



1936

## 1935 Income Tax Statute of North Dakota Upheld

North Dakota State Bar Association

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find their way into the histories of our country. I recently found in a well known recent publication, by a distinguished historian, this misleading statement: "In the same year there sounded through the Nation, a sudden dispute which Adams called the fire bell in the night." The truth is that Jefferson made that statement and not Adams. In the same book, the same writer spoke of the Hermitage, the home of Andrew Jackson, as being in Kentucky. Also that Van Buren replaced Clay as Vice-president. Clay was never Vice-president of the United States, but he was speaker of the House of Representatives.

In a very recent biography a distinguished officer in the army mentioned that Jefferson Davis was Secretary of War in the Buchanan cabinet. I have mentioned mis-statements of history of years ago, but is there any excuse for writers of history at the present time to make false statements which confuse the youth, and which have the effect of justifying a distinguished industrialist who stated that history was "bunk."

I would like to see an act of Congress passed and approved, for a history of the United States that could be relied upon, to be placed in the public schools.

A great writer has said, "Truth lies deep. It takes time and labor to produce it, but falsehood floats upon the surface, and is always at hand."

M. A. HILDRETH,  
President.

#### DEATH OF V. R. LOVELL AND TRACY R. BANGS

During the month of February the Bar of the State has lost two of its most distinguished members. Verner R. Lovell, of Fargo, died on February 12th, 1936, at the age of 73. He was admitted to the Bar of this state in 1888.

Tracy R. Bangs, of Grand Forks, died on February 22nd, 1936, at the age of 73. He was admitted to the Bar of this state in 1886.

Appropriate memorial resolutions will, of course, be prepared by the Memorials Committee, presented to the Annual Meeting of the Association and published in the next annual number.

#### 1935 NORTH DAKOTA INCOME TAX STATUTE UPHELD

The syllabus of the Supreme Court decision holding that the 1935 income tax statute is valid, reads as follows:

State ex rel. Haggart, et al. vs. Nichols, Tax Commissioner, et al.

SYLLABUS: 1. A legislative enactment is presumed to be constitutional. This presumption is conclusive unless it is clearly shown that the enactment contravenes some provision of the constitution of the state or of the United States.

2. It is not the function of the courts to review or revise legislative action but to ascertain and give effect to the legislative will as expressed in the constitution and the statutes. When a legislative enactment is

held void it is not because the courts have or exercise any control over the legislative power, but because the will of the people as expressed in the constitution is paramount to that of their representatives as expressed in the statute; and it is the duty of the judges under their oaths of office to give effect to the will of the people as expressed in the fundamental law.

3. The power of taxation is not dependent upon a constitutional grant. It is an attribute of sovereignty inherent in the state, and provisions in a state constitution in relation to taxation are not intended as grants of power but as limitations on the state's taxing power.

4. The power of taxation is legislative in its nature and belongs exclusively to the legislative branch of the government. The legislature must determine all questions of necessity, discretion or policy involved in ordering a tax and in apportioning it. The courts cannot review the determination of the legislature in regard thereto or interfere with the enforcement of the tax unless such enforcement will result in infringement of constitutional rights.

5. Except as limited by the provisions of the Federal constitution the power of a state as to the mode, form and extent of taxation is unlimited where the subjects to which it applies are within her jurisdiction.

6. The Fourteenth Amendment to the Constitution of the United States does not compel the states to adopt a rigid rule of equal taxation, nor prevent the classification of property for purposes of taxation, or the imposition of different rates upon different classes.

7. A tax purporting to be laid upon a subject within the taxing power of the state is not to be condemned by the application of any artificial rule but only where the conclusion is required that its necessary operation and effect is to make it a prohibited exaction.

8. A constitutional requirement that "taxes shall be uniform upon the same class of property, including franchises, within the territorial limits of the authority levying the tax" (Const. N. D., Sec. 176) does not forbid classification of property, subjects, or persons for purposes of taxation.

9. Where conflict with Federal power is not involved, a state tax law is not in conflict with the Fourteenth Amendment to the Federal Constitution unless it proposes, or clearly results in, such flagrant and palpable inequality between the burden imposed and benefit received as to amount to arbitrary taking of property without compensation.

10. Constitutional requirements that "taxes shall be uniform upon the same class of property" (Const. N. D. Section 176) and that no state shall "deny to any person within its jurisdiction the equal protection of the laws" (Const. U. S. Amend. 14) are met when the law operates on all alike under the same circumstances—when no greater burden is imposed on one person or species of property than on another similarly situated or of like character.

11. The graduated rate feature of the North Dakota income tax law is a valid exercise of the legislature's power to classify it; it operates equally and uniformly upon all in like circumstances and does not contravene the uniformity provision of the state constitution (Const. N. D. Sec. 176) the equal protection of the laws clause of the 14th Amendment or the due process clauses of the state (Const. N. D. Sec. 13) and Federal constitutions. (Const. U. S. Amend. 14).

12. The tax imposed by the North Dakota income tax law is in no case a tax on real property within the purview of section 179 of the state constitution so as to require assessment to be made in the county, city, township, village or district.

13. For reasons stated in the opinion it is held that certain alleged discriminatory provisions of the law are not violative of the constitutional provisions invoked by plaintiffs and that the power to remedy the conditions of which appellants complain is vested in the lawmaking power, and is not vested in the courts.

Appeal from the District Court of Burleigh County, Hon. Fred Jansonius, Judge. Plaintiffs appeal from an order sustaining a demurrer to their complaint.

AFFIRMED. Filed March 7th, 1936.

Opinion of the Court by Christianson, J.

Morris, J., and Nuessle, J., Specially Concurring.

H. C. Young, Richardson, Thorp & Wattam, of Fargo, Murphy & Toner, of Grand Forks, and Sullivan, Fleck & Sullivan, of Mandan, for appellants.

P. O. Sathre, Attorney General, and T. A. Thompson, Assistant Attorney General, of Bismarck, for respondents.

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#### CHANGE IN DATES OF ANNUAL MEETING

As now determined, the Annual Meeting of this Association will be held on August 10th and 11th. These dates were fixed after correspondence between President Hildreth and Hon. William L. Ransom, President of the American Bar Association, with reference to Mr. Ransom's speaking schedule and to enable him to accept the invitation to be present at our annual meeting. Definite acceptance of our invitation has not yet been received but it is hoped that this change will enable him to be present. Unless another change becomes necessary, then, the annual meeting will be August 10th and 11th at Fargo.

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#### APPOINTMENTS

Announcement has been made of the appointment of L. J. Wehe, Bismarck, as the delegate from this Association to the 40th annual meeting of the American Academy of Political Science, at Philadelphia, on April 24th and 25th. The outstanding subject to be considered and discussed at the meeting is the attainment and maintenance of world peace.

Other appointments, announced in the February issue of The American Bar Association Journal are members of advisory and associate committees in connection with the coordination movement. These committees and the respective North Dakota appointees are: Jurisprudence and Law Reform, George F. Shafer, Bismarck; American Citizenship, Joseph M. Powers, Fargo; Unauthorized Practice of Law, S. E. Ellsworth, Fargo; Federal Taxation, John Moses, Hazen; Commerce, Neal E. Williams, Fargo; Commercial Law and Bankruptcy, B. F. Tillotson, Bismarck.