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Election Year

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BAR BRIEFS

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ELECTION YEAR

This is an election year. We are to select our representatives in the state and national governments. There never was a time in our history when there was a greater need for strong, honest and fearless leadership than now. Every citizen of our land should vote, and every citizen should go to the polls well informed, so that he may be able to cast an intelligent ballot.

In a democracy like ours, we are or ought to be governed by the will of the majority of our people. The will of the people is expressed in one place only, and that is at the polls. The power of each individual citizen which guides and controls the ship of state, is expressed in the ballot box. If we are to have a government by the will of the majority, this majority must exercise the franchise.

The indifference of so many of our people to the duties and responsibilities of citizenship is appalling. In these busy times, when so many of us are engrossed in our businesses and professions, and in the progress of the war, we are prone to lose sight of important governmental affairs that should challenge our attention at all times.

Here again there is a great opportunity for the lawyers to serve their country in a constructive way. As leaders in our respective communities we can endeavor to instill in the people of our communities a greater regard for the duties and responsibilities of citizenship. Let us make all our people realize that the privilege of

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the franchise carries with it the duty to exercise it, and the duty to be well informed, to the end that they may be able to exercise it intelligently.

O. B. HERIGSTAD, President.

A BRIEF SURVEY OF COURT DECISIONS CONSTRUING THE NORTH DAKOTA BILL OF RIGHTS

By Prof. Ross C. Tisdale

(Continued from last issue)

"When §7 of the Bill of Rights was proposed in the Constitutional Convention, a member offered an amendment to the folio as introduced to permit three-fourths of the members of a jury in civil cases to return a valid verdict. In the discussion that folfowed, the late Judge Carland opposed the amendment as a fundamental departure from 'trial by jury' as known in the territory and to the common law. It thus appears that the framers of the Constitution had before them the alternative of majority verdict in civil cases and rejected the proposal. The convention did, in another respect, recognize the existing practice in the territory. In § 7, it is provided that in courts not of record, a jury may consist of less than twelve men. In chapter 49, Sess. Laws, 1862, § 61, it was provided that in civil trials before a justice of the peace a jury should consist of six men, or less, if the parties agreed. In other words, the framers of this instrument not only adopted the rule which had been recognized in the territory for over twenty-five years, but by saying when a jury might consist of less than twelve men, excluded all other cases from the exception to the rule." Johnson, J., in **Power v. Williams,** 53 N. D. 54, 62, 205 N. W. 9, 12 (1925). Judge Johnson restated the proposition in these words: "We think it must be regarded as settled law that the right to a jury trial, secured by § 7 of the Bill of Rights, is the right as it existed at common law and under the Federal Constitution in Dakota Territory and that one of the incidents thereof was the requirements of unanimity. We see no escape from the conclusion that §7 was deliberately adopted for the purpose, among others, of securing for the future, until the fundamental law should be changed, that no man should be deprived of his property, his liberty or his life, in cases where a jury trial was had in courts of record, save upon the unanimous verdict of twelve persons . . ." **Id.,** 53 N. D. 64, 205 N. W. 13. See also, **National Cash Register Co. v. Midway City Creamery Co.,** 53 N. D. 256, 205 N. W. 624 (1925).

"The title and possession of specific personal property, prior to the adoption of the Constitution, was triable to a jury and remains inviolate under § 7 of the Constitution. The right is also protected by statute, § 7609, Compiled Laws 1913 unless a jury is waived." Burke, J., in **First Nat. Bank v. Kling,** 65 N. D. 264, 273, 257 N. W. 631, 635 (1934). Hence, where plaintiff brings in a third party in mortgage foreclosure proceedings, "who claims to be the owner and entitled to possession of the property, his