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## Bar Briefs

North Dakota State Bar Association

M. L. McBride

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# BAR BRIEFS

PUBLISHED MONTHLY AT DICKINSON

—BY—

## STATE BAR ASSOCIATION OF NORTH DAKOTA

M. L. McBride, Editor

Entered as Second Class Matter, Dec. 9, 1936, at the Postoffice at  
Dickinson, North Dakota, Under the Act of August 24, 1912.

VOL. 17.

JULY, 1941.

NO. 8.

### THE ANNUAL MEETING

The time for the annual meeting of the Bar Association is approaching. The date has been set for September 18th and 19th. The meeting will be held at Bismarck, N. D. The program has not all been arranged but a legal clinic or legal institute will be the major attraction. This will be conducted on the plan used last year. Neither the subjects or the number have been definitely determined at this time but will be in the near future and a program will be set out in full in the August number of Bar Briefs; and be assured the subjects will be of interest to all of us. Plan now to attend.

This is your Association. You are members by virtue of your membership in the profession. If you want things done you must be on hand to help do them. It is very important that the younger members of the Bar decide to become active in the Association in the early years of their professional life. The Association needs their new ideas, their high ideals and their enthusiasm and energy. They need the Association and the contact that it gives them with the older members of the Bar. I am especially anxious to see a large attendance from among the younger men. Now is the time to plan to attend. The institute will be of real service, to both young and old attorneys.

Professional work has not been lucrative. Many factors have entered into and produced this condition. Some of the factors are within our control. Let us get

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together and talk things over. Some of you may think that you cannot afford to come. You cannot afford to stay away. You need the inspiration which this meeting will give. You will go back to your work better equipped to carry on your practice. Let us see you at Bismarck.—Your Secretary.

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### LAW LISTS

This term has been used to not only cover law lists for the forwarding of commercial claims through the lists and directly by clients; but to include law directories who claim to have contacts by virtue of which other legal business is either forwarded by them or on their recommendation.

So rapidly have such law lists grown in the last twenty years that membership in those that claim to be representative would completely wreck the yearly income of the average country lawyer.

Therefore, it has become a real problem for an attorney to determine which and what lists to subscribe to. Out of the myriad he could not determine with any degree of accuracy; and has been just as liable to fall for the wiles of a persuasive solicitor as he was to select a good one by a pure guess.

To assist in solving this problem—the expense of which was far beyond the means of many state bar organizations—the American Bar Association some years ago appointed a special committee to investigate the situation and make a report and recommendations to them.

After several reports and recommendations and discussions at the annual meetings of the American Bar Association, such body decided to take the responsibility of recommending selected lists to its members which could be altered and added to on the recommendation of the committee each year.

Some years ago the plan was instituted and has been carried on with good results and while it has been of immeasurable benefit to the profession at large it still does not solve part of the problem for interested attorneys.

The American Bar Association approved list approves only the "bona fides" of the list, their honesty and fair charge for listing; and functions according to certain minimum requirements and does not tell the attorney whether they "deliver the goods" or in other words, whether the list brings business to the attorney that is desirable and remunerative.

Many attorneys have assumed because a certain list is on the approved list of the American Bar Association that it must be a good business getter. But this is a mistake for the reason given above.

However, there is a publication in the field which can aid largely in the solution of this problem: which not only classifies the approved selected lists and legal directories but also the ap-

proved commercial lists and foreign lists as well as rating unapproved lists and directories and service bureaus and associations selling listing to lawyers. This work is now in its 12th annual edition and is published by Lawyers' Confidential Guide, First National Bank Bldg., Chicago, Ill.

(Continued in August Issue)

### OUR SUPREME COURT HOLDS

In *J. L. Smith, Applt., vs. Rae Smith, Respt.*

That a motion to open up or vacate a judgment is addressed to the sound, legal discretion of the trial court.

That where a party seeks relief from a judgment upon the ground that it was obtained by fraud, it is proper to present the matter by application or motion in the original action.

That when an application is presented to vacate or open up a judgment and the court by order fixes a time for hearing the application and the issues formed by affidavits presented in resistance thereto, such an order does not come within those designated as appealable by section 7841, Comp. Laws N. D. 1913. It neither grants a new trial nor involves the merits of the action or any part thereof.

That Section 4405, Comp. Laws N. D. 1913, does not authorize the modification of a decree rendered in a divorce action where no change in conditions or circumstances of the parties since the original adjudication is alleged.

Appeal from the District Court of Ward County, Hon. G. Grimson, J.  
APPEAL DISMISSED. Opinion of the Court by Morris, J.

In *Northern Pacific Ry. Company, Pltf. and Applt., vs. State of North Dakota, et al., Defts. and Respts.*

That the Constitution of North Dakota confers upon the State Board of Equalization exclusive power to assess the property of railroads operating in the state. N. D. Const. Section 179.

That in determining the value of railroad properties under section 179, of the Constitution, the State Board of Equalization exercises powers judicial in their nature.

That in determining the value of railroad properties in this state for the purposes of taxation, the State Board of Equalization is not limited to any specific formula, rule or method, and is free to utilize and apply any and all formulas, rules or methods not forbidden by the state or Federal Constitutions.

That no appeal lies from a determination made by the State Board of Equalization under section 179, of the Constitution; any such determination within the scope of the Board's authority is final and conclusive, unless it was made fraudulently, or was made in such illegal, wrongful, arbitrary or capricious manner as to constitute, in effect, a fraud in law.

That where its jurisdiction is properly invoked, a District Court has the power to set aside a determination of the State Board of Equalization, fixing the value of properties under section 179 of the Constitution, on the ground of fraud or excess of jurisdiction; but the court has no power to review the honest judgment of the State Board of Equalization acting within the scope of its authority, and it has no power to conduct an inquiry or enjoin the collection of taxes, where relief is sought solely on the ground that the State Board of Equalization erred in its judgment in valuing the property assessed.

That over-valuation or error of judgment is not in itself a sufficient ground to authorize a District Court to interfere with, or set aside, a determination of the State Board of Equalization; there must be something that in legal effect amounts to fraud or excess of jurisdiction.

That Chapter 226, Laws 1939 does not operate to enlarge the scope of judicial review of the determinations of the State Board of Equalization, but

it affords a remedy, in the District Court of Burleigh County in the circumstances prescribed in the Act, where the determination of the State Board of Equalization has been actuated by fraud or has been made in such illegal, wrongful, arbitrary or capricious manner as to constitute, in effect, a fraud in law or an act in excess of jurisdiction.

That in assessing property under section 179 of the Constitution, the State Board of Equalization may consider and base its action in part upon investigation of its members and upon their knowledge of values derived from experience and study.

That it is presumed that the valuation of North Dakota railroad property made by the State Board of Equalization is the honest judgment of such Board, made conformable to law. That presumption is conclusive unless it is shown by clear and convincing proof that in making its determination the Board was actuated by a fraudulent purpose, or that it acted in such illegal, wrongful, arbitrary or capricious manner as to constitute a fraud in law, or an act in excess of the jurisdiction of the Board.

That for reasons stated in the opinion, it is held that the plaintiff has failed to establish a cause of action for enjoining the collection of any part of the 1939 taxes against the North Dakota railroad properties of the plaintiff. From a judgment of the District Court of Burleigh County, Hon. W. H. Hutchinson, J. Spec. plaintiff appeals. **AFFIRMED.** Opinion of the Court by Christianson, J.

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In Elmer King and Mrs. Anna King, et al., Pltfs. and Respts., vs. Berta Baker, State Auditor, et al., Defts. and Appls.

That pursuant to section 186 of the Constitution of North Dakota, (Article 53 of Amendments to the Constitution, page 497, S. L. 1939) no specific legislative appropriation is required for the payment of proper obligations incurred by the State Highway Department in the construction, reconstruction, and maintenance of public roads from funds allocated under the law to that department for highway purposes. Appeal from the District Court of Burleigh County, Harvey J. Miller, Judge. From a judgment awarding a peremptory writ of mandamus, the defendants appeal. **AFFIRMED.** Opinion of the Court by Nuessle, J.

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In John Moses, Governor, Pltf. and Petr., vs. Herman Thorson, as Secretary of State, Deft. and Respt.

That the Constitution provides that a referendum petition must be signed by not less than seven thousand electors of the state. A referendum petition signed by less than seven thousand electors is in legal effect not a referendum petition at all, and does not operate to suspend the operation of a legislative measure, or authorize the secretary of state to submit the measure for approval or rejection at an election.

That in this case it is shown that a referendum petition purporting to have been signed by seven thousand one hundred and forty-one electors was signed by not to exceed six thousand eight hundred sixty-two electors, and the decision of the Secretary of State finding such petition to be sufficient is set aside. Original proceeding to review the decision of the Secretary of State finding a referendum petition to be sufficient. Referendum petition held to be insufficient and decision of Secretary of State set aside. Opinion per Curiam.

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In The Farmers Union Oil Company of Epping, a corporation, Pltf. and Respt., vs. P. W. Kilgore, Deft. and Applt.

That injunction can not be used for the purpose of dispossessing a party, entitled to the possession of property to which he holds legal title, and giving possession of said property to another, who has no title to the same or the right of possession.

That a suit in equity for an injunction can not be used to establish title and ownership in property. Appeal from the District Court of Williams County, Hon. A. J. Gronna, Judge. **REVERSED.** Opinion of the Court by Burr, Ch. J.

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VOL. 17.

AUGUST, 1941.

NO. 9.

### ATTENDANCE URGED FOR ANNUAL MEETING

The Executive Committee and officers of the North Dakota State Bar Association urge every lawyer who can possibly spare the time to attend the annual meeting of the State Bar Association at Bismarck, N. D., on September 18th and 19th.

Good things are in store for those in attendance at the meeting. The Legal Clinic or Institute inaugurated at our last meeting will be at the forefront. Six subjects will be under discussion for which see program on inside pages.

The Red Book containing briefs on the subject will again be distributed free of charge to members present. The discussion leaders invite advance questions so send them in. These clinics will give you the last word on each subject. Let every member come and bring himself up to date.

"No system of law can remain static. It must grow and mould and adjust itself to the needs of the time, in order to meet the responsibilities with which it is charged. It is a proper function of lawyers to be in the forefront of such advances, and it is the duty of every member of the legal profession to equip himself properly to become a part of these great public movements."

SECRETARY.

## THE ANNUAL MEETING PROGRAM

The program proposed for the Annual Meeting at Bismarck on September 18th and 19th has been arranged, and omitting social and entertainment features, it is given below, but is subject to such change as may become necessary.

## General Information

Registration: Evening of September 17th — Lobby of Grand Pacific Hotel; September 18th and 19th — Third Floor of Court House Building. Ladies will register at the same desks. Be sure to obtain badges and banquet tickets when registering.

General Assemblies: Courtroom of Burleigh County Court House.  
Sectional Assemblies: In other rooms in the Court House.

All proceedings and events will commence at exactly the time scheduled.

## THURSDAY, SEPTEMBER 18

- 9:30 A. M. .... General Assembly  
 Call to Order by the President  
 Invocation ..... Rev. Chester A. Hamblin  
 Address of Welcome..... Mayor Neil Churchill  
 Response ..... H. A. Bronson, Vice President  
 Memorial Service and Presentation of Memorial  
 Resolutions of the Committee on Memorials  
 ..... Hon. A. G. Burr, Chairman  
 President's Address..... Herbert G. Nilles  
 Report on Progress of Code Revision.... Albert M. Kuhfeld  
 Committee Reports:  
 Jurisprudence and Law Reform  
 ..... Hon. W. H. Hutchinson  
 Legal Education and Admission to the Bar  
 ..... Dean Olaf H. Thormodsgaard  
 Legislative Committee ..... Geo. F. Shafer  
 American Law Institute ..... Charles J. Vogel  
 State Bar Board ..... Geo. F. Shafer  
 Uniform Laws ..... H. A. Bronson  
 Unauthorized Practice ..... Geo. F. Shafer  
 Secretary-Treasurer ..... M. L. McBride  
 Executive Committee ..... M. L. McBride, Secretary  
 Special Resolutions Committee .... Hon. W. L. Nuessle
- 12:00 Noon  
 Complimentary Luncheon at The Service Club of the  
 Grand Pacific Hotel
- 1:45 P. M. .... General Assembly  
 Presentation of Distinguished Guests  
 Address: History of the North Dakota Supreme  
 Court ..... Hon. E. J. Taylor  
 Supreme Court Reporter  
 Report of Committee on Legal Institutes  
 Chairman ..... Geo. A. Soule