



1937

Our Supreme Court Holds

North Dakota State Bar Association

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next meeting of the Legislative Assembly and report it back to the meeting. The next day the Committee reported in a bill similar to the South Dakota Act, which vests in the Supreme Court the authority to appoint a Code Commission of three persons, residents of the state and learned in the law, as its members. Its provisions are too lengthy to be published in full here, but copies will be furnished to members upon application to the Secretary.

The Association then approved a motion that the proposed bill be referred to the officers and new Executive Committee, and that they be authorized and instructed to do everything within their power to secure at the earliest possible moment, a complete revision of our laws.

During the convention, luncheons were held for Alumni of the University of North Dakota Law School at the Colonial Hotel, presided over by the Hon. H. A. Bronson and for the Past-Presidents of the North Dakota Bar Association and Judges of the Supreme Court and District Courts at Mitchell's Cafe - Past-President Fred J. Traynor, presiding.

ANNUAL ELECTION

The annual election was held just shortly prior to the adjournment of the meeting, at which the following were elected as your officers for the coming year, Aloys Wartner, Sr., President, Clyde Duffy, Vice-president, M. L. McBride, Sec'y.-Treasurer.

EXECUTIVE COMMITTEE MEETING

Immediately following the adjournment of the annual meeting at Devils Lake the new executive committee met and organized. The new members are Clyde Duffy Vice-president, Mack V. Traynor, Pres. Lake Region Bar Association, A. Leslie, Pres., Third Judicial District Bar Association, Alfred Zuger, President Fourth Judicial District Bar Association; and Kurt H. Krauth, Pres., Sixth Judicial District Bar Association, the hold over members are Philip B. Bangs, Pres., First Judicial District Bar Association, O. B. Herigstad, Pres., Fifth Judicial District Bar Association, L. J. Palda, Jr., as Retiring President, Aloys Wartner, Sr., our new President and M. L. McBride, Sec'y.-Treas.

WANTS TO RETIRE

Mr. H. A. Armstrong, Attorney at Law of, Hazelton, N. D., who has practiced his profession in the territory of Dakota and State of North Dakota since the fall of 1883, has decided to withdraw from practice; he has a good location, a fair working library, book cases, and other office furniture; he solicits correspondence with attorneys desiring a location, and increase of practice.

OUR SUPREME COURT HOLDS

In Charles F. Russell, doing business as Russell Transfer & Storage Co., Applt. vs. Great Northern Railway Company, a corporation, and Interstate Transportation Company, a Corporation, Resp.

That where the Board of Railroad Commissioners grant to a motor carrier of property a certificate of public convenience and necessity under Chapter 164, Laws 1933, another common carrier operating in the territory proposed to be served by the applicant for such certificate, who had appeared in opposition to the application may appeal to the District Court of the County where such hearing was held.

That such appeal may be taken in the same manner, and upon the same conditions, and is subject to the same rules, as appeals taken from orders made by the Board of Railroad Commissioners under the Public Utility Act (Section 4609cl - 4609c56 Supplement to the 1913 Compiled Laws of North Dakota), with the exception that on appeal under Chapter 164, Laws 1933, the appellant, on demand, is entitled to a trial *do novo* in the District Court.

That where on an appeal to the District Court from an order of the Board of Railroad Commissioners, under Chapter 164, Laws 1933, the appellant demands a trial *de novo* in the District Court, it is incumbent upon the District Court to review and weigh the evidence, to exercise independent judgment upon the evidence submitted, to determine where the weight or preponderance of evidence lies, and to make its findings of facts in accordance with its own judgment.

That on an appeal to the District Court from an order of the Board of Railroad Commissioners under the provisions of Chap. 164, Laws 1933, the scope of judicial review is much broader than the judicial review afforded in an action to enjoin, set aside, annul, or suspend an order of the Interstate Commerce Commission.

That Section 8, Chap. 164, Laws 1933, makes it unlawful for any common motor carrier to operate within this State without first having obtained from the Board of Railroad Commissioners a certificate of public convenience and necessity.

That on an appeal to the Supreme Court from a decision of the District Court in a proceeding under Chap. 164, Laws 1933, the review is restricted to the record certified from the District Court, and the Supreme Court may not consider a question not arising on such record. All questions relating to the introduction of additional and newly discovered evidence in such proceeding, must be presented in the first instance to the Board of Railroad Commissioners.

Appeal from the District Court of Williams County: G. Grimson, Judge.

Proceeding in the matter of application of Charles F. Russell, doing business as Russell Transfer and Storage Company, for authority to furnish motor truck service between Minot, North Dakota, and Williston, North Dakota, which was opposed by the Great Northern Railway Company and Interstate Transportation Company. Judgment for defendants Railway Company and Transportation Company, and the applicant appeals.

AFFIRMED: Opinion of the Court by Christianson, Ch. J.