other business to come before the assembly?

MR. FOSTER: While here I have been very much impressed, as I think all lawyers have, with the way in which this Fargo convention has been handled, and being more or less practical minded have made inquiries what it cost the boys in Fargo to do this. The information I get is that these lawyers in Fargo and Fargo residents among themselves raised some \$600.00 out of their own pockets to put on this entertainment for us. The Bar Association, I believe, contributes about \$300.00. Now, the smaller towns, smaller cities like Bismarck, Minot, Grand Forks, don't have so many members of the Bar to distribute this between, consequently our convention meetings of the State Bar Association fall somewhat flat. I don't like to see the Bar in Fargo penalized by having to pay all that money. They have done it now so they won't get that back, but it occurs to me, and I have discussed it with some other members, perhaps a charge should be made at the time of registration, of the sum of, say, \$3.00 for the members registering, in order to help the local Bar pay the expenses of the convention if it is held in their city. Now there are only a few cities, as you know, that are large enough to hold the convention. The lawyers from the small places aren't burdened with any of the work of getting it ready, and the lawyers in some places like Mandan, Dickinson and Williston, with quite a large

Bar, are not burdened with it, not but that we are glad to have them come but I believe the Bar of this state would be willing to help the Bar in the city where the convention is held to defray expenses.

I move you, Mr. President, in the future a registration fee of \$3.00 be paid by every member registering, the registration fee to include the cost of the banquet ticket, and that there be no additional fee if he brings his wife along.

PRESIDENT DUFFY: Is there a second to that motion?

MR. HERIGSTAD: In spite of the fact that he refers to Minot as one of the smallest cities in North Dakota, I will second the motion.

PRESIDENT DUFFY: Is there any discussion of that motion?

MR. BURTNESS: I think I am somewhat in sympathy with the view that prompted this particular motion to be made, yet I think there are two sides to the question. I might say that we are perfectly willing in Grand Forks to be lined up with Bismarck, Minot and other small towns, but nevertheless a few of the boys up there, talking matters over, would be perfectly willing to invite the Bar Association to meet in Grand Forks next year. Of course, it would be nice for us if that invitation should be later accepted by the Executive Committee, to which it will be officially delivered, to have this help, and it would come at a very appropriate time if the meeting might be held in one of the suburbs of Fargo rather than in Imperial Cass, and yet I am not wholly convinced that the expense of the local Bar in entertaining the convention amount to more than the expenses of the man who travels a hundred and seventy-five, two hundred seventy-five or more miles to attend.

Of course, lots of them don't attend. Lots of the members of the Bar in the entertaining city don't attend the meetings, that is true. I think there are two sides to it. I think it is a matter which deserves some thought and consideration rather than to be passed on all of a sudden, and if the Chair would entertain the motion I would be disposed to move that the question submitted in the motion be referred to the Executive Committee for consideration.

MR. WARTNER: I second the substitute motion.

PRESIDENT DUFFY: We now have a substitute,—no it isn't a substitute. It is a motion to refer the previous motion to the Executive Committee. Is there any discussion with reference to that motion?

MR. DAY: I just want to call the assembly's attention to the fact that \$3.00 would amount to approximately half of the gross income of some of the attorneys in the state.

MR. OWEN: Mr. President. It occurred to me that out in the northwestern section of the state that we would be willing to

pay three or four dollars apiece to get this Fargo and Grand Forks bunch out our way, so our business men could look them over. Like George Shafer says, "Probably take them in." I don't believe there is any necessity of any member who comes to enjoy and have a post-graduate course should pay \$3.00.

Now, as an example, we come down here from Williston, five or six or seven of us, and I am glad to say one of the boys rides on a pass on the railroad. Another one is a member of the Executive Committee, and another one is a horse trader and comes down to the Fair to buy horses in Fargo, or at least look them over, and I am the only one who paid my fare. It cost me approximately \$25.00 to come down to Fargo. The first thing they do, they ask me to pay a dollar to eat over at the Elks Club, where I can get a free lunch any time I want it. But, seriously, I don't think it is fair to assess members of the association for the privilege of entertainment. I believe it is legitimate expense to put on a program, and the work of the officers and the committees, for the benefit of the lawyers, but if the Bars of the cities in various parts of the state see fit to entertain us when we get there, it seems to me that is up to them. As I say, magnificent as the Bar is in Fargo to look at, and attentive as they are to business, and as careful as they are to make us pay when we send them some business to look after for us, if they assess themselves \$15.00 apiece to bring a bunch of girls up here from the State Fair, it seems to me that is very fine of them, we are glad to take in the show.

But out our way, and I am sure the little towns of Minot and Bismarck, would be glad, the business men, the commercial clubs, if we can't entertain, they would be glad to do it. So I am rather opposed to the idea of this association voluntarily imposing servitude on lawyers. We have enough of that already through the many sources we have today, and as my friend over here suggested, about half of our income is three dollars, so I would rather see the Executive Committee forget about it.

MR. WARTNER: I don't like to become technical, but we come here to Fargo or any other city that invites the Bar Association to meet, and we have the privilege, up to now at least, of either buying or not buying these banquet tickets.

Did anybody say I had to, because I registered, buy a banquet ticket when I came here, though I did buy one and I am glad I did because the entertainment alone was worth it, to say nothing about the good meal we had. But I know of nothing in our by-laws or in our constitution which provides for any legal assessment that might be made of that kind. Consequently it seems to me unless we amend our constitution and our by-laws we have no right to make any assessment of that kind, or prescribe any rules of assessment of that kind under our proceedings, so while we do pay for these banquet tickets that is a matter for the city that gives the invitation to do as they like, whether they charge a dollar or \$2.00 for a banquet ticket, or \$3.00, that is up

to them, and it is up to each individual lawyer that comes here to either buy or not buy, so I am with Mr. Owen in figuring that I am against that procedure.

JUDGE KNEESHAW: I heard Mr. Owen talk. It seems to me we are taking up a lot of time on this matter. If I am a judge of anything I believe a substitute motion is made for the purpose of killing the original motion. I believe that was the purpose of this substitute motion. If not I move that both of these motions be placed upon the table, save a lot of work and talk.

Seconded from the floor.

PRESIDENT DUFFY: You have heard the motion, that both motions be laid upon the table.

From the Floor: Question.

PRESIDENT DUFFY: All in favor of Judge Kneeshaw's motion will say aye. Contrary the same. I would say that all the motions are now on the table.

Is there any more business?

MR. SGUTT: I don't know whether the motion which I am about to make is exactly in order or proper at this time, but it so happens that I have just visited at the bedside of one of the older members of the Bar who is seriously ill. This man, I think, has attended most of the conventions, he's always been an ardent worker in the State Bar and in our local Fargo Bar. He was a member of the committee that was responsible and did much of the work to bring about the splendid banquet we had last night. That is Ambrose C. Lacy, and I would like to move, if it is in order at this time, that the Secretary send him a letter properly expressing our regret that he could not attend the meeting, and wishing him a speedy recovery. I know that it would please him considerably, and I make that motion.

MR. BRICKNER: I desire to have the privilege of seconding that motion.

PRESIDENT DUFFY: I can assure you the motion is very much in order, and all in favor of the motion will signify by saying aye. Contrary the same. Carried, and the Secretary is so instructed.

MR. METZGER: Mr. Chairman: Along the same line of thought I read in the Fargo Forum that a member of the State Bar and Clerk of the Supreme Court, J. H. Newton, was injured in an automobile accident on his way to this meeting, and if that be so I move, Mr. Chairman, that the same type of letter be sent Mr. Newton.

Motion seconded from the floor.

PRESIDENT DUFFY: All in favor say aye. Contrary the same. The Secretary is so instructed.

Is there any other business to come before the meeting? If not, I am going to call on George Soule to distribute the law books. Mr. Soule.

MR. SOULE: We have a very good committee on those, Mart Vogel and Chester Serkland. They have a system here by which they are going to distribute these books.

MR. SERKLAND: Gentlemen: It is our pleasure at this time, through the industry of our General Committee Chairman, George Soule, and through the courtesy of various law book companies to present several gifts. With the exception of this first item all are books. The first item is a cigar lighter and that is presented with the compliments of the Lawyers Cooperative Publishing Company of Rochester, N. Y., to the oldest lawyer present here today. I want to make a statement now, that these prizes can be given only to those who are present here, and not to anyone registered and not present. We had hoped from the registration cards to be able to determine who the oldest lawyer was, or who the oldest lawyer present is today at this meeting, but unfortunately that information was not complete enough, so we will have just to have a little process of elimination at this time. I notice that Col. Hildreth is here and Mr. Gray. I believe Judge Kneeshaw has left.

DELEGATE: Oldest in point of practice or years?

MR. SERKLAND: Point of years.

I guess there is no competition. (Colonel Hildreth was the only one who stood up.) It is with pleasure that we present this to Colonel Hildreth of Fargo, the oldest practicing lawyer.

(Awarding of books)

PRESIDENT DUFFY: I think I should give the Committee on Books some instructions. When you come to engross or engrave or print the name of Mildred Burns on the book she just won I would suggest you consult with Vernon Johnson with reference to the correct spelling of the name. (Laughter and applause.)

MR. OWENS: I would like to ask a question for information, about the lawyer who came the farthest, whether that is by rail or by road. Palmer is in dispute. He is much closer to Fargo by road than by railroad, about seven blocks.

MR. SOULE: I think we will have to refer that to Judge Gronna who is familiar with Williston.

PRESIDENT DUFFY: I believe we have now reached the state for the election of your new president, and I will now entertain nominations for that office.

MR. CHARLES POLLOCK: Mr. President, many believe the nomination of a president is more or less of a perfunctory matter, because we really elect our President when we elect our Vice President, because he always succeeds to that office. However, I do not feel that it is perfunctory in any sense of the word. It is something that is very important and necessary and must confirm the president elect in his idea of our estimation of him.

It was my privilege a year ago at this assemblage,—and by the way I understand this is an assemblage if you want to use the district court rooms, not a convention,—I had the privilege of placing in nomination for Vice President a fellow townsman and friend of mine. What I said about him last year is doubly true this year. He is a man whom we all respect, all like to be called his friend. There is no question about his ability of leadership in the Bar, and so, Mr. President, I have the happy privilege at this time of placing before this assemblage in nomination my good friend, Honorable H. G. Nilles of Fargo, North Dakota. (Applause.)

MR. HERIGSTAD: On behalf of the Ward County Bar, I take great pleasure in seconding that nomination.

PRESIDENT DUFFY: Any other nominations?

MR. POLLOCK: Mr. President: There appearing to be no further nominations, may I move that the usual rules be suspended and that the Secretary of this association be instructed to cast a unanimous ballot for Herbert G. Nilles for President for the ensuing year.

Motion seconded from the floor.

PRESIDENT DUFFY: All in favor of that motion will signify by saying aye. Contrary the same. The Secretary is so instructed. (Applause.)

SECRETARY MCBRIDE: Mr. President: I take great pleasure in casting the unanimous vote of this meeting for Honorable H. G. Nilles for President.

PRESIDENT DUFFY: Now I don't know whether he became honorable when he was nominated or when he was elected President of this assemblage. In any event we will ask Herb, without the honorable, to come forward and say a few words by way of his inaugural. Herb. (Applause.)

MR. NILLES: Mr. President, Ladies and Gentlemen: I want to say to all of you that I thank you very much. I appreciate the honor. I feel the responsibility. What I said last year to the young folks still goes. I feel a greater responsibility this year, because it seems that standard which has been set by the activity of this assembly has been so high that succeeding administrations will certainly have their hands full in keeping up, and so in order that we may keep up the work so well started here by President Duffy and other members and officers of the association I am going to ask you to help me keep the thing going, because I can't do it alone. I've got to have the cooperation of every member of the Bar Association, and so I thank you. This is not my meeting. I will I assume, take office when this is closed, and will go right to work. Thank you very much. (Applause.)

PRESIDENT DUFFY: By the way, before we proceed with the election of a Vice President I am going to ask another gentleman to stand up here. We have a past president of this association

who has also wandered into the sister state of Minnesota. I am going to ask John Lewis to stand up before us again. (Applause.)

We come now to the election of a vice President, and the Chair will entertain nominations for that position.

MR. BURTNESS: Mr. Chairman, and fellow members of the Bar: Aside from the usual desire to come to these meetings to meet all the members in a social way, I came down this morning feeling there were two things which further attracted me. One was due to the fact that my partner, Harold Shaft, who was here yesterday, got me out of bed about five o'clock this morning and told me over the telephone this was the largest gathering the association had ever had, so, of course, naturally I wanted to see the large attendance, for I love a crowd, to say nothing of seeing the sights of the metropolis of the State of North Dakota.

We all enjoy sights and we all enjoy crowds, perhaps almost as much as a distinguished gentleman from this city who went to New York some months ago and met a former North Dakotan down there and he wanted to know where he could see the largest possible crowds. The two men were standing in Times Square and the friend said, "If you will come back here in two hours you will see one of the biggest crowds you ever saw for Lady Godiva is coming through here".

"Who and what is Lady Godiva?", the North Dakotan inquired.

The friend replied, "Why she is a beautiful woman who is going through here riding a beautiful white horse, in the nude".

The gentleman said, "Well, I sure am coming back in a couple of hours. You know, I haven't seen a white horse for ten years." (Laughter.) I haven't seen crowds like this recently.

Now, another reason I wanted to come was (I didn't expect to make the nomination) at least by my vote to try to repay a grudge of almost thirty-five years standing. Some of my classmates here like J. K. Murray, Judge Hutchinson, Don Cashel, Fred Graham and others may surmise what I mean; for in the Law School of North Dakota there was at that time one, I don't know what to call him, who taught real property and that fellow compelled us to keep note books, lengthy note books, and he was an expert on penmanship, apparently, for he seemed to be able to recognize the handwriting of every member of the class, and about every two or three weeks he demanded those note books be turned in and he took them home at night and he worked over them until four o'clock the next morning, and handed them back with more or less peculiar tracings and marks scattered here and there throughout the pages which we had so laboriously written.

Well, none of us liked him for this, and I, perhaps, least of all. But, nevertheless, when the time for examinations came along it did look as though he had given us a lot of help in getting through the Bar examinations in that subject, still the grudge some of us harbored did not entirely vanish.

I know you are all now familiar with the man I have in mind whom I believe can serve this association very well as Vice President, and I entertain the hope that he may eventually serve you as President of this association.

In all seriousness I don't know of any member of this association who down through the last two or three decades has carried much more wood or water for the association than has Harry A. Bronson. I don't know of anyone who has attended more sessions of the association than he, at least he is among the very top. I don't know of anyone more willing to serve the best interests of the Bar in any capacity, high or low, than is he. I believe most of the members of the Bar of this state also recognize the fact he has perhaps attended more meetings of the American Bar Association than any lawyer in North Dakota. He has, in fact, attended thirty-two of such meetings, and this year attends his thirty-third consecutive meeting, having attended continuously each year since 1908.

He never takes a vacation, as we usually think of vacations. He goes to the American Bar meeting and that's his vacation, and he is also active in the work of that association, so active that a year ago his name was proposed as a member of the Board of Governors of the association, to represent the Eighth Judicial Circuit of the United States. He didn't get a majority vote, it is true, so he is not now a member of such Board but all of you know a dozen men or so, including that Board, practically run the American Bar Association. Undoubtedly his name will come up again for the same position this coming year. North Dakota has never had a member upon that Board.

It strikes me that if Harry Bronson goes down to wherever the American Bar Association meets a year hence, with the prestige of having served as Vice President of this association, and then being president-elect of this association, that will help, not particularly Harry Bronson alone, but it will help to secure recognition for the Bar of North Dakota in the American Bar Association.

Now, seriously, if there are any of you here who don't want to be called upon to work, I don't think you want to vote for him. He is more or less of a slave driver, and he is a good executive, for he can secure cooperation from others; somehow or another he has the secret of securing aid and complete cooperation from people he asks to do the required work. I feel that if you elect him today as Vice President, then with the training period he will have under our good friend, Herb Nilles, you will be happy to elect him as President two years hence, and he will be a worthy successor to such splendid men as Duffy and Nilles and Wartner and Hildreth and Palda and Young and the many other distinguished lawyers of this state who have held this high office. In placing Judge Bronson, former Judge of the Supreme Court of this state, in nomination, I commend his candidacy to you. (Applause.)

PRESIDENT DUFFY: Mr. Hildreth.

MR. HILDRETH: I was a member of the General Council of the American Bar Association for a number of years, and I was succeeded in office by Mr. Bronson. I speak knowingly with respect to the work he has done in the American Bar Association. His activity and general knowledge alone is valuable. I wish all the members would join the American Bar Association. It is a great institution and I absolutely am confident that in time Brother Bronson will succeed to the Presidency of the American Bar Association, and, therefore, in the few remarks I have made here I want to second with all my heart his nomination. (Applause.)

MR. OWENS: Mr. President: A few years ago, to be more specific, in 1898 and 1900, there was a young fellow down at the University of Minnesota Law Campus continuously carrying around a book, gradually adding to it some notes. In those days we had the old envelope filing system, which afterward was improved by Sneed. The University of Minnesota, a year after I left, gave this young fellow a Certificate of Admission to the Bar of Minnesota. The field didn't seem fertile enough down there so we of Minnesota sent him up here to North Dakota. He became a member of the faculty of our worthy law school. To him devolved the duty of making governors, judges, chief justices, so that this morning I was happy to sit in our Minnesota Assembly and have with us as guests Governor Moses, Chief Justice Nuesle, and I saw Ex-Governor Shafer nosing around to see who was there, and it occurred to me that all of these fellows came from the North Dakota University, and this young fellow who carried a book around, and still does, came from that University. His name is Harry A. Bronson, and it gives me great pleasure, being a fellow alumni of Brother Harry A. Bronson, to lend my aid in his election as Vice President of our association.

I have great confidence in his ability. I know his work. I know what he has done for the lawyers of North Dakota in his efforts as an educator, practitioner and one of our former judges of the Supreme Court, so I would like to second the motion. So I had two objects in coming here today,—once in my life to agree with my friend Burtness, and, second, I want to see my friend, Harry Bronson, Vice President. (Applause.)

FROM THE FLOOR: I move that nominations be closed and the Secretary be instructed to cast the unanimous vote for Harry A. Bronson for Vice President.

Motion seconded from the floor.

PRESIDENT DUFFY: You have heard the motion. All in favor of the motion will signify by saying aye. Contrary the same. The ayes have it. The Secretary will proceed to cast the ballot.

SECRETARY MCBRIDE: I take great pleasure in casting the unanimous ballot of this association for Honorable Harry A. Bronson for Vice President of this association. (Applause.)

PRESIDENT DUFFY: Judge Bronson, will you come forward and look at the assemblage?

JUDGE BRONSON: Mr. President, Friends of the Bar:—I am very deeply appreciative of the splendid words that have been said today. Of course, in nominations we expect bold statements. But this being the thirty-sixth year of my being a member of the North Dakota Bar Association, and being the thirty-fourth year of my membership in the American Bar Association, and having been privileged in so many ways by what North Dakota has done for the young fellow who has come within the state, come here as a boy of sixteen years of age, being accorded the privilege of an education at the University of North Dakota, and having the opportunity to go down to the University of Minnesota, and with Bill Owens and some of the others working our way through school, coming back into North Dakota and receiving by the hands of the people over quite a number of years a very confidential position, having somewhat considerable contacts in the American Bar Association, and having seen at the University, our law school, the greatest thing of all, boys that have graduated from there go on the Bench and to making in the records of our judiciary a splendid showing in legal opinions that are received outside of the boundaries of this state, and seeing them, those alumni like John Moses sitting in front of me, George Shafer over there, those who were law students of mine, and of whom I have been proud, seeing Clyde Duffy there occupying the presidential chair, another law student of mine in the days that were, and Herb Nilles, and seeing and observing the splendid manner in which Clyde Duffy has conducted the affairs of this Association during these two days, no one can help but be proud, no one can help but be deeply appreciative of this honor that you have conferred upon me. (Applause.)

PRESIDENT DUFFY: We have one more election to come before this Assemblage. That is the election of the Secretary-Treasurer. I will entertain nominations at this time.

MR. GRAHAM: We come to a somewhat different proposition when we come to the matter of naming a secretary. We have elected a President and Vice President but those are more or less honorary positions, if I do say it. The Secretary does the actual work at the meeting and the actual work during the year and we have a man who has been with us for the last several years, who has become very well accustomed to the work and it seems to me it would be a mistake to make a change at this time, and it gives me great pleasure to nominate M. L. McBride for Secretary of the Association.

MR. HANLEY: Coming from the section of the state where our Secretary lives, having in mind the efficiency with which he has performed the numerous duties of his office, particularly the discretion with which he has edited the Bar Briefs, and also having in mind the work that he has done for the lawyers of this

state and the Bar Association, in connection with his legislative activities at Bismarck, and particularly having in mind the fidelity with which he has kept the accounts and moneys of this association, the report on which, as a member of the Executive Committee I passed upon the other night, I am very glad, on behalf of the western part of the state, to second the nomination of Morton Lewis McBride as Secretary of the Bar Association.

MR. HALVORSON: I move you that nominations be closed and that the President be instructed to cast the unanimous vote of this assemblage for Mr. McBride for Secretary.

The motion was seconded from the floor.

PRESIDENT DUFFY: You have heard the motion. All in favor signify by saying aye. Contrary the same. Mr. Morton Lewis McBride, you are duly elected Secretary-Treasurer of this association. (Applause.)

MR. MCBRIDE: Mr. President, Members of the Association: I want to thank you for this election and to assure you that I appreciate it. It will be my constant endeavor to deserve this endorsement here today by working every way I can with your officers as I have in the past. I thank you again. (Applause.)

PRESIDENT DUFFY: We have arrived now at the close of this meeting.

MR. DIVET: May I bring up what might be called new business. About fifteen years ago a young man, a member of the Bar of this state, left the state and went to a great metropolis on the Pacific Coast. He was a young man at that time and is not very old yet, and during the years both before and since he was here he's attained considerable distinction in various ways. It is in the press last night that he has just been appointed to the Federal District Court of California. I refer to Mr. J. F. T. O'Connor. I think it would be a very nice gesture for this Bar Association to instruct the Secretary to communicate with Mr. O'Connor by telegram and express to him the felicitations of the North Dakota Bar Association, and I move that the Secretary be so instructed.

Motion seconded from the floor.

PRESIDENT DUFFY: You have heard the motion. All in favor of the motion signify by saying aye. Contrary the same. Carried.

MR. GRAHAM: I made a motion a year ago at Jamestown in regard to an appointment to Circuit Court of Appeals. Since that time there has still been no appointment made, and I am sure we have members of our association who could fill very well that position and I want to repeat the same motion I did a year ago. I, therefore, move that the officers of the Bar Association bring

to the President of the United States the suggestion that a member of the Eighth Circuit Court of Appeals be appointed from this State, for the reason that up to this time we have never had membership on the Circuit Court of Appeals.

The motion was seconded from the floor.

PRESIDENT DUFFY: You have heard the motion. Is there any discussion? If not, all in favor of that motion will signify by saying aye. Those opposed, the same. It is carried.

MR. KNAUF: Some years ago we had only a voluntary association of the Bar. Among the last Secretaries of that association was Mr. Oscar J. Seiler of Jamestown. He, too, has moved to the State of California, resident in Long Beach of that state, and we have reports now at Jamestown that he is a very ill man, spending most of the time in the hospital and, I, therefore, move you that it be the sense of this Association that the Secretary send an appropriate letter of appreciation of his past years in North Dakota and with the hope of his early recovery.

Motion seconded from the floor.

PRESIDENT DUFFY: You have heard the motion. All in favor of that motion signify by saying aye. Contrary the same. It is carried.

PRESIDENT DUFFY: The members of the Executive Committee who are now members are Hugo Remington, Charles Pollock, the newly elected President and Vice President, the old and the new Secretary-Treasurer, Everett Palmer, Judge Whipple, Thor Dahl, Judge Hanley and myself, so the members of that committee will remain here, awaiting the orders of the new President.

JUDGE KNAUF: I think that motion we used to pass is still in order again today and, therefore, I move you that this association authorize the newly elected President to appoint such additional committees as he may deem best, and that he do so under the prerogative of his office.

PRESIDENT DUFFY: You have heard the motion. All in favor of the motion say aye. Contrary the same. It is carried.

Is there anything further to come up?

MR. SOULE: May we make one announcement clear? If any of you have any tickets on your automobiles, turn them over to Clair Brickner.

PRESIDENT DUFFY: May I say, as my little swan song, that I appreciate more than I can tell you the successful assemblage that we have had here in Fargo and to express again my sincere

appreciation of all the work that George Soule and his various committees have done, and for the wonderful cooperation of all of the members of the Bar in making this really a fine convention or assembly or whatever it is. Anyway I thank you for the privilege of having been your President during the past year and we now stand adjourned until next year.

In Memoriam
