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Proceedings of the State Bar Association, at its Annual Meeting

WM. H. Hutchinson

R. E. Wenzel

PROCEEDINGS OF THE STATE BAR ASSOCIATION, AT ITS ANNUAL MEETING HELD AT MINOT, NORTH DAKOTA, AUGUST 21-22, 1933

WM. H. HUTCHINSON, President, Presiding
R. E. WENZEL, Secretary

AUGUST 21, 1933

Morning Session

PRESIDENT HUTCHINSON: Gentlemen, I think we might as well commence the meeting. Not so many have arrived yet, but the time has come for the program to begin.

Some of you may have wondered what happened to your chairman. I am going to take the advice of Elbert Hubbard who once said, "Never explain—your friends don't need it and your enemies won't believe you any way."

Rev. McKay, I believe, is present. Rev. McKay, will you give the invocation?

REV. MCKAY: Let us all rise and bow our heads.

Oh Father, of the nation, God of all mankind, we come into Thy presence this morning seeking help and guidance in a time of restlessness and unbelief. Grant that we may no longer forsake Thee, the fountain of living waters and hew out for ourselves broken cisterns that can hold no water. From the love of ease, from contentment with second best, save us, good Lord; from pride of possessions, from corruptness, which is idolatry; from ruthless competition, spare us, good Lord; from the worship of Mammon, which is the worship of wealth, from the hatred of class for class, from racial antagonism, deliver us, Oh Lord. Quicken our thoughtfulness for the general good; help us to consider the plight of the unemployed, and the aged. Cure our indifference to the strangers and the unknown within our gates. Help us to understand the true workings of the outcast and the criminal mind, and help us to reform and rectify those conditions within our social system which breed the criminal and the outcast. Help us to grasp the truth that prevention of crime is perhaps even more important than the apprehension of the criminal. Help us to a cleaner standard of ethics in this profession of the law and all other professions. Cure us of our narrow nationalism. Forgive us for our failure to take account of the needs of other nations and grant that henceforth we may live, not to ourselves alone, but that we may put our trust in them, and this we ask in the name of Thy son, Jesus.

JUDGE HUTCHINSON: Mr. Halvorson, who is president of the Northwest District Bar Association will now address you.

MR. HALVORSON, MINOT: Mr. Chairman, members of the North Dakota Bar:

It is a pleasure to welcome you to the City of Minot, on behalf of the lawyers of Northwest North Dakota. We hope that our facilities will be such that you can enjoy your stay here. We hope you will have

an opportunity to go about the city parks and other facilities, we want you to enjoy. We believe that every citizen will do all within his or her power to see that you have an enjoyable time during this meeting.

I also hope that during this meeting the discussions and the questions that come before you will involve this new order of things. I believe every man, who is a member of the Bar realizes we are undergoing a fundamental change in this country, and that those things which once were the main source of business to the lawyer, are gradually disappearing, the state and federal government gradually assuming, and I do not say it is not for the best of every one, the very fountain heads of income to the lawyers in the State of North Dakota. I refer to the Workmen's Compensation Bureau, to the loan department of the Bank of North Dakota, to the new work the Federal Government is now taking over, and will take over in the next couple of years. Negligence and real estate foreclosure have been the sources of the greatest income to North Dakota lawyers in the years past. Those avenues are going to be closed, and I hope that during this meeting, the Bar considers seriously the new order of things, how and where we fit in, and how and where we cannot only do the most good, but if possible to do so, earn a livelihood. That much on the serious side.

On the other hand, I hope that you, during the recreations of the sessions, enjoy yourselves. We can at least do that. We have three golf courses, splendid parks, swimming hole, and all those things that many of you, and I believe all of you enjoy. We want you to go away knowing that Minot has your interest at heart and played with you as you played.

JUDGE HUTCHINSON: I am sure we appreciate these generous words of welcome given by Mr. Halvorson. We are going to hear some further words of welcome from Mr. Lewis, of Minot, who represents the Ward County Bar Association.

MR. LEWIS, MINOT: Mr. President and gentlemen:

You have been welcomed by the Bar of the Northwest; you are now being welcomed by the Bar of Minot, and you are going to be welcomed by the City of Minot, so you will be thrice welcome, all of which is superfluous, because you knew in advance you were thrice welcome. The order of the day is ex parte without notice. I do not know whether our city attorney is going to turn over to you the keys of the city. You know we have a city manager and he may insist on keeping those keys in his hands, but it is of no importance.

All the locks are out of order, and the town is yours. Now your secretary asked me to make arrangements with our bootleggers so that this little badge could serve as a card of admittance. It was entirely unnecessary. Our bootleggers require no visiting cards. You just show them a picture of Washington or Lincoln, on a piece of green paper, so they will know you are a friend of Washington and Lincoln, and they will admit you. But I want to warn you against our 3.2. There was a fellow arrested the other day for selling beer, and it turned out to be 1.1. That man will be convicted and Judge Lowe tells me he is going to get a year.

Now we are proud of our court house. It houses some very pleasant officials and a splendid collection of relics. We hope you will like our country club. We hope especially you have brought with you a microscope in order that you may see our river, which has been officially held unnavigable. Our jail accommodations are somewhat cramped, but I trust none of you will need to patronize them. From what I know of reading about the meetings of the county commissioners, we will probably decide to admit to vote the question of building another jail, an action which I understand has Governor Langer's full approval. If you do get into trouble, we will do our best for you, and if worst comes to worst, I have flowers enough in my garden to bury you. Have a good time and come again soon.

PRESIDENT HUTCHINSON: We thank Mr. Lewis. I am sure that the words he spoke came from the bottom of his heart, and that he really is interested in seeing the members of the bar come to Minot. The Secretary states that Mr. Lewis seemed especially interested in seeing some of the attorneys buried.

Mr. Stenerson not being present, Mr. J. P. Cain, vice president of the Association, will make the response.

MR. CAIN, DICKINSON: Members of the North Dakota Bar:

In the absence of Mr. Stenerson, I would prefer to fill his place, because it has been allotted to me on several occasions—I am city attorney—to welcome many delegations to Dickinson, so I have always been on the other side of the case welcoming rather than responding to an address of welcome.

I believe that it is hardly necessary to tell the Bar of Minot, or the citizens of Minot, that we are deeply appreciative of their invitation to hold our convention here this year. It has been my pleasure to have attended several conventions in different locations or parts of the state. As I recall it now, since coming to North Dakota, this is the seventh convention I have attended in the City of Minot, the first one in the year 1911 shortly after I came to North Dakota.

There was a peculiar coincidence that occurred at that convention, and you lawyers might be interested in just what happened, so I am going to take a short time to tell you about it. Throughout the country there are many people that are superstitious. It is seldom you find a lawyer that is at all superstitious. I happen in my practice to run across people who object to trying cases on Friday, or the 13th of the month. It so happened at that convention I was requested by a delegation from Dickinson to come along with them, and to invite members of that convention to hold their next meeting at Dickinson, and it also so happened that there were thirteen delegates from Dickinson in attendance at that convention. It was the thirteenth annual convention for that particular organization and it was being held on the 13th day of the month, so we told the assembled delegates we wanted to disprove any superstition in connection with the numerals thirteen, and they promptly insisted on sending the next convention to Dickinson. That is one convention here in Minot where we could try a case, or ask for a convention on the 13th, or Friday, and get anything we wanted.

Now we know that it is hardly necessary to ask for the keys of the city. We have been here so often and accepted the courtesies and hos-

pitality of the people here, that we feel right at home in Minot without any addresses of welcome, or being especially requested to come here. Proof of that is due to the fact that within a period of three or four years, the Bar Association is back here again, permitting members of the Association of Minot and citizens to entertain us.

I thought perhaps our friend, ex-president Lewis might have been a little more definite and certain in his description of the men that you might desire to come in contact with during your stay here, because there are so many of the lawyers that have not had an opportunity yet of sampling 3.2, and it might have been better if he had mentioned some names and given you more of a personal and visible description of that particular gentleman, but I take it from his general remarks you will have no difficulty to get what you really want in Minot. I know we have had no trouble in past gatherings here, and don't think we will have any today.

I want Mr. Lewis and the other men to know that the members of the Bar throughout the state are deeply appreciative of the invitation to come here, and we will deeply appreciate our stay in Minot.

PRESIDENT HUTCHINSON: There was only one provision that was made by Mr. Lewis in his address of welcome, and that was you had to produce the coin for your entertainment. That may be a provision that will prevent a good many of the lawyers from partaking of the entertainment offered, if I have the right slant on things. Lawyers are not very flush these days, but I am sure that we will have a fine time here during this meeting, and I believe that there will be matters on the program that will be of interest to us all and I hope that we can attend the meetings and attend them promptly.

In providing the program, I didn't want to make the program so full that we wouldn't have time to meet each other and to greet each other, and to have a good time; at the same time, we have our meeting of serious things. I sometimes think that a good deal that we get out of the state meeting is a chance to meet and greet other lawyers in a fraternal way and I don't think we should take up the full time of our meeting so as to prevent that, and I have tried to arrange the program accordingly.

Mr. Cain, will you take the chair?

MR. CAIN: This is the time fixed for the president's address. We will now hear from our President, Judge Hutchinson.

PRESIDENT'S ADDRESS

As my administration as President of the North Dakota Bar Association now draws to a close I desire to bring to the members a brief report of the activities during the past year, and a few suggestions as to what might be undertaken in the future.

Early in October the Executive Committee met in Bismarck, at which time the annual standing committees were appointed. The matter of the selection of some Attorney to succeed Mr. Adams as a member of the Bar Board was considered and nominations were made by the Executive Committee, and the Secretary instructed to conduct a referendum

election. This referendum resulted in the choice of W. A. McIntyre, of Grand Forks. There also came before the Executive Committe at this time that topic which has been much discussed at several of the annual meetings of this Association—The Unauthorized Practice of Law. It was decided to procure, if possible, at the coming session of the Legislature, an amendment to the law so as to permit the use of funds in the hands of the Bar Board for the purpose of investigation and, if necessary, prosecution of any persons or corporations engaged in the unauthorized practice of law. The committee appointed, was instructed to be thorough and vigorous in its action that definite results might be obtained. A bill was presented to the Legislature, being House Bill 86, which prohibited any person or corporation from practicing law without a license. It further provided that the expense of investigation and prosecution to protect the Bar and public from unauthorized practice might be paid out of the State Bar Fund. To Senator Bangert, of Ransom County, who was the Chairman of the Committee, must go the credit for obtaining the passage of this Bill, which is Chapter 143 of the 1933 Session Laws. Your President has urged Mr. Bangert and his Committee to use every effort to bring any offending corporation or person to justice that this Bar Association might discharge its full responsibility to its members, as well as to the public, in protecting them from the unlicensed practitioner. In this connection I would further report, that at the last meeting of this Association an assessment was authorized of $2.00 per member for the purpose of raising a fund to assist this Committee. Only about 100 members responded to this call. Since the passage of this law the assessment seems now unnecessary, and it may be your wish to return to the members the amount which they have paid by reason of this call. I believe that some progress has been made by this Committee on the unauthorized practice of law, and that this problem which has engrossed our attention during the past annual meetings is in a fair way for solution.

At the beginning of the year your President stressed the importance of Local Organizations, and strongly advocated to the Presidents of those organizations the necessity of regular meetings and the value of well planned programs at such meetings. There is no question but that the Local Organization must be the work-shop of our Association. It is in the local meeting, where a much larger membership of the Bar can be present, that professional ideals can be raised and professional problems met and solved. In the Local Organization there is a much more intimate relationship between members and a much freer and widespread expression of opinion. If our Association progresses and becomes more important in our professional life, it will be because we foster and keep active our Local Organizations. During the past year, perhaps largely because of financial reasons, some of the District meetings have been abandoned. I believe this to be a grave mistake. However, other districts have been very active, and have held important meetings. The Cass County Bar Association has been especially alert, holding regular meetings each month, and has thus set an example that the Bar of the whole State might well emulate.

Although your President, by reason of your By-Laws, is Chairman of the Legislative Committee, the active Chairman was Mr. Foster, of Bismarck, and he prepared the report. Conceding the fact that the committee could not accomplish much during the last session of the Legis-

lature, we should not be discouraged. I believe we should at each session have an active and vigilant Legislative Committee firmly advocating changes in the law where we deem such changes important, for only thus can we expect to win a public confidence which we should merit and enjoy.

One of the leading activities of the Association during the past several years is the publication of Bar Briefs. There seems to be a misunderstanding among some members of the Bar as to who is responsible for what is printed in this publication. Our Secretary and Treasurer is the Editor, and to him must go the credit for everything printed therein, except the President's page. With this exception I have in no way interfered with the Editor's responsibility. I have availed myself of the opportunity to use this President's Page to bring to the attention of our members things which I believed significant, and from the standpoint of the profession, of grave import. I had no thought of personal or political consequences. I trust that the membership of the Association have received these editorials in the spirit in which they were intended. I believe that a publication of this Association is essential, and with improved financial conditions, should be enlarged.

There has been nothing during the past year of outstanding accomplishment, yet, I believe that some progress has been made. I believe I see a growing desire for higher professional standards. The Association has had its part in attaining this result. But we have not reached the limit of our usefulness. May I, at this time, make a few suggestions as to what I think we might do to improve our service to our members and to the general public?

In the future there will come a more intimate relationship between State Associations and the American Bar Association. This is absolutely essential to the life and usefulness of both the National and State Associations. It is now receiving serious consideration by proper Committees of the American Bar Association and some solution will, no doubt, be made. The ultimate result will be, that the matters for consideration by the American Bar Association from year to year, together with its program of activities, will be submitted to State and Local Organizations. This will mean a closer and more unified system of grouping of the members of our profession. It is necessary, therefore, that we, as a State Association, seek a better contact with the American Bar Association. This can be done by having our in-coming President, each year, attend the Annual Meeting of the American Bar Association. It would be proper for this Association to pay a portion of his expenses, perhaps an allowance of $50.00 By holding our Annual State Meeting before the American Bar meeting it would enable our in-coming President to attend the meeting of the American Bar before his annual session with the Executive Committee and thus to harmonize his plans for the year with the plans of the American Bar Association. I hope the time will come when membership in the State Association will be membership in the American Bar Association, and thus when each State has an integrated Bar we shall have a mighty force all seeking to solve the problems of our profession.

The time is now ripe to provide for a permanent office for our Secretary in the Capitol Building in Bismarck. We are a State Organization under and by virtue of the Laws of the State. There is no

reason why we should not have an office in the Capitol Building. With the new building now being completed there is no doubt but that a room could be set apart for our Secretary. This room could be in conjunction with the rooms which will be set apart for the Bar Board, where perhaps the same office help could be used. If this arrangement could be made and permanent office help obtained the office could be of use in sending requested information pertaining to the different State Departments to lawyers. It would give us a permanent place for Association records which will be valuable in years to come.

Bar Associations spend much time and money in disciplining their own members. This is proper and necessary in order to maintain professional standards. However, if we took a greater interest in those who contemplate the study of law, we might save ourselves much of this labor of preparing for practice those who have been already admitted to the Bar. If a young man or woman considering the practice of law as a profession gets a proper conception of what the law means, gets a conception of the ethics of the profession, the long and arduous labor that must precede success, they are more likely to be successful lawyers and ornaments to the profession. Many of the high schools of the State offer short vocational courses during the Senior year. If we had a committee reaching into every County that would offer to furnish through some local member of the Bar a lecture on the profession of the practice of law before these high school classes I believe such service would be accepted. This would not only bring to the student the realization of the necessity of a broad education as a foundation for the study of law, but would also bring to him a proper conception of the ideals and ethics of the profession. It would also be a wonderful opportunity to contact the public and to combat erroneous popular ideas of the general public concerning the lawyer. There was a time when a young man who considered taking up law entered the office of some old practitioner and began the study there. He thus got an early contact with lawyers. But today, with the law school preparing a majority of those who enter our profession, this service which I propose becomes much more valuable.

There is a further service that we might offer the law student. Often during the vacation between the Junior and Senior years in law school the student desires to go into some law office. I realize that such young person is usually of no value to the lawyer at that time, and that the lawyer who would accept him would do so at some personal sacrifice. The opportunity for doing something for the student and the profession would be his reward. In many cases, too, the gain would not all be on one side, for contact with youth is always refreshing and inspiring. Could we not have a Committee who would keep in touch with law firms in this State who are willing to take students during vacation periods and also be at the service of students desiring such opportunity?

I have often thought that this Association should take a more important part in the ceremony of the admission of new members to our profession. This ceremony should be made impressive and one never to be forgotten by those entering our profession. They should be impressed with the fact that they are entering a great profession with a worthy past and with high ideals; that their certificate of admission does not mean merely a permission to follow a certain line of work for profit and livelihood, but that it does mean that because of their education,

preparation and character they are permitted to enter a field of public service where only the satisfaction, that comes because of duty well performed, can be their reward.

And finally in this connection I believe that this Association should be interested in assisting these young practitioners in finding a place where they might locate and practice their profession. It is very important to the young man and young woman and to our profession and to the public that they start off on the right foot. If their early professional relationships are with men of low professional ideals they are likely to acquire habits in practice that may not only require disciplining later, but will never reflect honor upon our profession. A permanent standing committee to advise with those who seek advice in the matter of location could perform a valuable service.

I was interested in the report of an address by Senator Shipstead given at the last Annual Meeting of the Minnesota Bar Association. The Senator was discussing the matter of the appointment of Federal Judges. Although the Senator is not a lawyer, he was impressed with the fact that political, rather than professional endorsement, seemed to have the greater weight in the matter of appointment of Federal Judges. And it was his opinion that when Bar Associations had more to say in the matter of Judicial appointments, then and not until then would we improve the standard and efficiency of our Courts. I realize that in the past Bar endorsement has generally meant defeat in the election of Judges. On the other hand, will the public ever have confidence in the judgment of lawyers in the matter of the selection of Judges if we continue a hands-off policy. It may take time and effort to build up public confidence, but this can only be done by some participation of this Association and the profession in the selection for Judicial office. This Association should work out some plan of participation. I am not prepared to suggest what that plan should be, but it is worthy of our study, and could be brought forward as a topic for consideration by Local Organizations during the coming year. We often hear complaints that Judges are without sufficient power and without sufficient length of term. Let us first select Judges worthy of power and long terms and we will have made it easier to remedy this complaint. Upon the lawyer must rest the responsibility for the quality of the Judiciary as well as the powers and prerogatives with which the Judiciary is clothed. As a matter of fact it is the lawyer who has been reluctant to invest the Court with power and it is the lawyer who has hesitated to advocate long terms for Judges. Let us not shrink from or try to avoid the responsibility that is ours, or criticize others for failure to perform our obligations.

In closing I wish to make one further observation. We hear a great deal about the lack of public confidence in the lawyer. If this is true, and to some extent at least it is true, has not the lawyer himself brought about this condition? Can we expect the public to have a higher conception of a lawyer than he himself has of the opposing counsel in a lawsuit? In his arguments to the Jury he often centers attention upon the opposing attorney and pictures him as the real scoundrel in the lawsuit. He often holds this lawyer up before the Jury and the audience in the Court Room as a cunning and adroit rascal who has procured shady, if not perjured, testimony, and is even now expending every effort to mislead the Jury and the Court that his client might win

an unjust verdict. The Jury is often told that the lawyer on the opposing side is not to be blamed for all his sculduggery and misrepresentations for that is his business and what he is paid for. Can we expect the ordinary layman and elector to rise above class prejudice when we appeal to class prejudice in arguments to Juries and thus place our stamp of approval upon its use in that most sacred institution—A Court of Justice? The lawyer can have a right to expect public confidence only after he himself has attained a high conception of public duty. The lawyer's duty to his client never transcends truth, honor, right. It has appeared to me that a closer and more intimate relationship between lawyers and the trial Judge might increase public confidence. The lawyer is said to be an officer of the Court. If he would always be in fact what he is said to be we might expect higher public esteem. A lawsuit should be a proceeding where the Court and Jury and the lawyers are all working to get at the facts, and apply the law. A more perfect cooperation to this end would go far to strengthen public respect. I would not have you think that I believe the great mass of our profession to be men of low professional ideals. The great majority have a high concept of public duty. But our reputation as a profession is sometimes made by a small minority. To wipe out this minority must be our task, and to this task let us pledge ourselves and the united strength of this Association.

As this is the last time I will address you as President of our Association, I want to express to you my sincere appreciation of the opportunity you have given me to serve you during the past year. I wish to thank the Secretary, the Committees, and the members for their loyal co-operation. My administration has had at least one accomplishment. It has prepared me to become a more efficient worker in the ranks of our Association.

MR. CAIN: Judge, on behalf of the Association, I want to thank you for your very excellent address. I will now turn the meeting back to the President.

PRESIDENT HUTCHINSON: In looking over your programs, you will note that we made a little innovation this year by placing the election in the afternoon of the first day. It seems to me that the election is a very important matter upon the program and heretofore election has come late in the session, when many of the members have had to return to their homes. I thought it might meet with your approval, if we placed the election on the afternoon of the first day, when our largest attendance is usually present and thus we would have an expression from the whole bar present.

We will now take up the committee reports. The first is the report of the executive committee, which is usually given by the Secretary.

SECRETARY WENZEL: Mr. President and Members of the Bar:

The major part of the executive committee report has already been presented to you in the president's address. I will just briefly skim over some of the other items that have probaly been omitted.

REPORT OF EXECUTIVE COMMITTEE

This report was presented orally by the Secretary, who reviewed the work of the Committee during the year, the high lights of which were: the referendum conducted through the Secretary's office for the selection

of a member to the Bar Board, the Committee preparing a ballot containing the following names: John Knauf, Jamestown; A. M. Kvello, Lisbon; H. P. Jacobson, Mott; W. A. McIntyre, Grand Forks; O. B. Herigstad, Minot; and J. J. Weeks, Bottineau. The three receiving the highest number of votes, McIntyre, Kvello, and Knauf, were presented to the Supreme Court as the recommendations of the Bar Association, Mr. McIntyre, of Grand Forks, being selected by the Court.

The two matters submitted to the Executive Committee by the 1932 Annual Meeting were disposed of as follows: Approval was given to the action of the annual meeting in postponing indefinitely all further action concerning an amendment to the Workmen's Compensation Law that would give the right of appeal on questions of fact; and the Association having previously adopted, in principle, the self-governing features of the California Bar Act, the Committee recommended reference to the incoming Legislative Committee to formulate a law for the consideration of the 1934 annual meeting, and the various district associations, for consideration and action.

FINANCIAL STATEMENT
N. D. STATE BAR ASSOCIATION FOR 1932-1933

Receipts

Balance at last report		$1,335.32
1932 banquet receipts		297.00
Borrowed at Bank		300.00
		$1,932.32
Balance 1932 expense, including $241.25 for banquet, and $100.00 for reporting	$1,115.05	
1932 Unauthorized Practice balance	179.59	
Repayment of loan, and interest	306.67	$1,601.31
Balance available for 1932-1933 administration..		$ 331.01
Received of State Bar Board, license fees		2,660.00
Total available funds		$2,991.01

Disbursements

	Budget	Expended	
Bar Briefs	$ 325.00	$ 284.00	
December Bar Briefs	350.00	372.50	
Executive Committee	250.00	51.88	
Postage & Printing	175.00	160.24	
President	200.00	92.71	
Secretary-Treasurer	660.00	660.00	
Unauthorized Practice	150.00	16.05	
1933 Meeting, expense	450.00	22.15	
1933 Meeting, reporting	100.00	.....	
Citizenship Committee	75.00	23.21	
Miscellaneous	125.00	81.53	
Bar Board Referendum	75.00	51.85	
	$2,935.00	$1,816.12	
Balance on hand			$1,174.89

Requirements to Close Administration Year:	
Executive Committee	$150.00
Printing	20.00
President	60.00
Meeting	425.00
Reporting	75.00
	$730.00

Special Trust Fund

Receipts on assessment for Unauthorized Practice	$ 146.00
Interest earned on said deposit	1.99
	$ 147.99

State of North Dakota }
} ss.
County of Burleigh }

R. E. Wenzel, being first duly sworn says: that the foregoing is a true and correct report of all receipts and expenditures, moneys received, carried over or paid out for the administration year of 1932-1933.

R. E. WENZEL.

Subscribed and sworn to before me this 16th day of August, 1933.

(SEAL) C. E. KNUDTSON, Notary.

I move the adoption of the reports:

MR. TRAYNOR, DEVILS LAKE: Second the motion.

PRESIDENT HUTCHINSON: It has been moved and seconded that the reports of the Executive Committee and the Secretary-Treasurer be approved, or adopted as presented. Is there any discussion?

MR. ELLSWORTH, JAMESTOWN: There is matter of information I would like to inquire about. I note from the Treasurer's report that our income from the State Bar Board is reduced about $200. I am wondering whether or not that is coming about through the failure of about forty attorneys to pay their annual license fee. If such is the case, it brings up a phase of the depression. It is well known this Association receives five dollars from each license fee and a reduction of $200 would mean a reduction of about forty license fees.

SECRETARY WENZEL: Mr. President, this report for the year 1933 is not yet complete, and there will probably be further income before the close of the year. However, Mr. Newton, the Secretary of the Bar Board, is here and can give you a better idea of what the situation is as compared with last year and the year before. I think that is a better source of information.

MR. NEWTON: The receipts are slower coming in this year than they have been in previous years. My judgment is there are approximately 60 or 65 active attorneys who are delinquent in payment of their fees at this time; of course, they usually clean up by the first of December. They are either required to pay or remanded to the Supreme Court for unauthorized practice of law.

MR. ADAMS, LISBON: I think in my last report, I noted the number of lawyers are decreasing perhaps twenty per cent a year, so that accounts for it. That probably accounts for it to a large degree. I know that has been true for the last two or three years, at least.

PRESIDENT HUTCHINSON: Any further remarks? If not, all those in favor of the motion signify by saying aye; opposed; carried.

Now before we pass to the other reports, perhaps we might take up the consideration of those matters that were referred to in these reports. What do you desire to do with reference to the assessment made last year, if anything.

MR. HALVORSON, MINOT: I move you that the assessments be returned to the individuals that paid them.

MR. BRACE: Second that motion.

PRESIDENT HUTCHINSON: Very well, are there any remarks? If not all those in favor signify by the usual sign aye; opposed no; it is carried, Mr. Secretary, and you will make the refund.

PRESIDENT HUTCHINSON: Is there anything further that the Association desires to do with the two matters that were referred to the Executive Committee in that report.

I believe last year when the matter of an amendment to the Workmen's Compensation Act permitting appeal on questions of fact came up, that the Association voted against a change in the law. It was then referred to the Executive Committee. The Executive Committee have now in their report approved of the Association's vote. Do you desire to take any further action in that matter?

MR. KVELLO: Do we approve of matters acted on by the committee in this way?

PRESIDENT HUTCHINSON: I presume we do, unless you want to take some special action. Very well, if that is the understanding, I think there are no further matters in the report for consideration at this time.

We will pass then to the report of the committee on the American Law Institute.

American Law Institute

The Annual Meeting of The American Law Institute was held at Washington, D. C., on May 4, 5, and 6. Due to the continued agricultural depression and reduced budget, the University of North Dakota did not send a representative to the meeting.

From the Report printed in The American Bar Association Journal, the following progress of The Institute may be noted:

1. The Restatement of the Law of Contracts was published in book form in two volumes. This set has been well received by the bench and bar.

2. The approval of the Proposed Final Draft of the Restatement of the Law of Agency, which contains 549 pages.

3. Three Tentative Drafts of the Restatement of the Law of Business Associations were presented for consideration.

4. The Proposed Final Draft of the Restatement of the Law of Conflict of Laws have been reviewed, especially Draft No. 4, which includes the topic of "Administrative Estates."

5. On the subject of Property, the Council submitted Tentative Draft No. 4 covering the chapters on Transferability by Conveyance Inter Vivos, Succession on Death, and Subjection to the satisfaction of the claims of creditors.

6. The Council reported that in 1934, it will present the Proposed Final Drafts of two volumes on Torts.

Mr. Herbert F. Goodrich, Adviser on Professional Relations, again emphasized the importance of state annotations of the Restatements.

At the meeting in Chicago of The Association of American Law Schools, Herbert F. Goodrich, who is also Dean of the University of Pennsylvania School of Law, recommended the use of the Restatements by law teachers and law students. We may report that the faculty of our Law School has used the Restatements to the advantage of both teachers and students.

The Restatement of the Common Law will appeal to all judges, lawyers, and teachers of law, who have a scholarly and philosophical interest in the law. It will not appeal to the professional men who have no interest in the science and philosophy of law. It will have an appeal to a larger group of practicing lawyers when the Restatements are annotated to the laws of the different states, in that the Restatements will then be a useful working set for their daily practice.

Very little can be performed on the problem of North Dakota annotations, by the University law faculty with its limited budget, reduced faculty, and heavier teaching load. As to this problem, the committee will have to wait until conditions are more favorable, before the Law School can give creditable service in aiding and assisting the North Dakota Bar Association in the problem of state annotations.

O. H. THORMODSGARD, Chairman
E. T. CONMY,
O. B. BURTNESS.

MR. THORMODSGARD: I may say for your information that the American Law Institute is bringing special student editions for the use of law students, and we have used the tentative drafts as well as the final drafts of the restatement of law of contracts, property, trusts, conflict of laws, in our class instructions at the University.

I move the adoption of this report:

MR. COOPER: I second the motion, Mr. Chairman.

PRESIDENT HUTCHINSON: It has been moved and seconded that the report of this committee, the American Law Institute, be adopted. Any remarks? If not, all those in favor signify by the usual sign; opposed; the motion is carried. There are no particular recommendations in the report, are there Mr. Thormodsgard?

MR. THORMODSGARD: None.

PRESIDENT HUTCHINSON: Very well. We will pass to the next report, that is on Criminal Law and Procedure. This report is also printed in the Bar Briefs beginning at page 210. The report was prepared last year by Mr. Morris and submitted, and it went over with the recommendation for the consideration of the Association during this past year and for the consideration of local organizations. Mr. Morris is not here. Do you want to take up the consideration of the report, or pass it until he arrives, if he comes?

SECRETARY WENZEL: May I suggest that the report of Mr. Morris is rather exhaustive. He has made a complete review of the situation and presents a definite bill for enactment. No bill can be enacted prior to the 1935 session of the Legislature. There will be another meeting of this Bar Association in the meantime, and it seems to me that Mr. Morris' recommendation should be given every consideration. It should not be passed by, nor should it be passed without full consideration. May I suggest that the matter be referred to either a special committee here or to a special committee during the coming year, and if the latter, that such special committee, together with Mr. Morris, present the matter to the various local organizations at their sessions so that this Association may be prepared at the next annual meeting to make its definite decision concerning it. I am not putting that in the form of a motion, however.

MR. ADAMS: I am asking for information. Isn't this act the same act as prepared by the American Law Institute?

PRESIDENT HUTCHINSON: It is practically verbatim, just as few changes to fit our own statutes, but that is the article that was prepared. It has been considered somewhat by the judicial council, I know, and I know several of the local organizations passed it, the district organizations of the state have already considered this article and these recommendations.

Now I don't know whether you want to take up the matter at this time or not, or how you want to consider this report?

MR. LAMBERT, MINOT: If Mr. Morris is expected to be here, it seems to me it would be well to defer it until he gets here and let him sort of lead the movement as to what should be done with it.

PRESIDENT HUTCHINSON: Maybe we better pass it until later and see whether Mr. Morris comes to lead the discussion, unless some one else has some other suggestion. We will pass that report then at this time

Criminal Law and Procedure

SECTION 1. DEFINITIONS. In this Act.

(a) The singular number includes the plural and the plural includes the singular.

(b) The masculine gender includes the feminine and neuter genders.

(c) The words "person," "defendant" and similar words include, unless a contrary intention appears, a public or a private corporation.

(d) The term "act" includes omission to act.

(e) The word "property" includes any matter or thing other than a person, upon or in respect to which any offense may be committed.

(f) The words "indictment" and "information," unless a contrary intention appears, include any count thereof.

(g) The terms "writing" and "written" include words printed, painted, typed, engraved, lithographed, photographed, or otherwise copied, traced or made visible to the eye.

(h) The term "the court," unless a contrary intention appears, means the court before which the trial is had.

(i) The term "prosecuting attorney" includes the State's Attorney or Assistant State's Attorney of the county in which the offense sought to be prosecuted was committed; the Attorney General of the State of North Dakota or any of his duly appointed assistants, either regular or special, or any attorney at law duly appointed by the Court as now provided by law to prosecute.

SECTION 2. CAPTION — COMMENCEMENT—AMENDMENT. (1) Whenever an objection is made that an indictment or information does not contain a caption or commencement, a caption may be prefixed to, and a commencement may be inserted in, the indictment or information; and any defect, error or omission in a caption or commencement may be amended as of course, at any stage of the proceedings, and shall be in any event cured by a verdict.

(2) It is unnecessary to allege that the grand jurors were impanelled, sworn or charged, or that they present the indictment upon their oaths or affirmations.

SECTION 3. CONCLUSION. The indictment or information need contain no formal conclusion.

SECTION 4. SUBSCRIPTION AND VERIFICATION OF INFORMATION. (1) All informations shall be subscribed by the attorney. Except in cases where the defendant has been held to answer in a preliminary examination, the information shall be verified by the oath of the prosecuting attorney or that of the complainant or of some other person. When the information is verified by the prosecuting attorney, it shall be sufficient if the verification is upon information and belief.

(2) No objection to an information on the ground that it was not subscribed or verified, as above provided, shall be made after moving to quash or pleading to the merits.

SECTION 5. FORM OF INDICTMENT. The indictment may be in substantially the following form:

In the (here state the name of the court) the day of....., 19....., The State of North Dakota vs. A. B.

The grand jurors of the county of.....accuse A. B. of (here charge the offense in one of the ways mentioned in Section 7, —e. g. murder), (assault with intent to kill, poisoning an animal contrary to section 31 of the Penal Code) and charge that (here the par-

ticulars of the offense may be added with a view to avoiding the necessity for a bill of particulars).

SECTION 6. FORM OF INFORMATION. The information may be in substantially the following form:

In the (here state the name of the court) the day of..... ..., 19..... The State of North Dakota vs. A. B.

X. Y. (here state the title of the prosecuting attorney) for the county of.....accuses A. B. of (here charge the offense in one of the ways mentioned in section 7—e. g. murder (assault with intent to kill, poisoning an animal contrary to section.....) and charges that (here the particulars of the offense may be added with a view to avoiding the necessity for a bill of particulars).

SECTION 7. CHARGING THE OFFENSE. (1) The indictment or information may charge, and is valid and sufficient if it charges, the offense for which the defendant is being prosecuted in one or more of the following ways:

(a) By using the name given to the offense by the common law or by statute.

(b) By stating so much of the definition of the offense, either in terms of the common law or of the statute defining the offense or in terms of substantially the same meaning, as is sufficient to give the court and the defendant notice of what offense is intended to be charged.

(2) The indictment or information may refer to a section or sub-section of any statute creating the offense charged therein, and in determining the validity or sufficiency of such indictment or information regard shall be had to such reference.

SECTION 8. BILLS OF PARTICULARS. (1) When an indictment or information charges an offense in accordance with the provisions of section 7 but fails to inform the defendant of the particulars of the offense sufficiently to enable him to prepare his defense, or to give him such information as he is entitled to under the constitution of this state, the court may, of its own motion, and shall, at the request of the defendant, order the prosecuting attorney to furnish a bill of particulars containing such information as may be necessary for these purposes; or the attorney may of his own motion furnish such bill of particulars.

(2) When the court deems it to be in the interest of justice that facts not set out in the indictment or information or in any previous bill of particulars should be furnished to the defendant, it may order the prosecuting attorney to furnish a bill of particulars containing such facts. In determining whether such facts and, if so, what facts, should be so furnished, the court shall consider the whole record and the entire course of the proceedings against the defendant.

(3) Supplemental bills of particulars or a new bill may be ordered by the court or furnished voluntarily under the conditions above stated.

(4) Each supplemental bill shall operate to amend any and all previous bills and a new bill shall supersede any previous bill.

(5) When any bill of particulars is furnished, it shall be filed of record and a copy of such bill given to the defendant upon his request.

SECTION 9. INSUFFICIENCY, OR INCONSISTENCY BETWEEN INDICTMENT OR INFORMATION AND BILL OF PARTICULARS—EFFECT OF. If it appears from the bill of particulars furnished under section 8 that the particulars therein stated together with any particulars appearing in the indictment or information do not constitute the offense charged in the indictment or information or that the defendant did not commit that offense or that a prosecution for that offense is barred by the statute of limitations, the court may, and on motion of the defendant or of the prosecuting attorney shall, quash the indictment or information unless the prosecuting attorney shall furnish another bill of particulars which either by itself or together with any particulars appearing in the indictment or information so states the particulars as to make it appear that they constitute the offense charged in the indictment or information and that the offense was committed by the defendant and that it is not barred by the statute of limitations.

SECTION 10. NAME OF DEFENDANT. (1) In an indictment, information or bill of particulars it is sufficient for the purpose of identifying the defendant to state his true name, or to state the name, appellation or knickname by which he has been or is known, or, if no better way of identifying him is practicable, to state a fictitious name, or to describe him as a person whose name is unknown, or in any other manner. In stating the true name or the name by which the defendant has been or is known or a fictitious name, it is sufficient to state a surname, a surname and one or more given names, or a surname and one or more abbreviations or initials of a given name or names.

(2) If the defendant is a corporation, it is sufficient to state the corporate name of the defendant, or any name or designation by which it has been or is known or by which it may be identified, without an averment that it is a corporation or that it was incorporated according to law.

(3) If in the course of the proceedings the true name of a person indicted or informed against otherwise than by his true name is disclosed by the defendant to the court or appears in some other manner to the court, the court shall cause the true name of the defendant to be inserted in the indictment, information or bill of particulars and record wherever his name appears otherwise therein, and the proceedings shall be continued against him in his true name.

(4) In naming the defendant, no indictment, information or bill of particulars need further describe him by stating his addition, degree, estate mystery, occupation, title or residence unless such further description is necessary to charge an offense under section 7.

(5) In no case is it necessary to prove that the true name of the defendant is unknown to the grand jury or prosecuting attorney.

SECTION 11. TIME. (1) An indictment or information need contain no allegation of the time of the commission of the offense unless such allegation is necessary to charge the offense under section 7.

(2) The allegation in an indictment or information that the defendant committed the offense shall in all cases be considered an allegation that the offense was committed after it became an offense and before the finding of the indictment or information, and within the period of limitations prescribed by law for the prosecution of the offense.

(3) All allegations of the indictment, information and bill of particulars shall, unless stated otherwise, be deemed to refer to the same time.

SECTION 12. PLACE. (1) An indictment or information need contain no allegation of the place of the commission of the offense, unless such allegation is necessary to charge the offense under Section 7.

(2) The allegation in an indictment or information that the defendant committed the offense shall in all cases be considered an allegation that the offense was committed within the territorial jurisdiction of the court.

(3) All allegations in the indictment, information and bill of particulars shall, unless stated otherwise, be deemed to refer to the same place.

SECTION 13. MEANS. An indictment or information need contain no allegation of the means by which the offense was committed, unless such allegation is necessary to charge the offense under section 7.

SECTION 14. VALUE AND PRICE. An indictment or information need contain no allegation of the value or price of any property, unless such allegation is necessary to charge the offense under section 7, and in such case it is sufficient to aver that the value or price of the property equals or exceeds the certain value or price which determines the offense. The facts which give the property such value need not be alleged.

SECTION 15. OWNERSHIP. (1) An indictment or information need contain no allegation of the ownership of any property, unless such allegation is necessary to charge the offense under section 7.

(2) In charging an offense in which an allegation of ownership of property is satisfied by proof of possession or right of possession any statement in an indictment, information or bill of particulars which implies possession or right of possession is a sufficient allegation of ownership.

SECTION 16. INTENT. (1) An indictment or information need contain no allegation of the intent with which an act was done unless such allegation is necessary to charge the offense under section 7.

(2) An allegation generally of an intent to defraud and injure is sufficient without alleging an intent to defraud or injure any particular person, unless such allegation is necessary to charge the offense under section 7.

SECTION 17. CHARACTERIZATION OF ACT. (1) An indictment or information need not allege that the offense was committed or the act done "feloniously" or "traitorously" or "unlawfully" or "with force and arms" or "with a strong hand," nor need it use any

phrase of like kind otherwise to characterize the offense, nor need it allege that the offense was committed or the act done "burglariously," "wilfully," "knowingly," "maliciously," or "negligently," nor need it otherwise characterize the manner of the commission of the offense unless such characterization is necessary to charge the offense under section 7.

(2) An indictment or information need not contain the words "as appears by the record" or any other words of similar import.

SECTION 18. OMISSION OF UNNECESSARY MATTER. An indictment or information need not state any matter not necessary to be proved.

SECTION 19. ALLEGATIONS OF PLACES AND THINGS. Whenever it is necessary in an indictment or information to describe any place or thing in order to charge an offense under section 7, it is sufficient to describe such place or thing by any term which in common understanding embraces such place or thing and does not include any place or thing which is not by law the subject of, or connected with, the offense.

SECTION 20. NAME OF PERSON OTHER THAN DEFENDANT. (1) In an indictment, information or bill of particulars it is sufficient for the purpose of identifying any person other than the defendant to state his true name, or to state the name, appellation or nickname by which he has been or is known, or, if no better way of identifying such person is practicable, to state a fictious name, or to state the name of an office or position held by him, or to describe him as "a certain person," or by words of similar import, or in any other manner. In stating the true name of such person or the name by which such person has been, or is known, it is sufficient to state a surname, or a surname and one or more given names, or surname and one or more abbreviations or initials of a given name or names.

(2) It is sufficient for the purpose of describing any group or association of persons not incorporated to state the proper name of such group or association, or to state any name or designation by which the group or association has been or is known or by which it may be identified, or to state the names of all the persons in such group or association, or to state the name or names of one or more persons in such group or association, referring to the other or others as "another" or "others."

(3) It is sufficient for the purpose of describing a corporation to state the corporate name of such corporation, or any name or designation by which it has been or is known, or by which it may be identified, without an averment that the corporation is a corporation or that it was incorporated according to law.

(4) In no case is it necessary to aver or prove that the true name of any person, group or association of persons or any corporation is unknown to the grand jury or prosecuting attorney.

(5) If in the course of the trial the true name of any persons, group or association of persons, or corporation, described otherwise

than by the true name is disclosed by the evidence, the court shall cause the true name to be inserted in the indictment, information, bill of particulars and record wherever the name appears otherwise.

SECTION 21. PROPERTY DESCRIBED AS MONEY. In an indictment or information in which it is necessary to make an averment as to money, or bullion or golddust, current by custom and usage as money, treasury notes or certificates, banknotes or other securities intended to circulate as money, checks, drafts or bills of exchange, it is sufficient to describe the same or any of them as money, without specifying the particular character, number, denomination, kind, species, or nature thereof.

SECTION 22. DESCRIPTION OF WRITTEN INSTRUMENTS. Whenever it is necessary to an indictment or information to make an averment relative to any instrument which consists wholly or in part of writing or figures, pictures or designs, it is sufficient to describe such instrument by any name or description by which it is usually known or by which it may be identified, or by its purport, without setting forth a copy or facsimile of the whole or any part thereof. The description, if in a bill of particulars, is sufficient if it sets forth the character and contents of the instrument with such particularity as to enable the defendant to prepare his defense.

SECTION 23. DESCRIPTION OF WRITTEN MATTER. Whenever in an indictment or information an averment relative to any spoken or written words or any picture is necessary, it is sufficient to set forth such spoken or written words by their general purport or to describe such picture generally, without setting forth a copy or facsimile of such written words or such picture. The description, if in a bill of particulars, is sufficient if the defendant is thereby sufficiently informed of the identity of the words or picture concerning which the averment is made so as to enable him to prepare his defense.

SECTION 24. MEANING OF WORDS AND PHRASES. The words and phrases used in an indictment, information or bill of particulars are to be construed according to their usual acceptation, except that words and phrases which have been defined by law or which have acquired a legal signification are to be construed according to their legal signification.

SECTION 25. ALLEGATION OF PRIOR CONVICTIONS. No indictment or information shall contain an allegation of a prior conviction of the defendant unless such allegation is necessary to charge the offense under Section 7.

SECTION 26. PRIVATE STATUTES. In referring in an indictment or information to a private statute or a right derived therefrom it is sufficient to refer to the statute by its title and the day of its passage or in any other manner which identifies the statute, and the court shall thereupon take judicial notice thereof.

SECTION 27. JUDGMENTS. In referring in an indictment or information to a judgment or other determination of, or a proceeding before, any court or official, civil or military, it is unnecessary to allege the facts conferring jurisdiction on such court or official, but it is

sufficient to allege generally that such judgment or determination was given or made or such proceeding had, in such manner as identifies the judgment, determination or proceeding.

SECTION 28. EXCEPTIONS. No indictment or information for an offense created or defined by statute shall be invalid or insufficient merely for the reason that it fails to negative any exception, excuse or proviso contained in the statute creating or defining the offense.

SECTION 29. ALTERNATIVE OF DISJUNCTIVE ALLEGATIONS. No indictment or information for an offense which may be committed by the doing of one or more of several acts, or by one or more of several means, or with one or more of several intents, or with one or more of several results, shall be invalid or insufficient for the reason that two or more of such acts, means, intents or results are charged in the disjunctive or alternative.

SECTION 30. INDIRECT ALLEGATIONS. No indictment or information shall be invalid or insufficient for the reason that it alleges indirectly and by inference or by way of recital any matters, facts or circumstances connected with or constituting the offense.

SECTION 31. LIBEL. No indictment or information for libel shall be invalid or insufficient for the reason that it does not set forth extrinsic facts for the purpose of showing the application to the party alleged to be libelled of the defamatory matter on which the indictment is founded.

SECTION 32. PERJURY AND KINDRED OFFENSES. No indictment or information for perjury, or for subornation of, solicitation of, conspiracy or attempt to commit perjury shall be invalid or insufficient for the reason that it does not set forth any part of the records or proceedings with which the oath was connected, or the commission or authority of the court or other official before whom the perjury was committed or was to have been committed, or the form of the oath or affirmation, or the manner of administering the same.

SECTION 33. OFFENSES DIVIDED INTO DEGREES. In an indictment or information for an offense which is divided into degrees it is sufficient to charge that the defendant committed the offense without specifying the degree.

SECTION 34. PARTIES TO OFFENSES. Every person concerned in the commission of an offense, whether he directly commits the offense or procures, counsels, aids, or abets in its commission, may be indicted or informed against as principal.

SECTION 35. REPUGNANCY. No indictment or information that charges an offense in accordance with the provisions of section 7 shall be invalid or insufficient because of any repugnant allegation contained therein.

SECTION 36. SURPLUSAGE. Any allegation unnecessary under existing law or under the provisions of this chapter, may, if contained in an indictment, information or bill of particulars, be disregarded, as surplusage.

SECTION 37. DEFECTS, VARIANCES AND AMENDMENT. (1) No indictment or information that charges an offense

in accordance with the provisions of section 7 shall be invalid or insufficient because of any defect or imperfection in, or omission of, any matter of form only, or because of any miswriting, misspelling or improper English, or because of the use of sign, symbol, figure or abbreviation, or because of any similar defect, imperfection or omission. The court may at any time cause the indictment, information or bill of particulars to be amended in respect to any such defect, imperfection or omission.

(2) No variance between those allegations of an indictment, information or bill of particulars, which state the particulars of the offense, whether amended or not, and the evidence offered in support thereof shall be ground for the acquittal of the defendant. The court may at any time cause the indictment, information or bill of particulars to be amended in respect to any such variance, to conform to the evidence.

(3) If the court is of the opinion that the defendant has been prejudiced in his defense upon the merits by any such defect, imperfection or omission or by any such variance the court may because of such defect, imperfection, omission or variance, unless the defendant objects, postpone the trial, to be had before the same or another jury, on such terms as the court considers proper. In determining whether the defendant has been prejudiced in his defense upon the merits, the court shall consider all the circumstances of the case, and the entire course of the prosecution.

(4) No appeal, or motion made after verdict, based on any such defect, imperfection, omission, or variance shall be sustained unless it is affirmatively shown that the defendant was in fact prejudiced thereby in his defense upon the merits.

SECTION 38. MISJOINDER, MULTIPLICITY, DUPLICITY AND UNCERTAINTY. (1) No indictment or information shall be invalid or insufficient for any one or more of the following defects merely:

(a) That there is a misjoinder of the parties defendant.

(b) That there is a misjoinder of the offenses charged.

(c) That there is duplicity therein.

(d) That any uncertainty exists therein, provided it charges an offense in accordance with section 7.

(2) If the court is of the opinion that the defects stated in subsection 1, clauses (a), (b), and (c) or any of them exists in any indictment or information it may order the prosecuting attorney to sever such indictment or information into separate indictments or informations or into separate counts, as shall be proper. (3) If the court is of the opinion that the defect stated in sub-section 1, clause (d) exists in any indictment or information it may order that a bill of particulars be filed in accordance with section 8. (4) No appeal, or motion made after verdict, based on any of the defects enumerated in this section shall be sustained unless it is affirmatively shown that the defendant was in fact prejudiced in his defense upon the merits.

SECTION 39. AMENDMENT AFTER VERDICT. The defendant and the prosecuting attorney are entitled upon motion made by either after verdict and before sentence is pronounced or the defendant is discharged to have the indictment or information amended so as to state the particulars of the offense, as proved, in such a manner that the indictment or information shall without evidence aliunde be such evidence of the offense charged and its particulars as to bar a subsequent prosecution for the same offense constituted by the same particulars.

SECTION 40. INTERPRETATION OF THE ACT. Nothing contained in this chapter shall be so construed as to make invalid or insufficient any indictment or information which would have been valid and sufficient under the law existing at the date of the enactment of this chapter.

SECTION 41. FORMS FOR SPECIFIC OFFENSES. The following forms may be used in the cases in which they are applicable:

AFFRAY: A. B. and C. D. made an affray.

ASSAULT: A. B. assaulted C. D.

ASSAULT AND BATTERY. A. B. committed an assault and battery upon C. D.

ASSAULT WITH INTENT. A. B. assaulted C. D. with intent to murder him, (or kill, or rob, or maim him as the case may be).

ARSON. A. B. committed arson by burning the dwelling house of C. D.

ATTEMPT. A. B. attempted to steal from C. D. A. B. attempted to commit larceny of the goods of C. D. A. B. attempted to commit burglary of a dwelling of C. D.

BURGLARY. A. B. committed burglary of the dwelling of C. D.

CONSPIRACY. A. B. and C. D. conspired together to murder E. F. (or to steal the property of E. F., or to rob E. F.).

FORGERY. A. B. forged a certain instrument purporting to be a promissory note (or describe the instrument or give its tenor or substance.)

LARCENY. A. B. stole from C. D. one horse.

LIBEL. A. B. published a libel concerning C. D. in the form of a letter (book, picture, or as the case may be) (the particulars should specify the pages and lines constituting the libel, when necessary, as where it is contained in a book or pamphlet).

MURDER. A. B. murdered C. D.

MANSLAUGHTER. A. B. unlawfully killed C. D.

PERJURY. A. B. committed perjury by testifying as follows (set forth the testimony).

RAPE. A. B. raped (or ravished) C. D.

ROBBERY. A. B. robbed C. D.

SECTION 42. DISCLOSING THE FINDING OF AN INDICTMENT OR THE FILING OF AN INFORMATION FORBIDDEN. No grand juror or official of any court shall, except in the performance of his official duty, disclose the fact that an indictment has been found or an information filed against any person for an offense, unless such person is in custody or has been admitted to bail for such offense.

SECTION 43. FILING AND RECORDING OF THE INDICTMENT OR INFORMATION. When an indictment has been presented by the grand jury or an information filed by the prosecuting attorney, it shall be filed by the clerk of the court, and transcribed in a book kept for that purpose. In each case the clerk shall certify in the book that he has compared the transcription with the original and that the transcription is a true copy of the original.

SECTION 44. INSPECTION OF INDICTMENT, INFORMATION AND RECORD. All indictments, information and the records thereof shall be in the custody of the clerk of the court to which they are presented, and shall not be inspected by any person other than the judge, the clerk, the attorney general and the prosecuting attorney until the defendant is in custody or has been admitted to bail.

SECTION 45. INDICTMENT OF INFORMATION LOST, MISLAID, ETC. COPY MAY BE USED. When an indictment or information, filed or provided for in section 43, has been so mutilated or obliterated as to be illegible, or has been lost, mislaid, destroyed, stolen or for any other reason can not be produced at the arraignment or trial of the defendant, he may be arraigned and tried on a copy thereof taken from the clerk's book and certified by the clerk.

SECTION 46. COPY OF INDICTMENT OR INFORMATION TO BE FURNISHED DEFENDANT. Every person who has been indicted or informed against for an offense shall be furnished with a copy of the indictment or information together with the indorsements thereon at least twenty-four hours before he is required to plead thereto, and he shall not be required to plead to such indictment or information if it has not been so furnished to him. A failure to furnish such copy shall not affect the validity of any subsequent proceeding against the defendant if he pleads to the indictment or information.

SECTION 47. NAMES OF WITNESSES TO BE ENDORSED ON INDICTMENT OR INFORMATION. When an indictment or information is filed, the names of all the witnesses or deponents on whose evidence the indictment or information was based shall be endorsed thereon before it is presented, and the prosecuting attorney shall endorse on the indictment or information at such time as the court may by rule or otherwise prescribe the names of such other witnesses as he purposes to call. A failure to so endorse the said names shall not affect the validity or sufficiency of the indictment or information, but the court in which the indictment or information was filed shall, upon application of the defendant, direct the names of such witnesses to be endorsed. No continuance shall be allowed because of the failure to endorse any of the said names unless such application was made at the earliest opportunity and then only if a continuance is necessary in the interest of justice.

JAMES MORRIS, Chairman.

PRESIDENT HUTCHINSON: The report of the Committee on Local Organization is also printed in Bar Briefs. Is there any further report of that committee? It is found on page 224, by Mr. Knauf.

Local Organization

Your Committee on Local Organization beg to report:

1. That owing to the financial circumstances it has been thought best to make no considerable expense on the part of this committee.

2. The District Bar Associations have held splendid, enthusiastic and very profitable sessions.

3. The various counties' organizations have held different meetings with such success and doing a lot of splendid help in their communities. Both the District and County Bar Associations have sent speakers free of charge to all of the schools inquiring for them in their various counties, and various different local associations have entertained teachers and principals of various town high schools over the state, and on the whole the local associations have been doing good throughout the past two years.

JOHN KNAUF, Chairman.

PRESIDENT HUTCHINSON: There are no recommendations in the report. What shall we do with the report?

MR. WARTNER: I move you, in the absence of John Knauf, that the report be adopted.

MR. BRACE: Second the motion.

PRESIDENT HUTCHINSON: It is moved and seconded that this report be adopted; any remarks? If not, all those in favor signify by saying aye; opposed; the report is adopted.

We will take up the report of the Uniform Law Committee. Is the chairman present? Any members of the committee here? The report is found on page 223. What will we do with this report? There are no particular recommendations in the report.

MR. KVELLO: I move that the report be accepted and approved.

MR. HALVORSON: Second the motion.

PRESIDENT HUTCHINSON: It is moved and seconded that this report be accepted as printed. Any remarks? If not, all those in favor signify by saying aye; opposed; carried.

Uniform State Laws

Last year in Fargo the Bar Association approved the Uniform Act to secure the attendance of non-resident witnesses in criminal cases.

Accordingly, at the last session of the Legislature, Senator Whitman of Grand Forks, at the request of our Committee, introduced for passage the Uniform Act so recommended by the Association. It duly passed both branches of the Legislature and is now Chapter 217 of the Laws of 1933.

We also requested Representative A. E. Sandlie to introduce the Uniform Machine Gun Act, adopted by the Commissioners on Uniform State Laws in 1932. The Legislature, however, indefinitely postponed the Bill upon the grounds that it had previously adopted a Uniform Machine Gun Act known as Chapter 178 of the Laws of 1931.

The principle of Uniformity in State Legislation, is continuously gaining ground. I presume you all are familiar with the American Legislators' Association, which now, and for recent years past, has been concerned in improving State Legislation. It has aided and assisted in enacting Uniform State Laws.

There are now in force in this State the following Uniform State Laws:

Acknowledgment Act.

Act Regulating Traffic on Highways.

Aeronautics Act,

Air Licensing Act,

Declaratory Judgment Act,

Desertion and Non-Support Act,

Firearms Act,

Illegitimacy Act,

Motor Vehicle Anti-Theft Act,

Motor Vehicle Registration Act,

Negotiable Instruments Act,

Proof of Statutes Act,

Reciprocal Transfer Tax Act,

Sales Act,

Veterans' Guardianship Act,

Warehouse Receipts Act,

Act to secure the attendance of non-resident witnesses in Criminal Cases.

A. P. PAULSON,
A. W. AYLMER,
H. A. BRONSON.

PRESIDENT HUTCHINSON: The report of legal education and admission to the bar is also printed and found on page 208. There are no recommendations as I remember this report. Any remarks, or what action do you wish to take?

MR. NESTOS: Mr. Chairman, I move its adoption.

MR. BREKKE: Second the motion.

PRESIDENT HUTCHINSON: It has been moved and seconded that this report be adopted. Any remarks? If not, all those in favor signify by saying aye; opposed; the motion is carried and the report is adopted.

Legal Education and Admission to the Bar

By the passage of Chapter 90 of the 1931 Laws of North Dakota, the educational requirements for admission to the Bar in this state have been brought up to the standards advocated by the American Bar Association. Under the provisions of this act, each applicant for admission, subsequent to July 1, 1936, will be required to have completed two years of pre-legal college work. Therefore, in the opinion of your committee, an attempt to obtain legislation raising the standards further at this time does not seem advisable.

The Bar Board is to be commended upon the thoroughness of their work in examining applicants and investigating their qualifications. An exhaustive investigation of the character and background of each applicant is made. The requirement that the applicant be of "good moral character" is construed to include a requirement that he must possess a high degree of integrity, and every precaution is taken to obtain information on this point, thereby guarding against the admission of members who might bring discredit to the profession. The continuance of this practice is, in the opinion of your committee, highly desirable.

The faculty of the College of Law at the University of North Dakota is also to be commended upon the good work of that institution and the good record being made by its graduates in the bar examinations. Members of this association are eternally interested in the proper training of prospective members of the profession, particularly in the matter of professional ethics and deportment. A high standard of professional integrity and courtesy is found only where there is a thorough understanding of the true function of the lawyer. It is only the practices of those who do not have this understanding that tend to too greatly commercialize the profession, bring discredit upon it and impede, rather than advance, the administration of justice. For this reason your committee feels that further recommendations should be made to the faculty of the College of Law that even greater stress be placed upon the subject of legal ethics.

L. U. STAMBAUGH, Chairman,
PHILIP R. BANGS,
CLIFFORD SCHNELLER.

The next report is on Constitution and By-laws, and that proposes some change. It is printed and found at page 220. This report was made, as you remember also, last year. Are any of the members of the committee present—Mr. McIntyre, Mr. Cupler or Mr. Traynor? Mr. Traynor is here. Now perhaps the committee desire to make some remarks with reference to that report.

Constitution and By-Laws

Your Committee on Constitution and By-Laws of the State Bar Association respectfully report that after careful consideration of the Constitution and By-Laws of the Association they have only one recommendation to make in the form of an Amendment to Article IV of the Constitution, which has reference to the officers in the Association.

The provision in the Constitution of the Association, relating to membership, namely Article III, is identical with the Statute under which the Bar Association was created, namely § 813a1 of the 1925 Sup-

plement and under that Statute, the members of the Association consist of all practicing attorneys who have paid their annual license fees to, and have received their Licenses from the Clerk of the State Bar Board, as provided by law, and all other attorneys who have been duly admitted to practice by the Supreme Court of the State of North Dakota, and by laws exempted from the payment of such license fee.

Under the provisions of § 812-Supplement of 1925, it is provided that every person practicing law in this State and acting as an attorney or counselor-at-law therein, except those mentioned in § 793 of the Compiled Laws of North Dakota for the year 1913, shall secure an annual license from the State Bar Board.

The exemption under § 793 of the Compiled Laws of North Dakota for 1913, applies to any member of the Bar of another State actually engaged in any cause or matter pending in any Court in this State. In other words, it has reference to foreign attorneys.

Your Committee is of the opinion that under the provisions of § 812, there is an implied exemption from the payment of the license fee, to persons who have been duly admitted to practice law, but who are not practicing law in this State and acting as an attorney or counselor-at-law therein.

Your Committee is also of the opinion that under the provisions of § 813a1, these same attorneys to whom this implied exemption is applicable, are, by virtue of the Statute, members of the State Bar Association.

Under the provisions of § 813a1, the members of the Association are entitled to all the rights and privileges of said Association, and to vote and to participate in its meetings. This provision does not however, in the opinion of your Committee, prevent the Association from restricting the qualifications for holding office in the Association.

Your Committee is of the opinion that when the Bar Association was created, it was intended that it should be an association of practicing attorneys, resident in this state, and for the benefit of practicing attorneys.

Your Committee is of the opinion that in keeping with the spirit of the Act creating the State Bar Association and in accordance with the spirit and purpose of the organization, namely the banding together of the practicing attorneys of this State, for the welfare and improvement of the Bar of this State, that the officers of this Association should be limited to members who are active practitioners at the Bar in this State and for the purpose of effecting this, your Committee submits the following Amendment to Article IV of the Constitution:

ARTICLE IV.

Officers: The officers of this Association shall be a President and Vice President, who shall be elected at the annual meetings of the Association and shall hold their offices until the next annual meeting succeeding their election. There shall also be elected, by the Executive Committee of the State Bar Association, at a meeting following the annual meeting of the Association, a Secretary-Treasurer, who shall hold his office until his successor is elected and it is further provided that no member of this Association shall be elected to the office of the President

or Vice-President of the Association, who is not an active practicing attorney. Provided further, that a member of this Association, while he is holding any public office which charges him with the devotion of his entire time to the performance of the duties of such office, shall not be eligible to hold the office of President or Vice-President of this Association.

In accordance with Article X of the Constitution, which provides that the Constitution may be amended at any annual meeting by a majority vote upon Amendments which have been suggested at a previous annual meeting, or Amendments which have been suggested at the next preceding annual meeting, your Committee respectfully submits the foregoing Amendment to Article IV, to be voted upon at the next annual meeting.

Your Committee is of the opinion that in the event of the adoption by this Association, of the above Amendment to Article IV, that then Article V of the Constitution, which has to do with the organization of the Executive Committee of the Association, should be amended to read as follows:

ARTICLE V.

The Executive Committee shall consist of the President and Vice-President of this Association and the President of each of the District Bar Organizations of the State as such Districts are now or may hereafter be organized. The Secretary-Treasurer of the Association shall act as Secretary of the Executive Committee but he shall have no vote. In the event that any such District Organization shall not have a duly elected President, then the President of the Association shall appoint a member from such District. The representative of such District Bar Association shall serve upon such Executive Committee until the next annual meeting of the State Association, nothwithstanding the election of a new President of such District Organization.

PHILIP R. BANGS,
THOMAS A. TONER,
CLYDE DUFFY.

Your Committee on Amendment to Constitution and By-laws to whom was referred the report of similar committee made to the 1932 annual meeting of the Bar Association of North Dakota, held at Fargo, North Dakota, after careful consideration of such report and recommendations therein contained have unanimously agreed upon the following report, namely:

That Articles 4 and 5 of the Constitution of the Bar Association of the State of North Dakota be amended to read as follows:

> ARTICLE IV. OFFICERS: The officers of this Association shall be a president and a vice president who shall be elected from the membership at the annual meeting of the Association and shall hold their offices until the next annual meeting succeeding their election; provided, however, that no member of this Association shall be elected to the office of president or vice president of the Association who is not an active practicing attorney and that no member of this Association, while he is holding any public office which charges him

with the devotion of his entire time to the performance of the duties of such public office, shall be eligible to hold the office of president or vice-president of this Association. There shall also be elected by the executive committee of the State Bar Association at a meeting following the annual meeting of the Association a secretary-treasurer who shall hold his office until his successor is elected.

ARTICLE V. Executive Committee: The executive committee shall consist of the president and vice president of this Association and the presidents of the several district bar associations of the state as such districts are now or may hereafter be organized. In the event that any such district bar association shall not have a duly elected president, then the president of this Association shall appoint, from the territory covered by said district bar association, a member for said executive committee. The representative of such district bar association shall serve upon such executive committee until the next annual meeting of this association, notwithstanding the election of a new president of such district bar association. The Secretary-Treasurer of this Association shall act as secretary of the executive committee but he shall have no vote.

Your committee in adopting the recommendations above set forth wish it distinctly understood that the recommendation is not made as, and should not be construed as criticism in any way of the activities of any of the Judges of the District or Supreme Court of this State, or of any officer in the State employ. The members of your committee feel that the bar as a whole profits by the contact had through members of the Courts of the State and State employees in their association in State Bar matters. Especially do we feel that the participation on the part of members of the Supreme and District Courts of the State and employed officers of the State in the proceedings of our State and District Bar Association meetings not only adds to the interest in such meetings, but tends to bring about a closer and more helpful spirit between the practicing attorneys of the State and those entrusted with interpretation of our laws and the enforcement of our laws, and your committee sincerely trust that if the proposed amendments to sections 4 and 5 are adopted, that they will not be construed by any person as a desire to limit the activities of members of the Supreme and District Courts of the State and employed officers of the State in the affairs of the State or District Bar Associations.

Respectfully submitted,

W. A. McINTYRE,
A. W. CUPLER,
F. J. TRAYNOR.

MR. TRAYNOR: Mr. President, inasmuch as I am a tail ender on the committee, the only one present, I presume it is up to me. Possibly the membership will want to discuss these changes.

The recommendations were made at the last meeting and were not passed on then because they couldn't pass on them until another meeting constitutionally. The present committee is in favor of the adoption of the changes provided for in the constitution, and so recom-

mends. As a member of the present committee, I feel that the phraseology used in the proposed amendment submitted by the committee last year might be improved on for the purpose of clarification and simplification of language, and constitutionally, the present committee have set forth the same identical principles in a little different language.

There are two articles to be amended. I first move that Article 5 of the Constitution be amended so as to read as set forth in the report.

Now if I recall correctly, the amendment there provides that no member shall be elected president or vice president who is not an active practicing attorney, or who holds a public office, which charges him with the devotion of his entire time in the performance of the duty of the public office.

Gentlemen, I move the adoption of that amendment.

PRESIDENT HUTCHINSON: You are moving then for the adoption of Article IV?

MR. TRAYNOR: Yes.

PRESIDENT HUTCHINSON: Are there any remarks or any discussion whatsoever.

MR. ELLSWORTH: There is no second.

PRESIDENT HUTCHINSON: First, we will have a second perhaps.

MR. STARKE: Second the motion.

MR. ELLSWORTH: Then Mr. President, I wish to move as a substitute for the amended by-law, proposed, Article IV—Officers. The officers of this association shall be president, vice president, secretary and treasurer, each and all of whom shall be elected at the annual meeting of the Association and shall hold their offices until the next annual meeting succeeding their election; provided, that no member of this association shall be elected to the office of president, vice president, secretary and treasurer of the Association, who is not an active practicing attorney, and provided further that a member of this association, while he is holding any public office which charges him with the devotion of his entire time to the performance of his duties in such public office shall not be eligible to hold the office of president, vice president or secretary.

PRESIDENT HUTCHINSON: You have heard the substitute motion; is there a second?

MR. MATTHAEI: Second the motion.

MR. TRAYNOR: As I understand the proposed substitute motion or amendment, it is identical in principle and substance with the one proposed by the committee, with the exception that it includes the Secretary.

PRESIDENT HUTCHINSON: I think that is right.

MR. TRAYNOR: So that the only question is, if we are in favor of the amendment in principle, is the question in this substitute motion, as to whether the secretary should be included.

Personally I can see no advantage in including the secretary. I believe that a secretary can perform the duties of secretary, even though he may hold a public office, or even though he may not be devoting his entire time to the practice of law. As I have understood the purpose of the change sought to be made in the constitution here—let's see what the committee says:

(Reads from Bar Briefs)

The feeling was particularly with reference to the president and vice president, and although the present president happens to be a judge of one of our courts, the feeling is that the members of the bar naturally felt some reticence in opposing a member of the judiciary, if he should be an active candidate for the position of president or vice president; they wouldn't feel the same freedom of expression either for or against a candidate who happened to be a member of the judiciary. It was thought advisable apparently by the committee last year, and the committee this year seem to agree in that view, that it would be well to have this limitation. I can't see where it should apply to the Secretary.

If this substitute motion is adopted, it would simply mean the elimination of Mr. Wenzel by vote of this association from being secretary. I don't think the association could have any more efficient secretary than Mr. Wenzel has been. It is nothing to me whether he remains secretary or not, but the manner in which he has conducted the affairs so efficiently of the office of secretary indicates to me that whether he or somebody else is secretary, that the fact he is not devoting his entire time to practicing law, and the fact he holds public office, and it is appointive rather than elective, has not interfered with his efficiency. Personally I would be opposed to the substitute motion.

MR. ELLSWORTH: Mr. President: In proposing this substitute motion, we followed along the lines indicated by the feeling on the part of the association itself. I mean by this, the fact that an amendment such as this was deliberately proposed by a committee of this association set forth that there is quite a feeling among the membership of the association that members engaged in some other work or performing the duties of some other office should not act as officers of this association.

I might say at this point that the present by-law as it stands rather favorably appeals to me. I don't have personally any serious objection at all to Judges of the District or Supreme Court acting as president or vice president of this association, but as I stated, there seems to be a certain feeling, not a personal feeling, amongst the membership to the effect it is properly a lawyers association, and that the lawyers, for the time at least, ought to have the most prominent part before the association, although we wish to keep in close contact with the judiciary, but when it comes to opposing such amendment as this, I cannot understand why it should not apply to all the administrative officers of the association. Some one has undertaken to distinguish between the seriousness of the duties of president and vice president and the secretary of the association. Now I think we all know that the secretary of the association is a member of the board or the officer among all others that has the largest work to perform, a work that must take considerable part of his time during the year, and if he is engaged in the duties of another

office that requires his devotion during the business hours of each day to the duties of his office, it is scarcely understandable how he can successfully perform the duties of the office of secretary.

These matters change about so often that it cannot be said that they have any particular personal significance in such a case as this, but it occurs to me that if we are to make this change with reference to the president and vice president, it ought also to include the secretary. The secretary of this association should be a lawyer of experience. He should be one that has some experience so that he would have a ready understanding of practically all the somewhat complex questions that come before him. It is just as necessary on his part as on the part of the president or vice president, and when they are elected by the membership of the Association, why should it dispense with the election of the secretary. In other words I believe that the membership of this association is just as much concerned in the selection of the secretary as they are in the president and vice president, and that we are not now preparing to relegate that to the executive committee, while some other matters might come in, so, Mr. Chairman, or Mr. President, in proposing this substitute motion, I have in mind to make this somewhat sweeping change in our by-laws, it ought to include all of the officers of the association, or more of them. In other words, by our action today we ought either to act along the lines of this substitute motion or reject the amendment altogether.

MR. KVELLO: It semes to me we operate largely through our executive committee, and that if the executive committee considers the selection of a secretary, they will consider whether he can devote enough time in order to faithfully perform his duties. I think in the case of the present secretary, he performs his secretarial duties without sacrificing any duties of the position he holds. I understand he works during the day time at his regular duties, and his evenings are devoted to these other matters. I believe it can safely be left to the judgment of the executive committee as to whether or not the proposed candidate for that position has time enough to take care of the office and carry it on successfully. I would therefore oppose that part of the amendment, restricting it to the president and vice president.

MR. NORTON, MINOT: It seems to me that we are going quite far in restricting ourselves to whom we shall, or shall not, elect as president or vice president of this organization. I think that the matter might be left to the judgment of the members of the bar rather than that judgment be so restricted, as those proponents seem to think in this proposed amendment. It occurs to me that it is as the committee says, that the Association has been greatly helped and stimulated and inspired by the associations and contacts with the membership of the Supreme Court members and the District Court members of the bar.

Now as to the secretary, the amendment proposed by the committee provides, as Mr. Kvello pointed out, that the secretary be appointed by the executive committee, and our learned friend here suggests that the secretary should be an attorney, that his time should not be taken up by any other work, such as public office work, so that he won't take any of the time to be devoted to the state to attend to the business of the secretary. Now I have seen men, and I dare say you have seen men, that had 24 hours in the day and they had but very

little law practice, and they could attend to a very small portion of that. Other men have a large law practice, and they can attend to it and do attend to it and attend to everything else in a public way that comes to them. Some men can do a great deal more than others, and do do it. There is just one reason why we have as our present secretary of this association the man in that position; that is because of his very high efficiency in his public official position, and in this position as secretary of this Bar Association. I don't think for a moment that matters left to the executive committee, that they will hire or employ or elect some clerk knowing nothing about legal business or select some one that won't meet the general approval of the members of the bar.

Now if we want to go so far as to exclude members of the judiciary from the office of president or vice president, I might be willing to go half heartedly into that, but I don't think there is any necessity or any occasion or any good reason why we should limit the executive committee or limit the members of the bar in the selection of a secretary, who must be an active working member of the bar. For my part, I would rather have as secretary of this association, a man who could perform the work of some high office with outstanding efficiency and at the same time do the highly responsible work of the secretary of this Bar Association, also, in a manner outstanding and highly efficient, so the work is not only recognized with many in this state, but in all the adjoining states. I, for one, am very much opposed to the proposed amendment including the secretary.

PRESIDENT HUTCHINSON: Any further remarks?

MR. NOSTDAL: I wish to state that I am opposed to this amendment. I happen to have been an officer of this association on the executive committee and I worked with the present secretary for about ten years. We, of course, have very able and efficient members that could probably do this work, but it would be very difficult to find a man, a person that could take the place occupied by Mr. Wenzel, for the reason he does not only have to be secretary of the Association, but he is also editor of our paper. There is another reason, and that is this, that if we have no income over and above what we have at the present time, a man without a salary could not afford to work for what we are paying our secretary at the present time. I believe it is $40 a month, or something like that; any way it isn't very much, and I don't see that there would be any necessity for this amendment, even if they did have an official position they would do this work outside of the time supposed to be devoted to their official duties. As it is with Mr. Wenzel, I don't doubt that most of his work probably in connection with the office of secretary of this association is done on his own time. I hope this amendment is defeated. (Question called for.)

PRESIDENT HUTCHINSON: Any further remarks? If there are no further remarks, will all those in favor of the proposed amendment as announced by Mr. Ellsworth, which includes the Secretary-Treasurer as well as the President and Vice President in the amended article, all those in favor signify by saying aye; all opposed no; the proposed amendment by Mr. Ellsworth is declared lost.

MR. ELLSWORTH: I would ask for a division.

PRESIDENT HUTCHINSON: Very well, all those in favor, please rise. (Seven arose.) All those opposed, please rise. I don't think there is any use counting the vote.

Now we will take up the amendment as proposed by the committee. We will first take up Article IV.

MR. KVELLO: Would the last paragraph of that exclude the State's Attorney from acting?

PRESIDENT HUTCHINSON: I presume it would under the reading as I would interpret it.

MR. TRAYNOR: The State's Attorney is not charged with devoting his entire time to the office.

MR. NORTON: Just to clarify matters, Mr. President, I move you that in Article IV, there be stricken out the last five lines beginning with "Provided further, that a member of this Association—" all of that be stricken out, and as amended, the proposed amendment be adopted.

MR. WARTNER: Not hearing any second, I move you that the proposed amendment be laid on the table.

MR. TRAYNOR: Second the motion. (Several seconds.)

PRESIDENT HUTCHINSON: Any remarks?

MR. COOPER, KENMARE: I rise to a point of order. This question is not debatable.

PRESIDENT HUTCHINSON: All those in favor of laying this amendment upon the table, signify by saying aye; opposed no. I will declare the motion carried. That takes care of Article IV then. What will we do with Article V?

MR. ELLSWORTH: As I understand Mr. Traynor, Article V was interwoven with Article IV.

MR. TRAYNOR: My motion covered only Article IV.

PRESIDENT HUTCHINSON: We will take up Article V, if the committee desires to present Article V, then, as I understand Article V, the change is that the executive committee will elect the Secretary-Treasurer instead of election by membership. Is that right, Mr. Traynor?

MR. TRAYNOR: I am just reading it over to see what it is. (Article V read.)

I move the adoption of that article.

MR. ELLSWORTH: As a point of information, I would inquire about Article V, that is printed at the top of page 222 of this report. That is the article that I referred to when I said I thought it was interwoven with Article IV, and passed to the table. Article V then begins in the lower part of the page, is entirely different and relates to a distinct subject.

PRESIDENT HUTCHINSON: You mean Article V of the report of the committee of last year is different from the report this year, is that your statement, Mr. Ellsworth?

MR. ELLSWORTH: What I am concerned about, your honor, is to know what would become of Article V that is printed at the top of page 222. I notice its adoption is recommended by the committee only in case Article IV is adopted. If we are voting on Article V, that begins at the bottom of the page, we ought to know it. That is what I have reference to.

SECRETARY WENZEL: Article V as written by the present committee is identically the same as Article V as printed and recommended by last year's committee, with the exception that the last sentence of the new Article V is in the middle, while in the other article it is at the bottom. It is simply a provision depriving the secretary-treasurer of a vote on the executive committee. That is all the change that is made, and I think you will find this provision is inserted in the middle of one report and in the other it is inserted at the end.

MR. TRAYNOR: Is that changed from the old section?

SECRETARY WENZEL: Yes, the old section reads as follows: (Reads old section.)

PRESIDENT HUTCHINSON: The only change there is the amended section takes away the vote of the secretary-treasurer in the executive committee.

MR. NORTON: It eliminates the secretary being a member of the executive committee.

MR. ELLSWORTH: Are we voting on the article just read?

PRESIDENT HUTCHINSON: No, we are voting on the article as proposed by the committee, Article V, as proposed by the committee at the bottom of page 222.

MR. ELLSWORTH: Well, that is the one the secretary read.

PRESIDENT HUTCHINSON: No, he read now from Article V as it now stands.

MR. ELLSWORTH: And to what he read is added, "Shall have no vote."

PRESIDENT HUTCHINSON: Yes.

MR. ELLSWORTH: Now we are voting on the entire amendment including that clause.

PRESIDENT HUTCHINSON: Yes.

MR. ELLSWORTH: I am favorable to that.

PRESIDENT HUTCHINSON: Any remarks? (Question called for.) All those in favor of the adoption of Article V as proposed by this committee say aye; opposed; I declare the motion carried, unless a division is called for I will declare the motion carried. I believe that takes care of all the recommendations made by the committee.

MR. TRAYNOR: Yes.

MR. NORTON: That is Articles IV and V, amendments to the Constitution. It wouldn't be considered as amendments to the by-laws, would it?

PRESIDENT HUTCHINSON: I don't think it conflicts with any by-laws that I know of. I don't pretend to be an authority on constitutions myself. Are there any further matters to be taken up by this committee? If not, we will take up the report of the next committee on the unauthorized practice of law. Is Mr. Bangert present?

MR. ELLSWORTH: Mr. President, this committee, as your honor suggested in your opening address, has had a work of great importance to perform. I understand an extended report has been prepared. Mr. Bangert so informed me, but for some reason he has not prepared a circular and doesn't seem to be here.

PRESIDENT HUTCHINSON: Perhaps we better pass the matter. We will pass the matter without a motion.

PRESIDENT HUTCHINSON: Anything on the fee schedule?

SECRETARY WENZEL: No report has been filed by the committee on fee schedule. You will note in the same issue of Bar Briefs on page 232, some changes proposed by the Cass County Bar Association, and adopted by that association. Something should be done with respect to that.

Fee Schedule

The Cass County Bar Association, at its May meeting, approved the following recommendations of a special committee to consider the matter of fees on foreclosure:

Your committee appointed to consider the question of attorney's fees under our new statutes on foreclosure of real estate mortgages, has given the matter consideration and recommends that upon a mortgage foreclosure by action when the amount of the debt secured by such mortgage does not exceed the sum of one thousand ($1,000.00) dollars, a minimum fee of fifty ($50.00) dollars; when the amount of the debt so secured exceeds $1,000 and does not exceed two thousand ($2,000.00) dollars, the sum of seventy-five ($75.00) dollars; when the amount of the debt secured exceeds two thousand ($2,000.00) dollars, the sum of seventy-five ($75.00) dollars, and in addition thereto, 2 per cent on the amount so secured in excess of two thousand ($2,000.00) dollars.

In foreclosure of a mortgage by advertisement, one-half of the above rate recommended in the foreclosure by action, plus the sum of twenty-five ($25.00) dollars.

PRESIDENT HUTCHINSON: You have all noted this report of the Cass County Bar on the back of Bar Briefs, page 232. Do you want to take any action?

MR. HOOPES, CARRINGTON: Mr. Chairman, if I may be permitted to impose for about sixty seconds to make a suggestion, our President in his address today spoke particularly about our cooperation and harmonizing with the national institution, the American Bar Association, and that is to be approved. We have a class of practitioners classified as commercial lawyers, and again we have a national institution, the Commercial Law League, and the question has arisen in my mind whether or not we are cooperating and harmonizing with the Com-

mercial Law League with the same enthusiasm that we are with the American Bar Association, not bringing that up for discussion at this time, but I merely make a suggestion and will be glad to have this matter considered. I am referring to the so-called docket fee.

PRESIDENT HUTCHINSON: Any action the membership desires to take with reference to the fee schedule.

MR. HALVORSON, MINOT: Mr. President, I move you we adopt the resolution of the Fargo Bar, as a part of the minutes of the State Bar, contained on the last page of Bar Briefs.

PRESIDENT HUTCHINSON: Any second to the motion?

MR. COOPER: Second the motion.

PRESIDENT HUTCHINSON: The motion has been seconded; any remarks?

MR. TRAYNOR: Mr. President, I don't believe the Bar will live up to that rule. It is no use in passing a fee schedule we don't live up to. Already in some places they are taking out garnishments for a fee of one dollar and I think lawyers are taking foreclosures on most any fees they can get. I believe it would be advisable to have a minimum like that which is provided in this resolution here. I do believe that minimum fee of $50 is all right, I think it ought to be $50 up to $2,000, then one per cent above that, and I move as a substitute motion that the fee schedule as suggested in this report on page 232 be reduced to the sum of $50 up to the amount of $2,000 and one per cent above that; that is the minimum, you remember.

PRESIDENT HUTCHINSON: Any second to this proposed amendment?

MR. LAMBERT: I move that we put it on the table. Nobody pays any attention to it anyhow. Just as soon as I get one printed and put it up on the wall, some one will come in and say "You are all right, Frank, but you charge too much, twice as much as anybody else."

MR. NORTON: I believe Mr. Traynor, that lawyers do not comply with the fee schedule. People haven't any money and lawyers are hard up for work, so they will work for almost anything. I believe we are making a mistake in passing rules the members can't live up to. For that reason, I move that this discussion be laid on the table and take it up again when conditions change so we can be expected to charge something reasonable for our work.

JUDGE HUTCHINSON: It is moved and seconded that the matter be laid on the table; all those in favor of this motion signify by the usual sign; those opposed; it is laid on the table.

The hour has now arrived when the membership of the Northwest District would like to have an opportunity of getting together for a little meeting, so I am going to declare the meeting adjourned at this time until 1:30 o'clock this afternoon.

AUGUST 21, 1933

Afternoon Session

PRESIDENT HUTCHINSON: We might as well come to order and continue our work. We will take up at this time, gentlemen, the report of the committee on Ethics and Internal Affairs. Mr. Wenzel, I believe, gives the report generally in that connection.

SECRETARY WENZEL: Mr. President and Members of the Bar Association:

Mr. Dickinson is the regular chairman of this particular committee, which has charge of the matter of taking care of complaints filed against attorneys of the state. This year, I am sorry to report, we had a particularly bad record, between 40 and 45 complaints against as many attorneys were filed during the year, most of which, of course, were minor matters, several of which, however, were matters of some importance. During the last two weeks, a number of matters have been brought to the attention of the secretary's office, which indicate that possibly some action ought to be taken.

I call your attention particularly at this time to the matter that was presented again to this Association this morning through the Executive Committee's report favoring the granting of disciplinary powers to the Bar Association. There just isn't anything this Bar Association can do through its committees on internal affairs and ethics. It can use moral suasion, just as the secretary endeavors to do. That is as far as the secretary can go, and that it all the committee can do. I am going to read a letter of complaint that was brought to our attention just a few weeks ago, which points to some of the things that occur which ought not to occur. I shall not read the name of the individual referred to, nor the persons making the complaint, but I shall read you the statement of facts. After referring to the fact of sending certain papers in February of this year accompanied by fees to the lawyer complained of, the letter goes on to say:

(This letter is dated July 27.) "We wrote a letter on April 18th, another on May 26th, another on June 13th, and we sent a wire on June 20th, but we haven't heard one single word from him." Now it seems to me that it is high time that just such situations were corrected through some definite action of this organization. I hope that this Association will bend its efforts toward securing just the sort of jurisdiction that is needed. You can't clean this house unless there is some authority given. We have certainly had plenty of other examples in high positions during the past year indicating that there is need for a cleaning of house, and I trust that this Bar Association will not feel, as it has sometimes felt in the past, that it does not want to mix in this thing. The public does hold us responsible. I had two women in the office within the last three weeks telling us of certain situation in a certain corner of this state, and this Bar Association was unable to do anything for them because we have absolutely no authority. Those people, just as other people, go out and spread the news and charge every individual lawyer of the state with the same kind of conduct. You might as well acknowledge the fact, the public does hold this Bar Association responsible for the action of the members of the Association. Unless you reach the point where you are willing to take the "bull by the

horns", using ordinary street language, to "face the music and clean house", you will continue in the same old position where you can't do anything, and yet are held responsible. I am presenting this to you in an informal sort of way, not moving its adoption at all, but I hope some good will come of it eventually.

PRESIDENT HUTCHINSON: Any further remarks? As long as that other matter was taken care of this morning, I don't suppose any further action or discussion is necessary at this time.

We will proceed with the other committee reports, the committee on Comparative Law. Is there any report?

MR. HERIGSTAD: Mr. President, the report is on file with the Secretary and contains no recommendation and it is very brief, so I merely move its adoption.

PRESIDENT HUTCHINSON: You had better read the report, please.

Comparative Law

Your committee has found it difficult to secure any material on the subject of Comparative Law. The only real source of information on this subject is the "State Law Index," published by the Federal Government.

The Comparative Law Committee in 1932 gave a comprehensive summary of Volume III of this Index and Digest. Your committee was unable to secure Volume IV of this Index. We wrote to the Honorable Robert P. Shick, the Secretary of the Comparative Law Bureau of the American Bar Association for material on this subject and received from him a letter which we take the liberty of quoting in this report because it so ably expresses our view that the study of Comparative Law is more a national problem than a state problem. The letter is as follows:

O. B. Herigstad, Esq.,

Minot, N. D.

Dear Sir:

I have your letter of June 17th in which you make request of me as Secretary of the Comparative Law Bureau of the American Bar Association, to furnish you some material on the subject of comparative law. In reply I would suggest that you are apparently about to repeat the experience of the members of the Pennsylvania Bar Association, whose work eventually led to the organization of the Comparative Law Bureau of the American Bar Association.

Wm. W. Smithers, Esquire, and others of the Pennsylvania Bar Association, back in 1907 or thereabouts, were appointed a committee on comparative law for the Pennsylvania Bar Association. A year's work or more soon developed the fact that the field of the study of comparative law was a national one and not a state's. As a consequence, about 1908 at the meeting of the American Bar Association in Portland, Maine, Mr. Smithers and the late Governor Simeon E. Baldwin of Connecticut, introduced the resolution under which the American Bar Association created the Comparative Law Bureau as a subsidiary organization of that Association.

The experience of the officers of that Comparative Law Bureau during the years since the Portland meeting, has demonstrated the wisdom of the move to make the study of comparative law a national subject rather than a state subject.

You will find in the American Bar Association Reports, since the year 1907, the record of the proceedings of the Comparative Law Bureau, beginning with the report which led to its creation at the Portland, Maine, meeting, and I would refer you to those annual reports of the American Bar Association for the history of the Comparative Law Bureau of the American Bar Association.

The problems of comparative law within the boundaries of the United States of America are more strictly the problems of making uniform the laws of the various states. The social and economic developments of the United States as a whole, have necessitated or at least made advisable for the people of our country, a more uniform condition in the law of the various states. The industrial and economic development of our country, necessitate this, so that the economic and commercial life of our country, as a whole, may not suffer from barriers or trammels upon the free interchange of commerce between the various states of our country.

I shall not elaborate upon this thought but I believe that this hint will be sufficient to indicate my general opinion that the study of Comparative Law is more a national problem than a state problem, and that a state bar association could more properly address attention to the problems of making uniform throughout the United States, the commercial and industrial laws which effect the social and economic life of the citizens of our various states.

In this connection, I would suggest that the National Conference of Commissioners on Uniform Law, has been functioning as a subsidiary organization of the American Bar Association for the last 20 years or thereabouts and annually has a week's conference immediately preceding the meeting of the American Bar Association. It has done some very fine work in its field of labors and you will find its reports also in the annual reports of the American Bar Association.

Yours very truly,

R. P. SHICK, Secretary.

To those who are interested in a further and more comprehensive study of the subject of Comparative Law we would recommend the following material:

American Bar Association Journal

June 1932 p. 379. Aliens and the Right to Work. By Joseph P. Chamberlain.

American Political Science Review

April 1933 p. 227-236. State Constitutional Development Through Amendment in 1932. By Harold Enslow.

American Year Book

1931 p. 332. Control of Cotton Production. By Wm. F. Notz.

Annals of the American Academy of Political and Social Science
May 1931—Zoning in the United States
May 1932—Modern Insurance Developments
May 1933—The Administration of Justice

U. S. Department of Agriculture. Bureau of Agricultural Economics. State Measures for the Relief of Agricultural Indebtedness to the U. S., 1932 and 1933.

U. S. Department of Commerce. President's Organization on Unemployment Relief. State Legislation for Unemployment Relief. By Rowland Hayes.

Respectfully submitted,

O. B. HERIGSTAD, Chairman.

MR. HERIGSTAD: We move the adoption of the report.

PRESIDENT HUTCHINSON: You have heard Mr. Herigstad's report; is there a second to this motion.

MR. LEWIS: Second the motion.

PRESIDENT HUTCHINSON: It has been moved and seconded that the report be adopted. Any remarks? If not, all those in favor signify by saying aye; opposed; it is carried.

We next have the report of Jurisprudence and Law Reform. Has there been any report filed?

SECRETARY WENZEL: No report filed, Mr. President.

PRESIDENT HUTCHINSON: Who is the chairman?

SECRETARY WENZEL: The chairman is E. B. Cox of Bismarck, and the other members are Max Wishek and B. F. Spalding.

PRESIDENT HUTCHINSON: We will pass that at this time. The Modification of the Jury System, is there a report on file on that?

SECRETARY WENZEL: This report has just been filed within the past few days, presented by Chairman A. R. Bergeson, and signed by all three members consisting of the chairman, H. G. Nilles and George Soule.

Modification of Jury System

Tradition has built around the jury system a halo of great luster. Dazzled by its brilliance we have consistently protected the system from tamperers. At any rate practically any proposal to modify our jury system meets with vigorous opposition, especially from some of the members of our own profession.

It is hard to understand why in small cases in District Court the law provides a jury as a matter of course and free of charge, whereas in justice court the litigant must make proper demand and pay all expenses. Especially so when we consider the difference in qualification between justices of the peace and judges of higher courts.

If it is advantageous to secure speedy trial of small causes of action in justice courts, it is even more so in the already overburdened

district courts. If it is desirable to save the taxpayers money by requiring litigants to pay for the jury in justice court, the same principle holds true in higher courts. If justices of the peace are competent to pass upon questions of fact, then surely judges of district courts and county courts of increased jurisdiction are even more so.

We therefore recommend that in all criminal cases except murder triable in the courts of this state, the defendant shall have the right by leave of the court to waive trial by jury, and that in district courts and county courts of increased jurisdiction in all cases involving less than five hundred dollars the jury be deemed waived unless the party desiring the jury makes demand on or before the opening day of the term of court and deposits with the court the sum of twenty-four dollars to be applied toward the payment of jury fees.

We believe that such modification would materially reduce the number of cases now tried to the jury, thereby saving costs to taxpayers and at the same time speeding up the work of our courts.

Respectfully submitted,

A. R. BERGESEN,
H. G. NILLES,
GEORGE SOULE.

For the purpose of getting the matter before the Association, I move the adoption of this report, Mr. President.

PRESIDENT HUTCHINSON: Is there a second to this motion?

MR. TRAYNOR: Second the motion.

PRESIDENT HUTCHINSON: It has been moved and seconded that the report be adopted; are there any remarks?

MR. CAMPBELL, MINOT: I would like to suggest that I do not like that word "deemed." Some time ago I had a small case in the county court with increased jurisdiction and for some reason or other the judge didn't want to try it without a jury. I conceived the idea that, under the existing statute in that court, a small case, where no demand had been made, the case could be brought on at once. But that peculiar legal word "deemed" used in the statute was taken advantage of. I tried to insist on the trial of my case at an early day by the judge; however, the upper court held that was entirely discretionary with him and that if he didn't see fit to try it and wanted to pass it over to a jury, he could do so. Consequently I had to wait with my little case there. Otherwise, I think the proposition of requiring a jury in small cases is ridiculous. I think it should be that there be no jury without a written demand, but the word "deemed" should be left out so that it is not discretionary with the court.

PRESIDENT HUTCHINSON: Any further remarks?

MR. HOOPES: I am inclined to look upon this with great favor. I wish to submit a question with reference to denying a jury. I am not sufficiently well informed, but I raise the question of whether or not that jury might not be demanded at the time of serving the pleadings.

PRESIDENT HUTCHINSON: This committee didn't draft any particular law. They are just submitting this report for the approval or disapproval of this association, upon principle.

MR. ELLSWORTH: Mr. President, I want to confess I am still old-fashioned enough to be in favor of a jury as a matter of right in the higher courts, and I do not feel disposed to penalize the litigant to the extent of requiring him to pay the expense of a jury in order that he have the privilege of having his case tried by one. The determination of whether or not a case should be tried by a jury ought not to be made to depend entirely upon the amount of money involved. As we all know, there are a great many cases arise in which the amount of money is a trivial consideration; there is some clear question involved that one or the other litigants prefer to have tried to a jury rather than to a single judge. However it may be, I do not believe that any recommendation of this kind would get us anywhere at all. This is a question that, during the 33 years of the life of this Bar Association, I suppose has been moved at different times in different forms, about 33 times, and we have never yet approved it, and so I don't feel disposed to favor a recommendation that will carry on that way without end.

PRESIDENT HUTCHINSON: Any further remarks?

MR. SWENDSEID: If I am in order, I wish to make a motion that the matter be divided, between the criminal cases for jury and civil cases. Several might be in favor of giving the defendant the right to try his criminal case without a jury, and would not be at the same time in favor of the matter pertaining to civil cases. I would therefore like to make a motion that the report be divided.

PRESIDENT HUTCHINSON: I will put it in divided form when you get through with your discussions anyway. Any further remarks on the report?

MR. COGHLAN: I don't believe there is any necessity for changing the system so that a litigant has to put up a certain amount of money before he can have his case tried. I don't think there is any call for reform along those lines. As to the criminal part, I don't think it would be wise to dispense with the jury excepting in misdemeanor cases.

PRESIDENT HUTCHINSON: Well you understand that the recommendation is that the defendant have a right to waive a jury. He doesn't need to waive unless he wishes to, but if he rather try his case before the court, he would have a right to do so. I think perhaps in some cases, the criminal perhaps can't put up a bond so he must remain in jail, and he pleads guilty perhaps to a crime where he thinks he has a defense just to get the matter over with. If he had a right to try his case before the court in chambers, he might prefer to do it.

MR. COGHLAN: Well I see, that may be all right as to the civil part, but I don't think it is a needed reform at all to require the litigant to put up the money.

MR. STUTSMAN: I am opposed to this whether you divide it or not. If a reasonable charge for jury service is made as mentioned for demanding a jury in justice court, I might favor it but $24 would be prohibitive in 97 cases out of 100. Of course in criminal cases, it is impossible to consider any thing of that sort. I am like Judge Ellsworth, I am old fashioned enough to believe that 12 sensible men would be a good deal more likely to reach the true facts in the case than one judge.

MR. SWENDSEID: I would like to take exception to waiving trial by jury by the defendant. It takes no rights away from the defendant.

MR. STUTSMAN: Do I understand it is an additional right for the defendant to be tried by the court?

PRESIDENT HUTCHINSON: If he wants to.

MR. STUTSMAN: I don't consider that a privilege at all.

PRESIDENT HUTCHINSON: Well, of course, the defendant might consider it a privilege whether you did or not, Mr. Stutsman.

MR. ADAMS: It is a fact that in the City of Boston more than half the defendants ask that privilege. Now if it isn't a benefit, why do more than half the criminals ask for that privilege of waiving a jury?

MR. WARTNER: Isn't the main reason for them asking that privilege the fact as has been pointed out by the president of the association, namely, the failure to hold jury terms within a reasonable time after a complaint or indictment is brought, and by this method the one accused is able to come to trial months before he would do so under the regular jury practice; isn't that the situation that is creating these requests?

PRESIDENT HUTCHINSON: It may be but perhaps that is not true in a city like Boston where they are holding jury terms almost constantly.

MR. ELLSWORTH: I can't quite see that yet. If the defendant wants an immediate trial, that is if he wants to commence serving the term as is suggested, he can do that by the very simple method of pleading guilty.

PRESIDENT HUTCHINSON: He may rather have a trial before the court than to plead guilty. You may not think there was any choice there, Mr. Ellsworth, but he may.

MR. ELLSWORTH: Is there anything now to prevent him from waiving that jury and going to trial before the court?

PRESIDENT HUTCHINSON: There certainly is.

MR. BANGERT: I would say this, while I am not on the bench, if I were on the bench I would be very much opposed to it myself, because I think the courts "are in" bad enough without adding to their burden in the matter of this kind.

MR. STUTSMAN: I am unwilling to believe any innocent man pleads guilty to get it over with. According to this resolution a man can be accused of any crime except murder and waive a jury and go to trial before the judge. I am unwilling to believe it is any privilege to a man indicted for a penitentiary offense, who is unable to give bond, and is forced to stay in jail for a few weeks until the court meets, that it is any privilege to submit the facts to a judge. (Question called for).

PRESIDENT HUTCHINSON: Any further remarks?

MR. COGHLAN: I object to that $24 provision on the further ground that the litigant would not have any money left to pay his attorney with.

PRESIDENT HUTCHINSON: We will vote on the proposition, the first recommendation, that is whether we favor the change in the law so as to give the defendant a right to waive a jury trial. Now if that is clear, all those in favor of the report with reference to the waiving of the jury in criminal cases, say aye; all those opposed no. Will all those in favor rise. The motion is carried, I can see that from the people standing.

We will take up the second proposition; all those in favor of a law that would require the party who desired a jury trial in civil actions to pay a jury fee, where the amount involved was $500 or less, all those in favor of this proposition say aye; all those opposed. I will ask for a rising vote on this. All those in favor, rise. The motion is lost.

MR. BRADFORD: I move that the report of the committee on jury trial be amended to read, that in all civil cases involving $500 or less in the district or county courts of increased jurisdiction, the parties would be deemed to have waived a jury trial unless they require on or before the first day of the term, that the issue of fact be submitted to two tryors of fact to be appointed by the court without expense to them.

MR. CAMPBELL: Second the motion, with this amendment: In such cases, where the issue is joined, that the judge be required to appoint such tryors and proceed to go to trial of the case at once.

MR. BRADFORD: I will accept the amendment.

PRESIDENT HUTCHINSON: Very well, you have heard the modification. Any further remarks? All those who favor this modified report, signify by saying aye; opposed no. I will ask all those who favor it to rise. All those who oppose it to rise. Thirty-one against; twenty-seven for—the motion is lost.

Ladies and gentlemen, we live quite a way from the seat of government in the United States, and we are now moving quite rapidly. I think with the many changes being made, many fundamental changes being made, with this in mind, I thought it might be of interest to the members of our profession to hear from some one who lived in Washington, D. C. I therefore invited David Lawrence to address the Association. Mr. Lawrence was unable to come and he recommended as a very good substitute for him Mr. Arthur S. Fleming of Washington, D. C. and I accepted Mr. Lawrence's recommendation and Mr. Fleming has come here to address us, and as this is the hour for his address, I want to introduce Mr. Fleming at this time and give him the floor. He is going to speak to us on the subject "Between You and Your Government" as printed on the program—Mr. Fleming.

"BETWEEN YOU AND YOUR GOVERNMENT"

ARTHUR S. FLEMING

Executive Director of the U. S. Society of Washington, D. C.

MR. FLEMING: Mr. President, Members of the North Dakota Bar Association:

I am glad that your President was frank enough to tell you that after all I am second choice in this particular instance. That makes things a little bit easier for me. Mr. Lawrence sincerely regretted that

he could not accept the very cordial invitation which he received from your President, and come out here today and address you on the rapid changes that are taking place in the field of government in the City of Washington, but his own personal interests prevent him from doing so. However, his misfortune is my good fortune. I am glad to be here and glad to have the opportunity of meeting you and talking with you about these events, which are of such great interest to all of us these days.

Not many years ago a huge dam was constructed in the State of California at a cost which ran into millions of dollars. Soon after the dam was completed, California was visited by a rainy season. Now I know that rainy seasons are not the rule in California, but this was an exception to the rule, and as a result of this rainy season the waters backed up against the dam and subjected it to heavy pressure, and in a few days that dam suddenly gave way, and the valley below was inundated. Hundreds of persons lost their lives; millions of dollars worth of property were destroyed.

A commission was appointed for the investigation of that tragedy. After a number of weeks of investigation, the commission made a report, and the substance of that report was this: The superstructure was perfect; the foundation was weak.

My friends, I bring you greetings today from the Capitol City of our nation. I bring you greetings from a city which, ordinarily deserted in the summer, is today humming with activity. It hums with activity because there has descended on it a great throng of architects; a great throng of builders, who are engaged in the construction of a great nation's dam; a dam designed to prevent the waters of despair from engulfing this great nation; a dam designed to hold back the waters of poverty, of disease and of lost hope; a dam which the historian of tomorrow may label as "The Dam of Economic Stability." Just like the dam we have talked about in the State of California, there are two parts to this dam, which is being constructed in the City of Washington, and whose ramifications reach out and touch every city and hamlet in the nation; one is the superstructure, the other is the foundation.

The foundation is the same foundation on which every governmental plan, every governmental device, every governmental agency has rested since the inception of this nation. That foundation is democracy, or to put it another way, that foundation is the great mass of American citizens.

The superstructure, on the other hand, consists of the plans which are being formulated, the devices which are being utilized, and the plans which have already been put into operation, all with one end in view, namely, to bring this nation out of the "slough of despond" and place it once again on the high plane of economic and spiritual prosperity.

The nation watches the construction of this great superstructure as it rises with lightning-like rapidity with a great deal of interest, and I am sure that you are interested, just as I am interested, in watching the Federal Government, which in days gone by has seemed to be so far removed from the average citizen, that he paid no attention to it what-

soever, suddenly reach out and tell every employer in this country the maximum number of hours that his employees can work, and tell every employer in this country the minimum amount of pay that he is to give these employees. I am sure you are interested, just as I am interested, in observing a Federal Government as it tells the owners of agricultural lands in this country how large crops they shall produce, and in some instances what the minimum prices are they are to receive for those crops.

Yes, you and I are vitally interested, as overnight we see developing in this nation a highly centralized form of government of unheard of powers being concentrated in the hands of the officials in the Capitol City of the nation. Of course, there are those who say, "Well it is true that these powers are being placed in the hands of the national government, but they are to be exercised only during the emergency." But, be that as it may, some people looking at the history, wonder whether or not when a government reaches out and takes control of a particular activity, if it ever completely lets go again, however, even though these powers be exercised only for the period of emergency, still we are vitally interested in watching this substructure rise, and in studying its effect on the lives of every one of us. Furthermore as a result of this interest, every one of us is vitally interested in getting just as much information as we can about what is being done in Washington at the present time, and I am sure when your president invited me to come out here and address you this afternoon, that he didn't want me to indulge in any critical generalization of what is going on, but rather he wanted me to provide you with additional evidence on which you can base your own conclusions. Frankly, that is what I hope to be able to do, and although I am going to spend most of my time dealing with the superstructure, I am not going to forget the foundation.

First of all, what about the personality back of this construction work going on in Washington? For after all, it is idle to attempt to appraise plans if we do not know something about the personality back of the plans.

What about the chief architect of this particular plan, the President of the United States? Now I know that every one of you have read countless biographical sketches of the President of the United States, and far be it from me to even attempt to add or detract in any way from any impression that you have developed of the man who today is leading the Ship of State through these troublesome times. I did think, however, you might be interested in knowing how the present President of the United States deals with the men and women who in turn provide you with the graphic accounts of what is transpiring in Washington from day to day, the ladies and gentlemen of the press. There are quite a number of ladies down around Washington trying to find out what is going on these days; that is particularly true since Mrs. Roosevelt inaugurated her own press conference. It immediately sent up the market for women reporters and every newspaper and press in the country went out to secure a woman reporter, if they didn't already have one, to get in on these press conferences. Mrs. Roosevelt stated that only women were to appear at this press conference, so it helped out the unemployment situation a great deal in that respect.

How does President Roosevelt generally deal with these men and women who "cover" him from day to day? Let us endeavor to visualize, if you can, a typical press conference. It is Friday afternoon at 3:45 o'clock. The waiting rooms in the executive offices are rapidly filling up with newpaper correspondents. By four o'clock there are probably 100 to 150 correspondents gathered there, all waiting outside the door of the President's office. Suddenly, the door is opened and this motley crowd finds its way into the office and gathers around the President's desk.

In a few minutes, the President asks, "Is everyone in?" When told by the doorman that everyone is in—and that is important, too; they don't want anybody left out, who will be thinking that someone on the inside is getting a scoop—they want to give every reporter a fair chance, if they are there on time. If everybody is in, the President will begin his conference by referring, in a rather humorous vein, to some newspaper account he has read in some journal, or he will refer to a humorous event which has taken place in connection with his busy life from day to day. A cabinet meeting has been held a few hours before and certain information has been divulged, certain decisions arrived at at that meeting, which the President believes the country will be interested in, and he passed the information on to the members of the press. Then the questions begin. Someone in the back of the room literally fires a question at him. The President responds quickly and to the point. Someone else asks a question. Some of the men occupying the President's office might consider it an embarrassing one, and one which perhaps should not be answered, but President Roosevelt turns it off with a remark which brings a roar of laughter from the assembled correspondents.

I will give you an example of that. At the present time I have already given my speech to the newspaper, so I can talk "off the record" a little. When the Morgan investigation was on, the preferred list had just been made public. Mr. Woodin was on the preferred list. Someone said, "Mr. President, do you care to make any comments on the Morgan preferred list? I would like to make that question specific, but I don't think I should." Just a few minutes before, someone on the other side of the room, inquired, "Who is going down the river on the boat with you tomorrow?" This being Friday afternoon, he usually goes down the river on Saturday and Sunday. The President looked at the fellow who had asked about the Morgan preferred list, smiled and said, "Someone wanted to know who was going on the boat with me tomorrow afternoon." The crowd roared. "Secretary and Mrs. Woodin are going with me," he said. "For business or pleasure," someone yelled out. His reply came quickly, "For pleasure." And thus a very ticklish situation was passed off. That is typical of the way the President handles these newspaper men.

Then someone asks a question that the President has known over a period of years. He possibly "covered" him while at Albany, or "covered" him while he was Assistant Secretary of the Navy under Wilson's administration. The President replies, "Well, Bill, it is this way," time and time again referring to correspondents by their first names. That particular question proves to be one about some delicate problem, as far as the development of the administrative policy is concerned, so the President decides he shouldn't say anything to the press

about that particular problem, but more often than not the President will probably say, "Frankly, off the record, it is this way" and then proceed to give the newspaper men the background they want. Questions are hurled at the President and answered by him for a period of from 15 to 20 minutes; then someone sings out, "Thank you very much, Mr. President," and the crowd goes out as rapidly as they have come in, to get their stories on the wires.

Not long ago I was in one of the conferences when the head of the Japanese Economic Conference was with the President. Apparently the President asked him to stay, so he stood just back of the President's desk in his office, and along with him were some of his advisers, and that was a particularly lively conference. As I stood there and listened to the questions asked and the answers given, I thought to myself, "I wonder what is running through the mind of the Japanese statesman." Imagine 100 or 150 newspaper men dropping into the Emperor's office and proceeding to fire questions at him. Of course, it could not be done; yet it is a perfectly normal part of the day's or week's routine in Washington. That is one example of the democratic feeling and spirit that prevails and is bound to prevail in a nation of this kind.

Now what do the newspaper men do with this information they have obtained? In the first place, there is one thing they cannot do. They cannot directly quote the President. The only time the President can be quoted is when he hands out an official statement, through one of his secretaries. Information the President has divulged in reply to his questions can be used, provided it is used in such a way it cannot be ascribed directly to the President. For example, you all have read a story to the effect, that it was learned at the White House today, that President Roosevelt is about to do so and so, or the present administration is about to do so and so. That is usually information that has been obtained at one of these press conferences. You will notice in one instance where the President said, "Off the record, I will tell you so and so." That means the information which he has given to the newspaper men, under those conditions, can not be divulged by the newspaper men, even in personal conversation with someone who did not attend the conference. That rule is respected, and if it were not, that would be the end of this type of press conference. It is of invaluable aid to the newspaper men in attempting to run down many events taking place in the Capitol today. These are some of the technical aspects of the White House press conferences, which will probably be of some help to you as you endeavor to read some of the dispatches that come to you from day to day from Washington.

But that is not my primary reason for discussing these conferences. My primary purpose is simply to help you realize why the large majority of newspaper men in Washington today firmly believe that the President of the United States is a human being from beginning to end and knows how to handle human beings. We may agree, or disagree in other matters, as far as that is concerned, but I have yet to find a newspaper man who does not agree with that statement, as far as the Chief Architect is concerned.

Of course, there are hundreds of other interesting personalities we do not have time to discuss now, behind the construction work which is under way in Washington. Surely, however, I could add nothing to

the picture of General Johnson, which your imagination has constructed for you. From the stories you have read about him, you can readily imagine that he is a mighty aggressive type of person, has a good head, and he is going to reach that goal, no matter how many hurdles he might have to jump.

I might, of course, talk to you about the professors, but I am afraid that might be an involved and lengthy proceeding. Of course, there is a lot of "kidding" about the professors and the so-called "Brain Trusts" but shouldn't there be some place for the trained thinker who has been successful in looking at matters from an objective standpoint, with the sole idea in mind of marshalling the facts which are needed in order to arrive at a proper determination of the matter in issue? It seems to me there must be some place for that type of thinker.

But so much for the personalities back of the construction work involved in the development of this superstructure in Washington. What about the superstructure itself? What is the form of this superstructure? What form does it take? What are the results today? What are some of the obstacles in the way? What are some of the defects that people feel are already apparent?

First of all, the form of the superstructure! As we noted in the beginning of this discussion, this superstructure is gradually taking on the form of a highly centralized government. Turn to the field of unemployment relief. There you find the Federal Government, for the first time in our history, making outright grants to the states of this country. More than that, you find the Federal Relief Administrator telling the States in no uncertain terms just what they have to do in order to get this money, and some states have found out this Federal Relief Administrator, Harley Hopkins, actually means what he says.

Turn to the field of banking, and we find that as a result of the powers granted by the emergency banking act and the Glass-Steagall bill, the Federal Government is virtually in a position to dominate this all important field.

Certainly I do not need to come to the State of North Dakota to talk about the extraordinary powers the Federal Government is exercising in the field of agriculture.

Think of what powers the Federal Government can exercise in the farm and home mortgage field as a result of the legislation passed by Congress in an effort to deal with these two troublesome problems!

Yesterday (I mean just before the special session of Congress) if you and I wanted to sell some securities, we could do so subject only to state laws. Today, if we want to sell some securities, we can do so only after we have satisfied the Federal Trade Commission that we have provided them with all of the available information relative to these securities.

Think of the extraordinary powers that the Federal Government will exercise in connection with the development of the Tennessee Valley project. Today the government is exercising greater power over the railroads of the nation than ever before in our history.

And last but not least the Federal Government is telling the employers of the country in no uncertain terms about the minimum pay and maximum hours their employees shall receive and work .

Certainly, we have before us an unquestionable and undeniably clear-cut pattern of power being centralized in the Federal Government, a superstructure which consists of a highly centralized form of government. Now if we had attempted to build a superstructure of this kind in 1928, it would have no sooner begun to take form than the states' rights school of thought would have voiced some very vigorous protests, and it is surprising when you consider what is going on in Washington today, that we have not heard more from that States' rights school of thought. Unquestionably their silence is due to a willingness on their part to sacrifice their theories in an effort to cooperate so the great crisis can be met and handled in a satisfactory maner. But we should not deceive ourselves. The emergency will pass, and when it does pass, we will hear from that school again and then America will be called upon to decide upon some permanent plans in its consideration of States' rights versus this highly centralized type of government.

So much for the form of the new superstructure, the highly centralized form of government. Now what has been the result of the construction work to date? It is early to attempt to appraise the results yet. We have just started, but I think if we would answer that question—what about the results—by giving a broad generalization, we would say on the whole they have been very satisfactory. Psychologically speaking, hope has been restored; the American people not only are looking forward, but are united in their purpose to push forward.

Practically speaking there is very definite evidence pointing to improved conditions. Just before I left Washington, The Department of Labor issued a report on unemployment; however this deals only with the manufacturing industries. As far as your country is concerned, the Department does not have adequate facilities to appraise the situation, as far as wages and unemployment is concerned, at present. It is going to be remedied, however, and a statistical board will be set up, which will enable us to get figures from any part of the country.

Taking the Department of Labor report for the manufacturing industries, it showed that during the month of July employment increased 7.2 per cent, as opposed to the situation during the month of June. It also showed the pay rolls increased 7.9 per cent as opposed to the month of June. Administration officials were particularly pleased over the report, because of the fact the experience for the last ten years has been that during the month of July, due to repairs, taking of inventory, vacations, and the holidays around the Fourth of July, pay rolls have decreased rather than increased, so that is one hopeful sign on the horizon. Then putting the matter another way, the report shows us that during the last four months, that is up to the last of July this year 1,100,000 people have been put back to work, bringing employment back to the level it was in October, 1931.

Another hopeful sign—during the month of June there were 500,000 fewer families given direct relief than during the month of May, according to the statistics announced by the Federal Relief Administration.

Here is another interesting piece of evidence which was emphasized by the President in a recent conference, and it is the kind of thing that gets across to the great mass of American citizens. Up to August 15th, automobile production was as great as was the production during the entire year of 1932. I don't know who is buying the automobiles, but certainly some one is, as shown by that increased production.

So we do have evidence pointing to the fact that the superstructure, as far as it has gone at the present time, is bringing some hopeful results. Now of course there are some extremists who say these results are due entirely to what is being done in Washington. The other extremists will say it is not due at all to what is being done in Washington, that it is just time and nature bringing about the results, and as is usually the case, unquestionably neither extremist is correct. The truth is somewhere between the two extremes.

So we have some conception of the plan of the superstructure; we have some conception of the results today. Now what about some of the obstacles that stand in the way. Certainly I do not have to suggest to an audience of this kind that one of the greatest obstacles in the way at the present time, at least from the standpoint of many keen observers, are legal hurdles. Are these laws placed on the statute books by Congress constitutional? Possibly that is a rather academic question today. When that distinguished group of jurists again find their way to Washington in October, it may cease to be an academic question.

But come with me, if you will, to the court room in the court house in the District of Columbia, the scene of many famous trials in the history of our nation. It is a hot sultry day in August, and certainly we would not expect the Justice, who is presiding in all branches of the court in the absence of his colleagues on their vacations, to handle anything more than routine matters. We notice a crowd going toward this particular court room. For some reason or other extraordinary interest is being displayed in a hearing which is underway. As we enter the court room, we hear counsel for the Southport Petroleum Company of Texas declare, "I do not believe the National Recovery Act can be sustained on any ground." Now we know why people are interested in this particular hearing. In the first place, the constitutionality of the National Recovery Act is being challenged, and is in process of hearing. In this particular case, it is the Department of Interior whose acts are being challenged, so counsel for the Department of the Interior represents the government and defends the constitutionality of the National Recovery Act. Justice Cox, presiding in this particular instance, instead of taking the case under advisement, renders an immediate oral opinion. In doing so, he denies the injunction, which the Petroleum Company asks for, which would have restrained the Secretary of the Interior from prohibiting interstate shipment of oil produced in violation of state regulations, a power granted by the National Recovery Act. In denying the injunction, Justice Cox said that he believed the Court lacked the power to enjoin the Secretary of the Interior from carrying out an executive order of the President of the United States. He goes on to say that even though he believes the Court had the right to exercise that power, that he didn't think they should, and he gave his reasons for arriving at that conclusion. He said: "Congress has declared that a great national emergency exists and has invested

the President with extraordinary power to meet the emergency. In the law it is recognized that necessity confers many rights and privileges that without the necessity might not be conferred. It is said that self preservation is the first law, and this principle, in some degree at least, seems to extend to the government. There is another maxim that the 'safety of the people is the extreme law' and all these must be considered in dealing with emergencies. All laws, including the Constitution, it seems to me, should be read in emergencies in the light of the law of necessity."

That is the opinion of the first Federal Judge to pass on the constitutionality of the National Recovery Act. That opinion was handed down last Tuesday, just a week ago tomorrow. Now it is interesting to note the similarity of the language that Justice Cox uses in this particular instance, and the view point adopted by the Supreme Court in a case arising during the war period when it passed judgment on the validity of a law passed by Congress for the District of Columbia, giving a commissioner the right to say when rents should be raised, and not be raised. The Supreme Court upheld the validity of that particular law, and in doing so, based the decision almost entirely upon the existence of a public emergency, so it is interesting to speculate as to whether or not this particular case is appealed to the Supreme Court of the United States, or if any other case is appealed to the Supreme Court of the United States, whether or not the highest tribunal of the land will follow the ruling in the case referred to, and will also follow the line of reasoning advanced by Judge Cox.

By the way, the Secretary of Agriculture in fixing the minimum price for milk in Chicago, has raised an issue, which is being attacked this afternoon in the District of Columbia, before another Justice in the Supreme Court, Justice O'Donahue. Of course, that involves the constitutionality directly of the broad powers invested in the Federal Government by the National Recovery Act.

Will the Supreme Court of today adopt the viewpoint of those four minority judges in the famous Child Labor case, and decide that interstate commerce after all is something entirely in the jurisdiction of Congress, and that Congress can decide just what things are to be shipped in interstate commerce irrespective of character and taking into consideration only the situation under which those goods may be shipped. That is the possibility. The court has changed a great deal since that child labor case was handed down.

It is one of the diversions in Washington among newspaper men who have much experience covering the Supreme Court to speculate how the Supreme Court of the United States is going to line up when the National Recovery Act comes before it for decision. It is generally accepted that Brandeis, Cardoza and Stone will uphold it and likewise, they feel the balance of power in the hands of Chief Justice Hughes and Roberts, has apparently in the last few years, seemed to swing back and forth, sometimes lined up with the liberal group and sometimes with the conservative group, it is pretty hard to line them up with any classification. But be that as it may, it may prove to be an unsurmountable obstacle, and time will tell.

But there are other obstacles likely to stand in the way. Let me read for you Section 7 of the National Recovery Act. It says:

> "Every code of fair competition, agreement and license, approved, prescribed or issued under this title shall contain the following conditions: (1) That empolyees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employes and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting in a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President."

Does this provision of the National Recovery Act sound the death knell of the open shop, of the company union, and of the so-called "yellow dog contract?" Organized Labor contends that it does. Some of the great industries of the nation that have consistently adhered to the open shop policy such as steel, oil, coal and the automobile industry, some of those persons interested, and some of the large manufacturers in the automobile industry say that it does not, that under a proper interpretation of Section 7, the company union can still be maintained. Now it is interesting to note that in Section 7, they held up the steel code and the oil code to a very large extent, as well as the automobile code, and General Johnson and his staff didn't seem to have much trouble in getting these industries lined up as far as minimum wages or maximum hours were concerned, but these industries always tried to read into Section 7 their interpretation of what it means. Finally, as far as I can make out from reading the dispatches in the papers the past day or two, the whole question has been solved in this way: They have not attempted to interpret Section 7 at all in the industries which have approved it. It has just assumed Section 7 is part of the code. That means work for the lawyers a little later on; just as sure as anything some of the companies are going to go to court and ask them to interpret Section 7 in order to find out whether it does sound the death knell of the "yellow dog contract." That is pretty well outlawed anyhow under the Norris bill, but the issue of the open shop and company union is very alive, and down underneath the surface, more than anything going on in Washington today, it seems to me there is a clash between labor and capital such as we have never had in this country before, but we lost some of the dramatic effect, there are so many other things going on. It is vitally important, as far as the future relationship between capital and labor is concerned, and of course, tied up with the whole thing are the strikes taking place throughout the country today. Will the strikes today prove to be obstacles in the way of the successful completion of the supstructure?

Then again is the question that is a very puzzling one, and one which is giving a great deal of concern to those who are intimately associated with the National Recovery Act. Here is another obstacle.

What about the small business man coming under the blanket code, under the Blue Eagle? What about the small business man who has been operating "in the red" the past two or three years, who by some means or another, has managed to hold his business together, struggling along, waiting for the light, and now suddenly he is told by the Government to raise wages, reduce hours of labor, or be branded as a non-patriotic citizen, and be reduced to boycott, if he does not come under the NRA. That question has been answered by NRA, if that man will come before an accredited representative of the NRA, he will be given a blue eagle with a white stripe across its breast, a "wound stripe" as some commentator has facetiously called it. But certainly there is some difficulty in the way of that. What business man wants to advertise to the world that his business is in a "shaky" condition? Take the small print shop, for instance, that is the best example that comes to my mind. Here is a fellow struggling along, buying paper and so on, and he puts the Blue Eagle with the white stripe in his window, which says to the outside world, "My business is in a 'shaky' condition." Having dealt to a certain extent with paper houses, I know and you know that right away, just as soon as they can find an excuse for doing so, they will put that fellow on the C. O. D. list, or he will come under the "paid in 30 days" list. That is one of the difficulties that may stand in the way. It has been suggested the way out of that particular situation is to set up emergency boards and that business men may be given an opportunity to come before the board, and report in all good faith, "I want to do everything I can to promote the welfare of this country. I would like to raise wages, decrease hours, and so on, but if I do, it will mean I must go into bankruptcy. Give me a chance to work out of this situation, and I will adhere to your program later on." After you have made an investigation, and you believe that man is acting in good faith, he will be given a Blue Eagle without a wound stripe. Let him testify to the fact he is a patriotic citizen and anxious to cooperate. That is a fair example of what is going on and it is very serious as far as the whole blanket proposition is concerned.

There is a chain of grocery stores in the State of New York, 25 stores in all in the state. The chain went into receivership back in 1926. It has been in receivership since that time. The receiver, however, did a good job, and he was able to build up a capital surplus so that the business was operating in a very fine manner when the crash came in 1929. Of course, he has had to draw on the reserve since 1929 and the result is today that he has gotten to the place where he is in rather a perilous position as far as the business itself is concerned. Here is the alternative he was concerned with. Along came the blanket code, and he knew he couldn't comply with it and keep the stores open. He also realized he had to get the "Blue Eagle" on the front of the stores or lose business, but at the same time he knew if he complied with the agreement, it would throw him into bankruptcy. The result was he came down to Washington and went before the officials, telling them in all sincerity and all honesty, "Unless I get credit of some kind to tide me over this period until business does pick up, my 25 stores will be closed next week." You can see what it does; if he doesn't put up the Blue Eagle, he will go out of business, and if he does put it up, he will go out, and his only salvation is to get credit some place. Probably that one instance is multiplied hundreds of thousands of

times throughout the nation. Your President tells me that is a very real problem in this state. I don't say it is an unsurmountable obstacle, but it is there and must be given serious consideration.

Take another obstacle, or what may prove to be an obstacle, the price-fixing. That is something that has really caused a great deal of discussion and debate in Washington during the past few weeks. If you read your paper yesterday, you probably noticed the written code which is justly promulgated by the President contains a provision for price-fixing. It doesn't fix the price if you are going to buy gasoline or anything of that kind, it just establishes a ratio—just what it is I am not sure. The article I read does not explain thoroughly or intelligently, but it does establish a ratio between the price of crude oil and the price of gasoline as it leaves the refinery. In other words, it enters into the price structure and fixes one of the variants, and leaves the other untouched, but it does fix one of them.

If you will remember when the National Recovery Act was up for discussion, Senator Borah had inserted an amendment to prohibit price-fixing. When the bill reached Congress, they took out that particular amendment, no agreement shall be enacted which will result in a monopoly. You have a nice question whether this price-fixing will result in a monopoly. The Supreme Court has held a number of times that it will if carried to the extreme.

Finally there is the obstacle of enforcement, and in that connection I am reminded of the story which was told by Eli Perkins, a famous American humorist of another day, which was recently reprinted in the Scripps-Howard newspapers throughout the country. Perkins tells his own story:

"A terrific storm arose and the waves dashed mountain-high. They swept the ship from the mizzen-mast to the hencoop. The passengers became greatly agitated. Panic became universal when the captain rushed down from the quarter-deck and yelled 'All is lost.'

"My uncle on board the boat immediately cried out, 'Down on your knees, everyone,' and he began to lead in prayer, and then he looked up, and he saw me standing aloof up there, and he said, 'Oh my poor boy, I am afraid you are going to be the Jonah of this ship. Do something religious, Eli, or we are lost. Do something religious.'

"I could not help but respond to the pleadings of the old man, and so I decided to do my part. I went around and took up a collection."

My friends, we are being appealed to today, to do our part in helping to make this great experiment in economics a success in this nation. We are being appealed to, "to do something religious." You know just as well as I know that there are some people in this country who know how to do just one thing and that is to "take up the collection." The only thing they know how to do is line their own pockets while the rest of the nation makes sacrifices in the interest of the common good. That is the problem NRA is facing; that is the problem NRA must face; that is the problem which you and I can help the NRA solve. Those people demand our everlasting condemnation, just as the profiteer in the time of war demanded our everlasting condemnation. That is another obstacle, and I could go on as there are still others, of

course. I think I have touched the high spots, but there is one more about which I am deeply concerned, and that obstacle, I think I can express best by putting to you a question: "Will the foundation be strong enough to hold the superstructure?"

We do not have a dictatorship in America today. It is true that power has been concentrated in Washington. It is true that the Chief Executive of the United States is exercising powers that were unheard of in years gone by, but unlike the situation which prevails in Germany and Italy, the President is exercising that power because of the fact that the people of this nation have placed it in his hands, and the people have not abdicated. The people who placed the power in the hands of the President can take it away whenever and if ever they desire to do so, and that brings us to this very serious consideration, when the people of the nation are called upon to pass judgment on the work of today in Washington, are they going to base their judgment on blind emotionalism. Are they going to base their judgment on the arguments of some politician who is interested only in promoting his own welfare, and who cares nothing for the welfare of the great mass of American people? Are they going to base their judgment on the arguments and opinions of persons who have been placed in positions of authority, but who have forgotten their high calling and descended to the level of promoting only their own welfare. Or when the people of this nation are called upon to pass judgment on what is being done today, are they going to base their judgment on an intelligent approach to the great problems of this day and the great problems of tomorrow? Are they going to base their judgment on the consideration of what will bring the greatest good to the greatest number?

If the first set of circumstances are going to govern that decision, then I say to you that the judgment of the historian of tomorrow may be, "The superstructure was fine, the foundation was weak; therefore America failed."

But if they base their judgment on those second considerations, that I suggested, then it seems to me that the judgment of the historian of tomorrow may be, "The superstructure was not as fine as it might have been, but the foundation was solid; therefore America succeeds."

My friends there may be some persons who cynically say to themselves that the time will never come in America when American people will base their decisions on governmental problems on an intelligent approach to those problems rather than upon consideration of what brings the greatest good to the greatest number. If a cynic is suggesting anything of that kind, or making a remark of that kind, then I say to him, "If your statement is true, then we might just as well junk democracy today and turn to dictatorship or some other form of government in which the people have no part."

Too bad, but as for me I do not believe that an impossible ideal. It may be far distant goal, but it is a goal which can be reached if every citizen in this nation will enter into an agreement with his government which says in effect:

"In consideration of what my government has done for me and in consideration of what my government is doing for me, and in consideration of my obligation to my fellow men, I agree to faithfully

discharge my duties as a citizen by approaching the great problems upon which I am called to pass in an intelligent manner and by arriving at a decision, which to the best of my knowledge and belief will promote the welfare of the greatest number."

And I appeal to you as lawyers and leaders of your community to enter into such an agreement with your government, but more than that, I appeal to you as leaders in your community to appeal to your fellow citizens to enter into an agreement similar to that, the wording makes no difference, you catch the spirit behind it. That is the important thing, and above all, I appeal to you to go back to your communities and make it possible for your schools to turn out future voters equipped and prepared to discharge such an agreement as that. Think what it would mean to America if the one million graduates who graduate from our high schools every year, and in three or four years become voters of tomorrow, were able to approach the great problems with an intelligent background, with sufficient understanding of the great principle upon which this government was founded, able to approach the problems of the day, to make a decision which would bring about the greatest good to the greatest number, a strong foundation, a strong democracy, an intelligent electorate. Impossible? A thousand times no. And when the day does come that America has one hundred per cent of its electorate equipped to meet problems in that way, then it seems to me that for the first time in our history, we will begin to realize the truth of that saying by that great leader of mankind, "Ye shall know the truth, and the truth shall make you free." Free from the selfish politician and other evils, and place this great nation in the hands of people from the highest office down to the humblest, who have just one idea in mind, to make decisions which will promote the welfare of the great mass of mankind.

PRESIDENT HUTCHINSON: I am sure we are all grateful to Mr. Fleming for bringing us this message and this inspiration. I am sure he has raised many thoughts and many problems have been brought to our minds for our thought and consideration, and there are problems that we too must study.

PRESIDENT HUTCHINSON: Gentlemen, we had expected this afternoon to have an address by Frank W. Murphy, President of the Minnesota Bar Association. Mr. Murphy has some position with the government in connection with the spending, I believe, of three billion dollars that the government has appropriated, and it was necessary for him to be at Jamestown today, where they are having a meeting in connection with the Missouri River diversion project, he informed me that he could not be here for today's program but would try to be here by this evening, if possible, so that is the last word I had from him.

Now I think this afternoon we had better take up another report and then later, we will have election of officers, as set for four o'clock this afternoon.

At this time, we will listen to the report of Mr. Bangert on the Unauthorized Practice of Law, Mr. Bangert.

MR. BANGERT: Mr. President, I think we ought to have a poll and get these fellows in so they can all discuss this proposition when I get through. If they do not want to come in, close the doors and keep

them out. Ladies and gentlemen, I didn't ask for a poll here because I thought this report was very important, but there has been a great deal of discussion on this subject pro and con ever since I have been in North Dakota. I thought possibly we could dispose of it at this session either one way or the other, so Mr. President, your Committee on the Unauthorized Practice of Law submits the following:

UNAUTHORIZED PRACTICE OF LAW

Your Committee on Unauthorized Practice of Law submits the following:

Each meeting of this Association held during the past number of years has produced much discussion, and some disagreement, on the question of the unauthorized practice of law. While the members of the Association, as a general proposition, have agreed that there has been an invasion by persons and corporations unauthorized to practice the profession, it has also been quite generally agreed that little could be done about it due to the fact that no funds for the necessary expenses in connection with investigation and prosecution were available.

At the outset, let us remind you that this excuse should no longer prevent active prosecution of the offenders.

You are, or ought to be, familiar with the fact that the 1933 Session of the Legislature, through the enactment of Chapter 143, amended Section 811 of the 1933 Supplement to the Revised Statutes, and this Section now makes it a misdemeanor for any persons or corporation to engage in the practice of the profession without being licensed so to do. Section 9205 of the Revised Statutes fixes the punishment for a misdemeanor, when not otherwise fixed, at imprisonment in the county jail not exceeding one year or by a fine not exceeding $500.00, or by both such fine and imprisonment. Under the provisions of Chapter 143 referred to, it is provided that the Clerk of the Supreme Court, in his capacity as Treasurer of the Bar Board, may disburse part of the license fees to pay "the expense incurred by the Bar Association of North Dakota in the conduct of investigations and prosecutions of proceedings instituted for the purpose of protecting the public and the Bar of North Dakota against unlawful practices by corporations or persons not licensed to practice law."

As stated, the question of funds to conduct investigations and institute prosecutions need no longer stand in the way of vigorous and thorough work. While Chapter 143 was passed with an emergency clause, and has been in force since March 7, 1933, some of the members of your Committee felt in duty bound to restrict activities to investigations only, and conduct these investigations on a very limited scale, until after this meeting, when association action could be taken. It should be understood that your Committee recommends the most thorough investigation and vigorous prosecutions permitted by the funds available during the next year. The practice of law by unlicensed persons and corporations has been increasing by leaps and bounds and should no longer be permitted in North Dakota.

Your Committee held several meetings during the year and the various members conducted extensive correspondence in connection with the work. Your Committee also employed Hon. S. E. Ellsworth

of Jamestown to conduct preliminary investigations and report upon violations at Fargo, Minot, Bismarck and Grand Forks and your Committee feels that the results obtained amply justify the money expended. The report of Judge Ellsworth necessarily is of such a character that it would be unfair to publish its contents in these proceedings. Suffice it to say that the report is in the hands of the Chairman of the Committee and may be inspected by any member of the Association. This report, and other evidence in the possession of the Chairman, discloses that trust companies, banks, notaries public and justices of the peace, insurance agents, land agents, collection agencies and many laymen have engaged in the practice of law to a very large extent. These activities consist of drawing wills, contracts, trusts, deeds, mortgages (real and chattel), material liens, labor liens, thresher liens, escrows, examining titles, advising in probate matters and guardianships, filing claims for exemptions, serving notice of intention to bring garnishment, foreclosure of chattle mortgages, and, in fact, every branch of the law practice, excepting only the actual trial of cases in court. To some extent at least this activity has been made possible through the assistance of some of the members of the Bar, and this feature should receive the attention of the Association.

It is interesting to note what the courts of other states have held constitutes the practice of law: viz.

Drafting or preparing for others deeds, mortgages, leases, agreements, contracts, wills, affidavits, or corporate minutes or records, reports, applications, petitions, or other documents or pleadings to be filed in court, or every other similar legal documents when the person preparing the same is not a party to the document and has no direct interest therein; giving legal counsel or advice, rendering legal services directly or indirectly to other persons, soliciting or procuring the drafting or preparing, for any other person, for or without compensation, any of the legal documents aforesaid; advertising by any means whatsoever the maintenance of a legal department in such a manner as to hold out to the public that such person or corporation engages in the practice of law in any respect whatsoever, soliciting business of any kind or nature under any representation, either for or without compensation, that said corporation furnishes legal counsel or advice or renders legal services; furnishing opinions as to the condition of titles to real estate without insuring such title; advising others on legal matters; and preparing escrow instructions for others, even though the abstract company be the escrow agent.

The Supreme Court of Tennesse has held that a corporation cannot practice law, directly or indirectly, that it cannot employ an attorney to practice for it nor can it act as agent for members and employ an attorney for them and receive part of the compensation. In disposing of the case the Court made the following statement:

"It is difficult to see how an incorporated collection agency can maintain a law department operated by its employees, working either on a salary or a commission, without practicing law. This is so because of the nature of the business. Such an enterprise is organized to attend to the business of others. Rendering legal service to another is the province of a lawyer."

Other courts of last resort in cases before them have said that: "The practice of law is not limited to the conduct of cases in court. In a large sense, it includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured, although such matters may or may not be pending in a court."

"The practice of law, as the term is now commonly used, embraces much more than the conduct of litigation. The greater, more responsible, and delicate part of a lawyer's work is in other directions. Drafting instruments creating trusts, formulating contracts, drawing wills and negotiations all require legal knowledge and power of adaptation of the highest order. Besides these employments, mere skill in trying law suits where ready wit and natural resources often prevail against profound knowledge of the law, is a relatively unimportant part of the lawyer's work", and

"It is common knowledge that a large, if not the largest, part of the work of the Bar today is out of court, or office work."

It has also been held that a collection agency which undertakes to furnish legal services where they may be necessary is engaged in the practice of law.

The Legislature of the State of Alabama passed an act defining the practice of law, which act was approved July 20, 1931 and provides in part as follows:

> "Section 2. For the purposes of this Act, the practice of law is defined as follows: "Whoever, (a) In a representative capacity appears as an advocate or draws paper, pleadings or documents, or performs any act in connection with proceedings pending or prospective before a court or a justice of the peace, or a body, board, committee, commission or officers constituted by law or having authority to take evidence in or settle or determine controversies in the exercise of the judicial power of the State or subdivision thereof; or ,(b) For a consideration, reward or pecuniary benefit, present or anticipated, direct or indirect, advises or counsels another as to secular law, or draws or procures or assists in the drawing of a paper, document or instrument affecting or relating to secular rights; or, (c) For a consideration, reward or pecuniary benefit, present or anticipated, direct or indirect, does any act in a representative capacity in behalf of another tending to obtain or secure for such other the prevention or the redress of a wrong or the enforcement or establishment of a right; or (d) As a vocation, enforces, secures, settles, adjusts or compromises defaulted, controverted or disputed accounts, claims or demands between persons with neither of whom he is in privity or in the relation of employer and employee in the ordinary sense; is Practicing Law. Nothing in this section shall be construed to prohibit any person, firm or corporation from attending to and caring for his or its own business, claims or demands; nor from preparing abstracts of title, certifying, guaranteeing or insuring titles to property, real or personal, or an interest therein, or a lien or encumbrance thereon." Gen. Acts 1931, p. 606."

A very interesting case on the unlicensed practice of law, to which has been appended a valuable annotation, is that of:

Bernard Berk, Appt., vs. State of Alabama ex rel. found in:

R. Dupont Thompson
84 A. L. R., Page 740.

The members of your Committee are of the opinion that no further legislation is required; that it is the province of the courts, rather than the legislatures, to determine what constitutes the practice of law; that, with trails well blazed as they are, there should be no difficulty in following them, and that with funds available there should be no hesitancy in authorizing action against offenders.

Respectfully submitted,

CHARLES G. BANGERT, Chairman
A. L. KNAUF,
W. F. BURNETT
Committee.

MR. BANGERT: In commenting upon this report and the evidence we have, I want to say to you that we have in our possession evidence which indicates they are doing everything except the trial of lawsuits.

Some of you fellows have undoubtedly heard of the depression. I think the lawyers' depression is perhaps largely due to the fact, that when there was considerable business, he wasn't looking after his own affairs, but was looking after the business and affairs of others rather than his own. By that I mean he was assisting various individuals and persons, for a small amount of money, in building up collection agencies, trust companies and other agencies to handle almost any legal matter, and for a small sum of money, he would advise the heads and employees of corporations and companies, and they would in turn go out and advise perhaps fifteen or a hundred of what they had learned. As far as I am personally concerned, I say to you in all candidness, there isn't any question in my mind that sixty per cent of the practice of law is conducted by others than the lawyers in this state, and if we are going to continue on discussing it and not doing anything about it, I am going to move at this meeting that the subject be forever barred from our program. If we get a fund where it would make it possible to reach these offenders, and a law to deal with such cases—the excuse has been in the past, that we had no money. Last winter I personally introduced in the Senate two bills touching on the practice of law and some of the Senators here will bear me out in this, it went through the senate, but when it got over to the house, some of the banking interests in the House immediately sensed what the bills were, and one of the very influential members of the House frankly came to me and said, "We do not propose to give the lawyers a monopoly on the practice of law in North Dakota" and SHE immediately stepped on it in the House and so we were rather down hearted for a while, but somebody over in Swendseid's part of the House had prepared a bill which provided that whenever there was $2,000 balance in the treasury, our fee thereafter would be $5 instead of $10. With the assistance of Judge Ellsworth, a few of us over in the Senate struck out everything in the bill and incorporated it in the provisions of Chapter 143 of the present ses-

sion laws, which not only makes it a misdemeanor to practice law without a license, and also not paying the fee, but we can use the money not only for the purpose of discipline of our members alone but for the purpose of disciplining those engaged in the practice of law. She was compelled to sign it, and that Mr. President of the Association is our report, and we move the adoption of the report.

MR. STENERSON: Second the motion.

PRESIDENT HUTCHINSON: Is there any discussion? If not, all those in favor of the adoption of the report signify by the usual sign; opposed; carried.

Now in connection with this report, of course my administration is now about to close, but in connection with this report, I would like to see whether or not this association favors a committee next year, which will be vigorous in their investigation and prosecution, if necessary. Now I think we have got this proposition where we can take action if we think it is necessary.

MR. BANGERT: I am glad to see there are so many records of so many states where the lawyers are finally waking up that it will be to their interest to see that those people who are not vested with the profession of the law are properly disciplined. We have many in our profession devoted to the practice who make mistakes enough without turning loose everybody in the state to make mistakes in our profession, and we get the blame for it. I would like to see a very vigorous committee appointed and prosecutions commenced. I can give them plenty of evidence.

MR. LAMBERT: I move we pass a resolution commending the Senator on the very able way he has handled this matter, and expressing the sentiment of this bar and everything he has recommended be carried out to the fullest extent by an energetic committee.

MR. CASEY: I will second that motion, your honor. I had a very peculiar experience about a year and a half ago. A gentleman who was quite along in years came in and consulted me with reference to a will, in kind of an informal sort of way. During the talk I mentioned the fact, something about drafting a will, just a letter stating what disposition he wanted made of the property was all right. Well a short time ago that man died and I find this, that he accepted my advice and didn't pay anything for it either; it was just during a visit. Now the consequences are that I believe that man was a good client of mine, but somebody else—I don't know whether the banker or who it was, told him that was the thing to do, and so that man might have got by in nice shape. Now as the gentleman who just addressed us said, our banks are these days crowded with applications for loans and all these things. As a matter of fact we have a banker up there in Dickinson that doesn't do anything else but take business away from the lawyers. Sometimes, as we all know from our experience when it comes to drawing contracts and these things, it is expensive for the man who takes the advice, and I think that is enough, we should push, and push as hard as we can and see that these men keep out of the practice of law and let us fellows have a chance. (Question called for.)

PRESIDENT HUTCHINSON: Any further remarks? If not all those in favor of the motion which will be that it is the sense of this meeting that we pursue this matter of the unlicensed practice of law with the appointment of a committee who will vigorously pursue prosecution, if necessary, under the information which has been gathered by the committee which we have had this year. All those in favor of this motion, signify by the usual sign aye; opposed.

MR. BANGERT: I do not understand that limits it so they can't go out and make other investigations.

PRESIDENT HUTCHINSON: No, my idea is that if it is the concensus of opinion of this bar, that we bring it to a conclusion rather than limit it.

MR. BANGERT: If I might make this suggestion for the next committee, I had in mind drafting just a short instrument and submitting it to the secretary direct, but as usual we don't have much money to do it with, but just draft a short circular setting forth Chapter 143 and the synopsis of the decisions of the various courts of last resort to what constitutes the practice of law and see that it is scattered throughout the state so these men may be advised as to what they are doing.

PRESIDENT HUTCHINSON: That may be worthy of consideration.

MR. ELLSWORTH: Mr. President, the situation has reached a point, I think, where we ought to have something a little more specific than has yet been done by the Association upon the motion that has just been adopted, and made by Mr. Lambert. The Association has expressed a strong good will toward proceeding vigorously in this matter of further investigation and prosecution of some outstanding example; in order that there may be no misunderstanding about the purpose of the Association, Mr. President, I move you that the President of this Association, with the concurrence of the Executive Committee appoint a committee of three persons for the purpose of making further investigations, if deemed necessary, and of prosecuting with prompt dispatch some outstanding examples among those who carry on the unlicensed practice of law, and that this committee be instructed and directed by the Association to proceed with all reasonable dispatch to make its selection of some outstanding offender whose prosecution will produce an impression throughout the state, and to further such prosecution as rapidly as means will permit, and that this committee be authorized to employ such counsel as is necessary to carry on the work of the committee, and at the expense of the Association, to proceed with these prosecutions at once. I make that motion, Mr. President.

PRESIDENT HUTCHINSON: You mean rather at the expense of the Bar Board fund, do you not?

MR. ELLSWORTH: That is I understand it becomes the Association fund under the provisions of the law that Mr. Bangert has referred to but I will include it.

PRESIDENT HUTCHINSON: I don't hardly think it does.

MR. ELLSWORTH: I will include that, at the expense of the Bar Association and by the use of the portion of the funds alloted to the State Bar Board and now made available to this Association for this purpose, to proceed with the prosecution.

PRESIDENT HUTCHINSON: Any second this motion?

MR. BANGERT: Second the motion.

PRESIDENT HUTCHINSON: Any further discussion? If not, all those in favor of this motion signify by saying aye; opposed no; carried. I guess by those two motions, which were practically, I presume, repetition, there will be no doubt as to the feeling of the members of the Bar who are here and there will be no doubt in the minds of the committee appointed as to what they are intended to do.

MR. NOSTDAL: I don't know where this report is going to bring us. Will it be printed? If not, I make a motion that it be printed.

PRESIDENT HUTCHINSON: It will be printed in the proceedings.

SECRETARY WENZEL: Right in this connection, I want to call attention again as I did last night, in the report of the Executive Committee, of a brief of cases on the unauthorized practice of law, I believe gotten out by the Baltimore Association of Maryland. We were wondering if this Association would not want this printed in connection with the annual proceedings. I imagine we will have to get permission from the men at Baltimore in order to do so.

PRESIDENT HUTCHINSON: It may be we could get enough copies of this brief to mail one in connection with the Bar Briefs to each member.

SECRETARY WENZEL: A motion would be necessary, though.

PRESIDENT HUTCHINSON: If you think it would be worthwhile, perhaps a motion to that effect is in order.

MR. HALVORSON: I move you that the secretary be instructed to get copies of these briefs, if same are available and if not, get permission to use them in our annual proceedings.

MR. ELLSWORTH: I would also call your attention to the fact that there is very valuable and exhaustive brief attached to this case of Buck against the State of Alabama and reported in 84 A.L.R. Mr. President you have the citation.

SECRETARY WENZEL: You will find that in last months' Bar Briefs.

SECRETARY WENZEL: I will second Mr. Halvorson's motion.

PRESIDENT HUTCHINSON: The motion by Mr. Halvorson was that this brief be included in the Bar Briefs, if it could be obtained, or permission obtained to use the citations of cases noted by the secretary; all those in favor of the motion, signify by saying aye; those opposed; carried. Have we now finished all questions regarding this report.

MR. MCINTYRE: If you please, Mr. President, I wonder if I might submit the report of the Bar Board. I am not sure I can be here tomorrow afternoon. It is short, if it isn't encroaching on your program.

PRESIDENT HUTCHINSON: That will be fine; we will receive it.

MR. MCINTYRE: Mr. President, Members of the Bar Association: I bring you at this time the annual report of the Bar Board.

REPORT OF THE STATE BAR BOARD

During the year the board has conducted one regular examination of applicants for admission to the bar. Twenty-eight applicants were examined. Nineteen of these passed. Eighteen were admitted to the bar, and one was recommended for admission upon completion of an additional period of study required by the board. One candidate who passed the regular examination held in July 1932 was not admitted for a time on account of a complaint of personal misconduct which was filed with the board. After an investigation the applicant was admitted during the year on recommendation of the board. The board also recommended the admission of one who heretofore had passed the bar examination but whose admission was deferred until he attained citizenship. Only one attorney was admitted during the year on motion.

The major part of the work of the board consists of the investigation of complaints of professional misconduct on the part of practicing attorneys. Three disbarment proceedings are pending at the present time. Two of these have been submitted to the supreme court. Another is ready for trial. A third has been held in abeyance on account of the departure of the accused from the state and his retirement from practice. The investigations made during the year may be classified as follows:

Charging of exorbitant fees	3
Failure to remit money of clients	5
Accepting retainer and failing to act	1
Failure to abide by agreement with opposing counsel	1
Malfeasance, misfeasance and non-feasance in public office	1
Acting without authority and misappropriating funds	1
Failure to complete client's business and to submit reports to clients	1
Practice without license	3

The financial statement of the board for the fiscal year ending June 30th, 1933, is as follows:

Balance in Bar Fund June 30, 1932, as per records of State Auditor		$5,236.34
Collections: July 1, 1932 to June 30, 1933:		
Licenses	$5,556.25	
Examination Fees	660.00	
Total		6,216.25
Grand Total		$11,452.59
Disbursements		5,342.20
Balance June 30, 1933, as per auditor's records		$6,110.39

Distribution of Expenditures

State Bar Association's pro rata share	$2,560.00
Salary and expenses of secretary	340.68
Per diem and expenses, Members of Bar Board	1,015.38
Disbarment expenses	484.48
Postage	75.25
Supplies	82.95
Printing	132.68
Clerk Hire	202.00
Expenses, Lawyer Members of Judicial Council	46.57
Unlawful Practice Committee of State Bar Association	332.01
Miscellaneous	70.20
Total	$5,342.20

Dated: August 8th, 1933.

Respectfully Submitted:

C. L. YOUNG, PRESIDENT,
W. A. MCINTYRE,
C. J. MURPHY.

I might say, by the way, that that young man wrote one of the finest set of papers submitted to the Board, at the examination. He lacked, I think, three weeks of the three years required study and he was going to the summer school at the University of Wisconsin to complete the course of study.

I would ask leave, Mr. President, to file this report of the Bar Board. If any one has a question they would like to ask, I will answer if I can.

PRESIDENT HUTCHINSON: Are there any questions on the report? Did you move the adoption of the report?

MR. MCINTYRE: I don't know what the practice is. Will you inform me?

PRESIDENT HUTCHINSON: It is the usual practice to make such a motion, I believe.

MR. ADAMS: May I call attention to the fact that the State Bar Board has no connection whatever with the State Bar Association.

MR. BANGERT: I move that the report be printed in the proceedings.

MR. BRACE: Second the motion.

PRESIDENT HUTCHINSON: It has been moved and seconded that the report be printed in the annual proceedings; all those in favor signify by the usual sign; those opposed; it is carried.

We have now reached the time for the election of officers. We will take that up at this hour.

Mr. Stenersen and Mr. Kent, will you act as tellers, please?

The first in order, I believe, is the election of a president.

MR. NORTON: Mr. Chairman, the position of president of this organization, I have always felt, is one of the highest honors that can be bestowed by fellow practitioners upon any fellow attorneys. As I recall the men who have been, for the time I have been practicing law the last thirty years, chosen as president of this Bar Association, have been distinguished and outstanding as gentlemen, as good citizens, and as practitioners. My memory does not need to go back far to be sustained in that opinion. We have today as President of this Bar Association one of the most honored and most highly respected members of the Bench and of the State Bar. Preceding Judge Hutchinson, we had my old friend John Hanchett, whose name is outstanding for honor, integrity and high character wherever he is known. Preceding him we had our friends Kvello and Bagley and Fred Traynor.

By the way I was greatly pleased; a year ago, I was doing some work up at Edmore and a man, a farmer, mentioned the President of our Bar Association. He said that of all the men he knew, had more confidence in him and high regard for his integrity than any citizen he knew. It is very pleasing to hear those things, and it has been pleasing to me over the years to know of the fine character of men in my profession.

Eighteen years of the most pleasant years, I might truly say, of my life were spent in the southwestern part of the state; they were spent at the time when the west was just disappearing. When I went out there first, the cowboys and ranchers controlled the country. Ed Cooper had thousands of horses feeding on the Cedar River over at the Cannonball. I met in my time out there some of the ablest, most active lawyers that the state has furnished in the last fifty years, men who distinguished themselves in the practice of law in other states; who have been recognized for their ability and keen knowledge of the law.

It was my pleasure in those early days to become acquainted with one man in particular who was held in high esteem by clients and by his fellow practitioners, a man who is always a gentleman in every situation, and who is a student of the law, a man who is welcome into every fold in the western part of the state, a man whose neighbors feel has the ability, the character, the integrity and the courage to grace any position that this state can offer to any man, and it gives me great pleasure, exceeding pleasure this afternoon to have the privilege of suggesting the name of that fine character, that fine gentleman, that fine member of this profession, to this body of men, as our next president, Senator James P. Cain of Dickinson. I nominate him for President of this Association.

PRESIDENT HUTCHINSON: Are there further nominations?

MR. WARTNER: I think it has been the usual custom to select the vice president as the president; therefore I move you, Mr. President, that the rules be suspended and the Secretary instructed to cast the unanimous ballot in favor of James P. Cain for President of this Association.

MR. KVELLO: Second the motion.

PRESIDENT HUTCHINSON: It has been moved and seconded that the rules be suspended and that the Secretary be instructed to cast the

unanimous ballot of this Association for Senator Cain as President of our Association the coming year. All those in favor of this motion, say aye; opposed; it is unanimously carried.

SECRETARY WENZEL: The ballot is cast.

PRESIDENT HUTCHINSON: And I have the pleasure of informing Mr. Cain that he is the President for the ensuing year. May we hear a word from you, Mr. Cain?

MR. CAIN: Mr. President, it is rather difficult for me to attempt to speak at this time, especially after listening to the glowing introduction of my friend, Pat Norton, of the Minot Bar. However, I want to say I deeply appreciate the high honor that you have conferred upon me this afternoon. I also appreciate the responsibilities and the duties that go with the office of President of this organization. I realize that it will be difficult for me to fill the shoes of the distinguished men that have preceded me as President of the North Dakota Bar Association. Mr. President, again I want to thank the delegates here for conferring upon me the high honor of becoming president.

PRESIDENT HUTCHINSON: Nominations for Vice President are now in order.

MR. LANE: Members of the Bar Association: I full realize that it is about as futile to attempt to sway and stampede a meeting of lawyers by oratory in nomination as it probably is to try to argue the facts to the court.

I arise here to present the name of a young man for Vice President of this Association, that I can say everything about that Pat Norton has just said, so it will be repitition, and when I think of this morning when we discussed the amendment to our constitution and by-laws, I have in mind and wish to present a man whom I think is a hundred per cent qualified to fill the office of Vice President, and a man, as Judge Wartner says, if he is elected will probably step into the presidency. He is a man that will do honor to the Bar Association in every respect. He is a young man that has been president of the Fourth Judicial Bar Association, which is sometimes called the Capital District. He is a young man that no matter how old a lawyer is or how young a lawyer is, he is always there with a glad hand. He is qualified, as I said, in every respect, for I would like to know anybody that knows this man, who ever saw him when he wasn't smiling. He not only smiles when he meets you, but I have seen him across the table in a lawsuit, he has that happy smile then. He is qualified in every respect in the way of carrying on the ethics of the profession.

Now I learned when I was a small boy to beware of the smiling fellow in a fight, the fellow that can get up smiling is the best fighter, whether in a rough and tumble fight or not, so I have in mind and wish to present the name of this man because he will carry on and fight for the ideals of our profession. I wish to present the name of Charley Foster of Bismarck for Vice President of this Association.

MR. HALVORSON: Since I had in mind presenting the same name, I want to second that nomination.

MR. ELLSWORTH: Mr. President, there is a story I once heard of an American who being in England, spoke with a member of the Eng-

lish Bar, and among other things a discussion of the high merits of the English judges came up, and the American said, "How is it you manage to secure such acceptable judges in England? We don't always hit it off as well in the United States." Well the Englishman said, "I think one of the great reasons in our country is that the Bar has a great influence in this election, and when the Bar gets together and considers the matter, we always select a gentleman, and if he happens to be a lawyer, so much the better."

Now gentlemen of the Association, I think that Mr. Lane has suggested and brought before you in his nomination a man who is not only a gentleman but a lawyer, and it gives me great pleasure on behalf of the Bar of Stutsman County to second the nomination of Charley Foster.

MR. ZUGER: I am from Mr. Foster's county and we all think a lot of him down there. I think all of the fine things said about him are true.

MR. BANGERT: For fear somebody else might discover something, I move that the nominations be closed, and the rules be suspended, and the Secretary instructed to cast the unanimous ballot for Charley Foster.

MR. COGHLAN: Second the motion.

PRESIDENT HUTCHINSON: It has been moved and seconded that the rules be suspended and the Secretary instructed to cast the unanimous ballot of this Association for Charley Foster for Vice President. All those in favor signify by saying aye; opposed; the motion is carried.

SECRETARY WENZEL: The ballot is cast.

PRESIDENT HUTCHINSON: Mr. Foster has got something to live up to; maybe we could hear a word from him at this time.

MR. FOSTER: I didn't know I had so many friends until I came up here this afternoon. I see a lot of fellows here who I think would be a lot better president than I will ever be. I think I can handle the Vice Presidency all right, I won't have much to do. I certainly appreciate what you have done, and I thank you all.

PRESIDENT HUTCHINSON: The Secretary-Treasurer is the next office to be filled. Nominations are now in order.

MR. BANGERT: Charley Foster just told us he had discovered he had a lot of friends. I don't think the man who nominates a Secretary is a particularly good friend of his because a Secretary has a lot of work to do.

I take pleasure in nominating for the office of Secretary-Treasurer to succeed himself, a man who has done much for this Association, Mr. Dick Wenzel.

MR. TORSON: I am from Pierce County, the county where Mr. Wenzel started in his profession. I want to second that nomination.

PRESIDENT HUTCHINSON: Any further nominations?

MR. SATHRE: I move that the nominations be closed and that the President cast the unanimous ballot of the convention for Mr. Wenzel as Secretary-Treasurer of this Association.

MR. NOSTDAL: Second the motion.

PRESIDENT HUTCHINSON: It is moved and seconded that the nominations be closed and that the President be instructed to cast the ballot of the association for Mr. Wenzel as Secretary-Treasurer. All those in favor, signify by the usual sign; opposed; carried, and I take pleasure in casting the ballot for Mr. Wenzel. That concludes the election of officers, I believe.

PRESIDENT HUTCHINSON: We will now have the report of the Committee on Citizenship and Americanization, Mr. Kvello.

Citizenship and Americanization

In attempting to outline a program for this committee an endeavor was first made to get together with committees of other organizations working along the same line. There is considerable overlapping on the part of the various Citizenship and Americanization Committees resulting in waste of time, money and effort and it seemed a practical proposition to coordinate the work of the different bodies if possible.

A cordial response to the suggestion was received from some of the organizations but it was found that others had already arranged their programs for the year and responses were not received from two of them. The attempt was therefore abandoned but the committee still feels that such an arrangement is feasible and that it should be taken up by the new committee immediately after its appointment. We believe a satisfactory joint program can be arranged. Six or seven organizations working together along a united front would naturally get more definite results.

The committee deviated somewhat from the programs of preceding committees which had engaged in a study of the Constitution through the medium of essay contests in the schools, newspaper publicity and platform discussions, and concentrated its activities upon the public presentation of two questions deemed essential for better Citizenship. The subjects chosen were "Liberty Within the Law" and "Tolerance," on both of which there is a lamentable lack of clear thinking by individuals as well as groups. The members of the committee were asked to present these two subjects in addresses by members of the bar and other public speakers before schools, scout organizations, P. T. A. and other adult bodies. A bibliography of the material for study was suggested in preparation for these public addresses. The committeemen canvassed the speakership material within their respective counties and the response was very gratifying.

While all of the county chairmen have not reported there has been a sufficient return to indicate a wide discussion of these subjects. Particular credit is due for extensive work done on this program by T. L. Brouillard, Ellendale; Victor L. Thom, Goodrich; and F. E. Shaw, Sheldon. Others reported a number of interesting and successful meetings.

After the judicial recall matter became acute the question of what should be the attitude of the committee on this question was submitted to the members for decision. As a result a resolution was prepared and sent to each of the 53 members for consideration. Of the committee 38 voted in favor of the resolution without change; 2 were opposed;

1 thought it was not within the duties of the committee, and 12 did not express any opinion. The resolution submitted and adopted after reciting the factual history of the movement was as follows:

> "WHEREAS, In our judgment the threefold foundation form of our Governmental system, the Legislative, Executive and Judicial, is the best calculated to preserve the rights of all and for that purpose each must be sustained in its proper sphere; and
>
> WHEREAS, We believe, with Lincoln, that the fullest measure of Liberty lies within the law, and that it is our duty as American citizens to uphold the law;
>
> THEREFORE, BE IT RESOLVED, By the Americanization Committee of the State Bar Association of the State of North Dakota, that the recall proceedings under these circumstances are Unjust and Un-American; that they are destructive of that freedom of Judicial consideration which constitutes the safeguard of the rights of every resident of this State to Life, Liberty and the Pursuit of Happiness, vouchsafed to us under the Constitution, and that the Recall should be condemned and opposed by every one who believes in the independence and integrity of our Courts, and in our American system of Government."

The committee, as shown by its vote, stands ready to meet its responsibility by resisting any attempts to make our courts the instruments of any clique or faction, either majority or minority; to combat any effort of those who would turn back upon the path of judicial progress; and to do all in its power to rally our citizenship to a vigorous support of the principles upon which impartial justice is based.

A. M. KVELLO, Chairman

MR. KVELLO: I move the report be approved and printed.

MR. WARTNER: I second the motion.

PRESIDENT HUTCHINSON: If there are no remarks, those in favor will say aye; opposed no. The motion is carried.

PRESIDENT HUTCHINSON: Now I think we are going to finish with the work tomorrow at a very good season. I hope that we can have as large an attendance as possible tomorrow morning to hear Judge Dwight Campbell of the South Dakota Supreme Court, who is going to address us. I trust that you will bring the ladies also, because we would be glad to have them join us in hearing this address.

AUGUST 22, 1933

Morning Session

PRESIDENT HUTCHINSON: We will come to order. Is Father Raith present? Will you kindly deliver the invocation?

(Invocation by Father Raith).

Mr. Nestos, I believe, has a resolution to present this morning.

MR. NESTOS: This resolution has been prepared by C. L. Young of Bismarck, who had expected to be here to present and urge the resolution but he had to leave on a business trip for the east, so he called and asked if I would submit it for him. As I personally approve it, I consented to do so. It is as follows:

RESOLUTION

WHEREAS, The Senate of the United States in January 1926 adopted a resolution ratifying adherence of the United States to the World Court, subject to certain conditions therein enumerated; and

WHEREAS, Such conditions have been fully met by the three protocols since signed by the United States and now awaiting ratification by the Senate; and

WHEREAS, The World Court during the eleven years of its existence has settled forty-five international disputes by applying principles of international law thereto; and

WHEREAS, Both Democratic and Republican National platforms in 1932 urged completion of the adherence of the United States to the Court; and

WHEREAS, The American Bar Association and numerous state and local bar associations have urged the ratification of such protocols; and

WHEREAS, The completion of our adherence to the World Court would put the United States clearly on record as endorsing the principle of judicial settlement of certain classes of international disputes and thereby might aid in the restoration of international confidence:

THEREFORE BE IT RESOLVED: That the North Dakota State Bar Association requests the Foreign Committee of the Senate to report the pending world court protocols favorably and without the addition of any further condition or reservations of any kind; and

BE IT RESOLVED FURTHER: That the Senate is hereby urged to ratify such protocols at the earliest practicable time, and

BE IT FURTHER RESOLVED: That the Secretary of the Association is hereby authorized to send a copy of this resolution to the senators from North Dakota and to the chairman of the Foreign Relations Committee.

Mr. Chairman, I move the adoption of this resolution.

MR. KVELLO: Second the motion.

MR. NESTOS: Mr. Chairman, just a few words in explanation. I do not believe it will be necessary or desirable to take very much time this morning to explain the resolution, or to justify it with any arguments. I believe the situation is such that the American Bar, at least, is pretty well committed to this resolution. I would like to call your attention to the fact that prior to 1923 the American Bar Association went on record three different times in favor of that sort of an action, and then at the meeting of the American Bar Association in 1923, 1926, 1927, 1929 and again in 1931 resolutions favoring our adherence to the World Court were adopted by almost a unanimous vote. Not only that,

but as was stated in the resolution itself, in the last campaign, both the Republican and Democratic parties, and I assume possibly the minor parties also, went on record strongly favoring our adherence to that Court. Both the then President Hoover, and the present President Roosevelt came out strongly in favor of our adherence to the World Court, and since the administration of McKinley, back in the closing years of the last century up to the present time, every President of the United States has been in favor of adherence, and not only that, I believe every candidate for President, of a major political party, at least, has also favored our adherence to the World Court.

Now since the first session in January, 1922, they have had 27 sessions, and during that time, they acted upon 45 or more International disputes, and while there is no executive force, as is the case in the settlement of disputes in our courts to enforce the results of the decisions rendered by this Court, I think it is a noteworthy fact, out of this 45 or more issues that have been presented to them, that every one has been accepted by the nation that lost in the dispute. Some of them have not been satisfied with the proposals that have been made, but without exception they have accepted and acted upon them. So my feeling is this, as far as the American Bar is concerned, that that sentiment has been expressed so often, sections of the Bar in North Dakota have adopted the resolutions unanimously, and it seems it might be interesting to let you know that in the month of July, five additional states, I think 27 in all, have endorsed the entire settlement. I think the State of New Hampshire, the home state of Senator Moses,—an exceptionally fine man, but an opponent to the World Court, a member of the Bar in that State,—at their convention in July the Bar Association of New Hampshire adopted a resolution unanimously endorsing the World Court. Not only that on the 15th, Idaho, the home of Senator Borah, an exceptionally capable man, who for one reason or another, it has been a difficult thing for me to understand, has also been an adamant opponent to the World Court, at a meeting of the Bar Association of the State of Idaho, and you know how strong Idaho is for Senator Borah, a resolution of adherence to the World Court was adopted unanimously by the Bar of that State, and because of that situation, I am very happy this morning to have this privilege on behalf of Mr. Young. I am sorry he is not here to urge the adoption of that resolution, but in his absence I very happily presented the resolution, and want to urge its adoption by the State Bar of North Dakota.

MR. ELLSWORTH: I am not quite clear as to the purport of this resolution that Governor Nestos introduced here. As I understand it, the situation at the present time is that there is before the Senate of the United States, a resolution declaring adherence to the World Court. That resolution has been pending for some years, for a considerable length of time, at least, and finally in the committees of the Senate, it has been returned for action with the recommendation of the adoption of certain reservations. Now these reservations, it seems to me, are reasonable and ought to be considered. In fact, it is a matter of great national importance in which we ought to act with greatest care. Now if I understand the resolution that is presented here, it urges upon the Senate of the United States, the adoption of the resolution of adherence without reservations or conditions. These reservations are not reasonable and while that is the case, I am doubtful if we ought to recommend

such action as that but rather leave the matter to the careful consideration of the Senate. If it refers merely to the adoption of a resolution of adherence with such reservations as might be worked out by the Senate of the United States, that might be a different matter, but as I understand, this urges the adoption of the resolution without reservation. To that I could scarcely consent.

MR. NESTOS: Mr. Chairman, I will say to the Judge that is a misunderstanding of the resolution. What it says is "without further reservations". The five reservations that were attached in 1926 are accepted by the 26 other states, and the other nations have agreed to it, and the reason for the drafting of the resolution to be adopted without further reservations is the fact in the Foreign Relations Committee, when it was adopted or recommended by them, it was said there was some talk of an additional reservation, which would mean delay by submitting it to all of the nations that have already acted upon it, and so it was signed by the President with those five reservations incorporated in it and all this resolution asks then, is that there be no further delay, but with these five reservations amply protecting the interests of the United States. I believe it takes care of just exactly what Judge Ellsworth desires.

PRESIDENT HUTCHINSON: Any further remarks? If not, all those in favor of the resolution, signify by saying aye; opposed no; carried, Mr. Secretary, with one dissenting vote.

Yesterday we passed the report of criminal law and enforcement. Mr. Morris, who is chairman of the committee that framed the report, is not present and has not been at this meeting, I guess. Shall we take up this report at this time and make some disposition of it? As you know the report is practically a recommendation of the code that was prepared by the American Law Institute, as the model criminal code.

MR. LAMBERT: Inasmuch as they do not have any legislative session before we meet again, and he is not here to present it, I move that we just defer any consideration of it until next year.

PRESIDENT HUTCHINSON: Well, Mr. Lambert, I think the attorneys are all pretty familiar with this code proposed. The matter has gone over one year, and it seems to me that there is no need, or particular need of delay; they could either express themselves as for or against. I would think they would be pretty well prepared to know what the report was.

MR. KVELLO: I move the report be adopted and that the Legislative Committee be instructed to prepare a bill to carry out the import of the bill.

MR. WARTNER: Second the motion.

PRESIDENT HUTCHINSON: It has been moved and seconded that the report be adopted, and that the Legislative Committee be instructed to prepare a bill to carry out the provisions in the report to be presented at the next meeting of this Bar Association. Are there any remarks? There are some matters in the report, as you all know that quite vitally change the procedure in criminal cases, especially in the matter of the form of indictments and informations, etc., simplifying the forms.

MR. ELLSWORTH: Mr. President, your suggestion is most abundantly true. This is one of the most sweeping measures that has been introduced before this Association in years. I don't know that there has ever been presented here greater, broader, more sweeping, more radical changes. Now I do not think at this time we ought to adopt a report stating in effect that the Association is back of the enactment of a bill such as is proposed. There was some suggestion that the Legislative committee be instructed to prepare a bill, but as I understand it, from reading this report, the bill is already prepared, down to the minutest detail, and it is simply a question at this time whether or not this Association recommends, or lays itself back of a measure of that extent, and advises the Legislature to adopt it, to enact it.

Now it seems to me that such a motion on the part of this body would be entirely futile at best. We know how the Legislature is apt to regard measures that come over from this Association. In any event, it must be explained down to the smallest detail, and should involve something more than lawyers' opinions. They are for the general public good. Now to throw an undigested mass of this kind upon the legislature from this association at this time, I think would be futile, to put it lightly, and it ought not to be done. I would be opposed to recommending the enactment of legislation such as this, as a whole. Possibly there are certain details there which would appeal favorably to me, as a lawyer, but not the entire mass at this time.

JUDGE BUTTZ: I think this is about the same material that the judicial council spent some two days on this last session, isn't it? At which time, the matter was gone over section by section, comparing with our present code on the same subject, and various recommendations made, which Judge Johnson tells me, corresponds in effect with the recommendations made in this report of this committee, and it seems to me that this committee have considered the matter. The Judicial Council have put in so much time on it, and the time has now arrived when this should go into the hands of the committee to be gotten into form to present to the legislature. I think we ought to take some action on it. I have not compared this report with what the Judicial Council did. I would suggest that the Legislative Committee make some comparisons with the work of the Judicial Council, if they are not identical, in formulating the bill, but I think some action ought to be taken now. This committee has worked on it; the judicial council, I know, has done a tremendous amount of work on it, the last session, I know, was devoted almost exclusively to the consideration of this very matter.

MR. CASEY: Now I have high regard for Judge Ellsworth's opinion and all that, but it seems to me that very few of us in the next year, if put off for another year, will study out that law any more carefully than we have done at present. It seems to me it has been considered very carefully by the highest authorities and it is about time we pushed it along and got it where it should be.

Insofar as recommendations of this Bar Association, I think it has very great prestige. As a matter of fact, I think we deprecate the legal profession too much here. I am satisfied the lawyers stand just as high today as they ever did. I have been satisfied the legal profession has immense force and effect in bringing about legislation. I am

not as familiar with this report as I ought to be but probably just about as familiar as I will be a year from now. The thing is to push it along and get it before the legislature and incorporated into the laws of the different states. I feel we should push it up to the legislature and get it disposed of. I think our recommendation will go far to have it passed in the legislature. (Question called for.)

PRESIDENT HUTCHINSON: Any further remarks? All those in favor of the motion for the adoption of this report, and for the recommendations that the legislative committee prepare a bill in accordance with the report, signify by saying aye; opposed; it is carried.

Now I would like to appoint a resolutions committee, Mr. Wartner and Mr. Lane and Mr. Johnson, you come from quite largely the same community down there so you won't have very much trouble in getting together upon the resolutions.

Are there any further reports? Mr. Secretary, any reports on file that have not been considered?

SECRETARY WENZEL: One other report, that is the Report of the Memorials Committee. I move, without reading that report, that the same be accepted and printed in the minutes as usual.

MR. JOHNSON: Second the motion.

PRESIDENT HUTCHINSON: It is moved and seconded that the report of the Memorial Committee be received and printed in the minutes of this meeting. Any remarks?

MR. LAMBERT: I have not read this so do not know what it contains. I do not suppose it was printed late enough so it got any mention of Mr. Braatelien's death down in Texas. If it is supposed to enumerate those who have gone during the year, it should be amended to cover that. Harold G. Braatelien died about four days ago in Texas. He is one of our very active members, and if this report enumerates those who have gone during the year, and does not include him, I would ask or move that his name be included, or some appropriate mention made.

MR. NESTOS: I will be glad to second that motion. Harold G. Braatelien is a graduate of our own law school in this state, practiced in this section for a number of years, a man whose character and ability makes him a credit to the profession. I certainly feel his name ought to be included in the list even though not now a citizen of the State of North Dakota, so I am happy to second the motion.

PRESIDENT HUTCHINSON: Any further names that perhaps have been omitted? All those in favor of this motion, signify by the usual sign; opposed; carried. I will appoint Mr. Lambert a committee of one to confer with the secretary, if the chairman of this committee, Mr. Libby, is not here, and if this report does not include Mr. Braatelien's name, that you file a short report, or such report as you deem appropriate, Mr. Lambert, in connection with this memorial report.

MR. LAMBERT: Brother Nestos and myself are just one office apart. I will ask him to do that.

PRESIDENT HUTCHINSON: That is very satisfactory and you and Brother Nestos will do that. Was the adoption of the report carried?

SECRETARY WENZEL: I don't think that has been carried.

PRESIDENT HUTCHINSON: All those in favor of the report being printed in the proceedings, signify by the usual sign; those opposed; carried. Are there any further reports to be taken care of this morning.

SECRETARY WENZEL: None filed with the secretary.

PRESIDENT HUTCHINSON: Ladies, and gentlemen: I presume of the states that surround North Dakota, there is no state that we feel more kindly toward and closer to than the State of South Dakota, I presume for the reason that we were once attached to that state, and belonged to the same territory, and because we have continued a very close relationship with its people, that we do have a very kindly feeling toward the people of South Dakota. This Association has always maintained most friendly and cordial relations with the attorneys of South Dakota, and it has been our pleasure during the past years to have some one with us at our meetings from the State of South Dakota, I think almost every session for the past four or five sessions.

When I invited Honorable Dwight Campbell of the Supreme Court of South Dakota to speak to us today, I was very happy indeed when he accepted my invitation because I knew that we would all be most happy to continue the very cordial relationship between the Bar of North and South Dakota, and it gives me indeed great pleasure now to introduce to you the Honorable Dwight Campbell, who will address us, and I will let him announce his subject himself.

MR. CAMPBELL: Mr. President, and gentlemen of the North Dakota Bar:

It is a very great pleasure to be here this morning, and I was most gratified to be able to accept Judge Hutchinson's invitation. Our relations with the Bar of our sister State have always been most pleasant. You pioneered up here to some extent in the field of an organized and incorporated state bar, and we have always looked on the North Dakota association as somewhat of an elder brother. It is a pleasure to bear you greetings, though in an unofficial capacity, from the Bar of South Dakota.

Judge Hutchinson permitted me to select my own subject for such remarks as I shall make, and not wanting to keep it a secret from you, and not wanting you to go out at the conclusion of my remarks wondering what I had been talking about, I presume I better let you in on it. I propose to speak on the subject of "Aeronautical Law." I selected that topic for manifold reasons; in the first place, it is interesting to me, and in the second place, I think I know a little something about it. While I speak with fluency and ease on subjects concerning which I know little or nothing, yet all other things being equal, I would rather talk about something with which I am familiar. Then I had the added element of a reasonable degree of safety; so far as I know, the development of aeronautical law is not yet a controversial subject in this state, and I do not think it will offend the powers that be. It took me 24 hours to get into the state, and I imagine it will take me 24 hours to get out, and I don't want to start anything which will cause the circulation of a recall petition against me before I can get home.

So far as you gentlemen, as an audience, are concerned, perhaps many of you here know something more about this subject than I do.

I am not disturbed about that, however, because if you do, you can sit back there, listen and comment to yourself on the general ignorance of the subject which I display. I think it is always pleasantly satisfactory to listen to a speaker, when you know something about the subject, and sort of catch him up in his remarks. This topic may not be a matter of any interest to you; if that is the case, it is just too bad. You ought to be interested in it, if you are not. In the course of a few years, you will have to become interested in it whether you want to or not. So far as any lack of interest on your part, you will just have to sit back there and listen and suffer.

I think I will have to shuffle the deck here and give you a "new deal" perhaps. If any of you are displeased with the tone of my remarks at any time, come up and you can have a cut and we will start over again. In attempting to convey a few ideas in relation to this subject, the principal difficulty is the organization of not an inconsiderable amount of material.

The origin of aeronautical law is, of course, comparatively recent; less than thirty years ago, the first flight was made and it was not until 1908, that a sustained flight for any length of time was accomplished, and from that time on, aviation has developed with extreme rapidity. As soon as the first flight was accomplished and some general knowledge of the subject came into existence, it was recognized that here was a new art in process of development, and publicists and others interested, commenced to speculate on the situation. The speed of the movement by air was not comparable to any means of locomotion that had come before. It was an art that did not lend itself satisfactorily to local restrictions, and was carried on in a field where the determination of boundaries was difficult, and you can see at a glance, many of the problems that were presented for the legal mind in dealing with the new subject of aviation.

Perhaps the easiest way to discuss the subject is to consider some of the problems that arose in connection with the beginnings of aviation law, and examine to what extent, and in what manner they have been dealt with, the degree to which they have been solved, and the present aspects of some of the more important ones.

The first problem that came up in connection with aviation was international in its nature, and had to do with sovereignty as a national matter, over the air space. The early publicists discussing the questions, propounded various views as legal possibilities. There was first what they called the freedom of flight theory. By that view, the navigable air space was regarded as analogous to the high seas, and there was entire freedom of flight over any country, or countries, without regulation or control by the subjacent country.

Then there was what was called the zone theory. That theory (and it was very earnestly advocated by some) was to the effect that the air space over any nation was subject to the control and government of the nation, so far as it could practically be regulated, somewhat analogous to the national control of the high seas, within the three miles or the 12 miles limit, and above the height of practical regulation, there was entire freedom of the air space.

The third theory was what was called the absolute sovereignty theory. By that theory, sovereignty and dominion over the air space above any nation was in that nation, absolutely, to the exclusion of all other nations, just as much as sovereignty over its soil, or sovereignty over its inland waters.

This problem, and the various theories concerning it, were quite lengthily discussed in various periodicals dealing with international law. This particular problem has now been solved, and like many other troublesome questions, the solution came about by development of a generally recognized practice. Prior to the World War, aviation was practically non-existent. During that War, it developed tremendously on the military side. Also, during the War, regardless of the views of theorists, every nation, not only the warring nations, but neutral nations, as a matter of fact, exercised absolute sovereignty insofar as they could, and claimed the right to exercise it over the air space above their lands and waters. So at the conclusion of the War, the matter of international sovereignty over the air space was very definitely settled, and the practical solution so arrived at has become a matter of international agreement. There exist at the present time with relation to international flying, three treaties or conventions.

The first was the Paris Convention of 1919. It was drafted in large part by representatives of the United States. It was entered into at the time of, and incident to the Peace Treaty. The United States was a signatory party to it, but we have never ratified the convention, so we are not bound by its provisions at the present time. It has been adopted, however, by some 28 nations, including all the leading European nations, excepting Germany, Spain, Russia and Switzerland, and it is under the 1919 Paris Convention that approximately fifty per cent of international flying is done today. That Convention establishes certain traffic rules for the air for international adoption. It requires certain inspection and licensing of airplanes, also pilots, but from this particular point of view, the interesting feature about the Paris Convention of 1919 is its specific declaration agreed to by all the signatory and ratifying nations, that the air space over any nation is under the absolute sovereignty of the subjacent nation. In other words, the air space over the United States is within absolute jurisdiction of the United States as an international matter.

There are two subsequent conventions, the next in point of time being the Ibero-American Convention adopted at Madrid in 1926, which was incidental to the withdrawal of Spain from the League of Nations. It is not of very much practical importance, I suppose, today. It was never signed or ratified except by five nations, and its ratification is not being pressed anywhere at the present time. Its general terms and provisions did not differ very materially from the Paris convention.

The third and last of the conventions is the Pan American Aviation Convention entered into in Havana in 1928. That Convention was based somewhat upon the theory that as an international matter, aviation in the eastern and western hemispheres may be separated for practical treatment. How long that theory is going to subsist in the light of developing facts, no one can tell. It is rather interesting to note that this Pan American Convention, treating as an established fact, the

separability of international aviation in the eastern and western hemispheres, was completed in its first draft on the same day that Colonel Lindbergh landed in Paris on the first non-stop flight from this hemisphere to the other.

To this Pan American Convention, the United States is both a signatory party and a ratifying party. With characteristic deliberation, unless there is some emergent political exigency, the Senate did not ratify it for some three years after we signed, but they finally got around to it. I don't know whether this bar association passed a resolution, or what was the final motivating force, but any way, they did at last ratify it.

These three international conventions disposed definitely, as I say, of that first big problem of the development of aviation law and national sovereignty.

The other big problems of aviation law development are perhaps more local in their nature. One of them was the question, which is peculiar to a government organized as is ours, of sovereignty in air space, not internationally, but as between the United States and the various states. You can see the legal questions that would be involved in that connection. There was the question of whether aviation should be controlled and regulated by the federal government or state government, the question of jurisdiction whether state or federal, for torts or crimes committed in the air, the question of jurisdiction with reference to contracts that might be executed in the air, and things of that sort. The continental jurists, rather interesting to note, had adopted in this connection—and some of the continental countries have adopted it as a matter of law—the extra-territoriality theory, that is they took the view that jurisdiction of torts or crimes or contracts or what not committed by persons, or executed by persons in an airplane, were governed by the law of the jurisdiction which had ultimate license control over the airplanes. For example, if an airplane owned in the State of Massachusetts, licensed by the State of Massachusetts, was in flight over the State of Colorado, and a passenger who resided in Connecticut, committed an offense against another passenger who resided in New York, the transaction would lie within the domain of the law of the airplane in its home site; that is the law of Massachusetts. This is a typically continental view which has never appealed to the mind of the English or American lawyer.

Another perplexing question was the matter of ownership of the air space. I have spoken previously of sovereignty, both international and local. This question of ownership is distinguished from sovereignty, just as your ownership of your land is distinguished from state sovereignty over it. Back sometime in about 1100 or 1200 one of the Roman lawyers, who was glossating the Digest, put out in the margin, a little note in connection with a rule of the Digest as to real property law, in which he said, "Cuius est solum, eius est usque ad coelum," and if any of you are rusty in Latin, that means simply this, "Who ever owns the soil, owns it up to the heavens." The glossater writing this little comment in the margin of the Digest some 800 years before aviation was known, made a good deal of trouble for the new art when it came along. Coke, when he wrote his Commentary on Littleton's Tenures, quoted and approved this gloss, and it was further embalmed in the

Commentaries of Blackstone, and like many of our legal statements, some people were inclined to take it too literally and too seriously, and they developed the idea that perhaps the land-owner did own the air clear up to an indefinite point. Then when aviation started to develop, the question arose whether whenever you flew your airplane 5,000 feet above John Jones farm, you were trespassing. That may sound rather capricious, but it was taken rather seriously, as late as 1921. One of the special counsel to the United States Senate advised them that commercial aviation could be carried on only by the consent and permission of subjacent land-owners, either actual or tacit, that actual ownership of the air space was in the owner of the soil under it and any flight without consent was technical trespass.

Then there were interesting problems of civil liability, as this new art developed. It was a strange thing in some respects, at first rather an alarming thing, and it was so new that people were immediately somewhat disturbed by it, and a man who ventured aloft in one of those new contraptions was regarded as extremely reckless, and the question arose whether any one engaging in such perilous ventures ought not to proceed under absolute liability, whether he ought not to be liable for anything that happened in any way or from any cause, whether he was responsible for it or not, to any one else, by virtue of the aviator engaging in so reckless and death defying an expedition.

There are other puzzling questions, many of which will readily occur to you, but these were the principal ones agitated when our aviation law first began to develop. It seems that our law develops a good deal by resolution in bar associations and elsewhere, and that is where aviation law started in 1911, only three years after the first flight that lasted for more than an hour. Governor Baldwin of Connecticut attended a meeting of the American Bar Association that year. The Governor was a man of many interests and no inconsiderable legal attainments, a student of the law, and the theory of the law, and also in touch with the times, and he was considerably agitated about this new and hazardous method of adventuring into the air. He propounded the view that anybody who undertook to get off the ground in one of these new fangled airships, or whatever they called them those days, should do several things. First, he should satisfy some authority of some kind that the machine that he took up had a reasonable chance of holding together until he got it down again. Secondly, he should satisfy them he had enough ability or experience so he could safely take the thing up without undue risk to himself or the community in general. And third, before he ventured off the ground in this machine, he should deposit with some proper authority a surety bond conditioned that he would pay anybody and everybody everything and anything they could prove happened to them, that would not have happened, if he had not gone up—a pretty fairly broad rule of liability. Whether regulation of aviation was for the United States, or the several states, was entirely an open question at that time, but Governor Baldwin took the view that the desirability was for the several states to pass a uniform law dealing with this. He presented to the committee on legal reform of the bar association a lengthy resolution citing these views I have stated, and embodied in the resolution a proposed form of law and advocated that each state enact such a law. The committee did not agree with Governor Baldwin in connection with the matter.

They took the view, in part, that aviation was so new and so unknown and so experimental that you could not intelligently legislate about it yet, and they reported unfavorably to the bar association on the resolution, and the bar association rejected it. Governor Baldwin may have been temporarily deterred, but he was not discouraged, and he immediately marched back to his own state of Connecticut where apparently he had more influence than he had with the American Bar Association.

He had the Legislature of Connecticut pass the first aviation law in the United States. That was Chapter 86 of the Public Acts of Connecticut for 1911. That law provided for the examination and registration of what it called "airships," for the examination and licensing of the operator, whom it described as "aeronaut," and also enacted Governor Baldwin's theory of absolute liability. Section 11 of the Act provided that "every aeronaut shall be responsible for all damage suffered in this state by any person from injuries caused by any voyage in an airship directed by such aeronaut." It is rather interesting to note that in connection with the development of the automobile, that same session of the Connecticut Legislature, by Chapter 85, passed the first comprehensive statute in that state for the registration and licensing of motor vehicles. The inspecting and licensing authority for airships and for motor vehicles was the Secretary of State; whether he had ever been in either was speculative.

As an illustration of the times, it is interesting to note that the motor vehicle act still provided that if a horse or other draft animal should show signs of fright upon the approach of an automobile, the automobile should stop and remain stationary until the draft animal was subdued, and that the driver of the automobile should assist the driver of the draft animal, and then proceed with great caution, and things of that sort. Those Acts both became effective in June, 1911, and thereupon the Secretary of State was faced, for the first time with the necessity of examining automobiles and inspecting and licensing airplanes and examining and licensing automobile drivers and airplane pilots. The Secretary probably knew little or nothing about either, so I suspect the Secretary of State in Connecticut in 1911 had a busy summer.

The next law was passed in Massachusetts in 1913. I don't know of any particular reason for its adoption in that state except that aviation was developing there locally, through Curtiss. Then I suppose they knew Connecticut had such a law and thought they ought to have one. The Massachusetts Law (Chapter 663, Mass. Acts and Resolves, 1913) made the local administrative authority the highway commission. What the highway commission knew about airplanes or navigation of the air, I have no remote idea, and I don't suppose that they did. In any event, that was the authority they selected to administer the statute. The Massachusetts Law likewise provided for licensing pilots. In Connecticut the pilot simply had to satisfy the Secretary of State that he ought to have a license. In Massachusetts, the statute prescribed definite rules.

In the first place, you could not apply to the highway commission unless you had flown at least 100 miles in a standard make of machine. In the second place you had to take a written examination given by the highway commission. What they might ask, I do not know—whatever they saw fit, I suppose. Also, the applicant seeking a license had to

take a test flight and when they provided for the test flight in Massachusetts, they showed a great deal more regard for the physical well being and safety of their highway commission than Connecticut did for its Secretary of State. They did not make the highway commission give the test flight personally, but provided that it should be under the supervision of an "expert" employed by the highway commission. Massachusetts also embodied in this 1913 law, the first traffic rules ever enacted in this country, so far as I know, in connection with aviation.

They provided rules of the road of the air, so to speak. Planes about to meet were required to change course, and pass to the right. The act also provided that passing planes should not come within 100 feet of each other. The requirement, by the way, today, is 300 feet but they were apparently more liberal in those days. Today the plane, which has the duty of giving way, alters its course so as to pass to the right of the other plane. Under the 1913 Massachusetts Law, the plane which had the duty of giving way and altering its course, could pass the other within 100 feet either above or below or either side. If they got some of those old "jennies" up there with a gusty wind, and tried to go over, they might have had an interesting time.

Except for a few sporadic state laws and municipal ordinances, these two Connecticut and Massachusetts acts mark the end of aviation legislation in this country, so far as I know, until after the World War. The building and operation of planes were tremendously developed by the War, and then immediately after the War, came the International Paris Convention of 1919 that I have mentioned, but there was no further action in the United States until 1923.

In 1922, the National Conference of Commissioners on Uniform Laws, who had been agitating for some considerable time the matter of aviation, proposed, and there was agreed to, what they called the Uniform Aeronautics Act. That was not a regulatory or licensing act, but it was rather a definite act. It is very interesting, however, from the point of view of the lawyer, because of the positive position it took on some of the problems that we have mentioned. The act defintiely settled for its purposes the matter of sovereignty in the air space as between the States and the United States by declaring that it was vested in the state, except where granted to and assumed by the United States. It settled the vexed question of ownership in the air space by saying that the land-owner owned the air space above his land, but that his ownership was subject to the right of flight carried on at an altitude sufficient not to interfere with the use he was making of the land or the air space, and at an altitude sufficient not to be dangerous to persons or property beneath. It settled the question of liability of the aviator in part as it had been settled by Governor Baldwin in Connecticut in 1911. The act provided that the operator of the aircraft was absolutely liable for damage to persons or property below injured in any way by reason of his flight. It provided, so far as collision of airplanes was concerned, either on the ground, or in the air, that liability for the collision should be governed by the same rules of law applicable to torts on land, that is the same rules which we apply in automobile or other collisions.

It made no provision for liability to persons or property in the airplane that might be injured by crash or collision, its provision for absolute liability being limited to the property-owner beneath. If I flew over your land and fell down on it, I had to pay damages, but if you were foolish enough to ride with me and we both fell down, I was not absolutely liable. The act also covered the matter of jurisdiction, civil and criminal, by providing that contracts made in the air over a state, should be governed by the law of that state in like manner as though made on land or water beneath. This Uniform Aeronautics Act has been adopted by some 24 states, I believe, now. You adopted it here in North Dakota in 1923, and it was adopted in South Dakota in 1925, and except as changed slightly by subsequent legislation, is still the law of both states.

Our next step in aviation legislation was the federal Air Commerce Act of 1926, approved in May, 1926. Some writer on the air law has rather aptly termed that as the Magna Charta of aviation in the United States. There has been considerable discussion as to whether regulatory aviation legislation should be state or federal. The practical utility of uniform regulation was clearly recognized and various methods had been suggested whereby the matter might be brought within the field of federal legislation. One suggestion was that navigation of the air be treated as analogous to navigation of the seas, subject to federal regulation under the admiralty powers.

Another suggestion was that it might be dealt with under the war powers of the United States. This was perhaps natural, because the War had so recently demonstrated the vast importance of the development of aviation as a military matter.

The third was that it might be dealt with under the commerce clause of the United States, aviation being deemed in essence transportation. This third view finally prevailed and the Air Commerce Act of 1926 is based in theory, as its title indicates, on the commerce clause of the Federal Constitution. It has undertaken, with one exception, to legislate only with reference to interstate or international air commerce, and interstate air commerce is defined in the statute as the interstate operation of an airplane carrying either persons or property for hire, or operated in the furtherance of the conduct of a business, or flown from one state to another for the purpose of being operated in the latter state in the promotion or conduct of the business. The Act has not undertaken to regulate intrastate, strictly intrastate flying, except in one particular. By virtue of this Act, there have been promulgated by the Department of Commerce, what are called the federal air traffic rules. These are the rules of the road for the air. They specify in detail the method of passing airplanes, the relative duties of airplanes as to giving way, one to the other, the method of landing upon and taking off from airports, and other features of that kind. These traffic rules are applicable to all flying. You may go out here to your local airport and fly five miles and come back and land; nevertheless you are bound during that flight to observe federal air traffic rules. The theory, relied upon to justify federal traffic rules, for all navigation of the air is, of course, that interstate commerce is affected, or is liable to be affected by the operation of any airplane, however local. The right of the United States to adopt air traffic rules and to make them applicable to all flying has never been specifically questioned, so

far as I know, excepting once. That was in the case of Neimonger against Goodyear Tire and Rubber Co., (1929) reported in 35 Fed. 2nd 761, and there the Court sustained the Federal regulatory power as to all air traffic, whether interstate or intrastate. The authority for administering the Air Commerce Act and regulating interstate air commerce is vested by the Act in the Secretary of Commerce, and it has been handled as a practical matter, by creating in the Department of Commerce what is called the Aeronautics Branch, and appointing in charge thereof an assistant Secretary of Commerce. The first Assistant Secretary for Aviation was Mr. McCracken, Secretary of the American Bar Association, and an experienced pilot. I suppose many of you know him, perhaps you are more familiar with him as "Bill" McCracken.

The second appointee, following the resignation of Mr. McCracken, was Col. Clarence M. Young, also an experienced aviator, and just now the appointment has gone to a Mr. Ewing W. Mitchell of Missouri, who is just starting in with the work.

Pursuant to the authority of the Air Commerce Act, the Secretary of Commerce promulgated what are known as Air Commerce Regulations, and that is really the bible of interstate flying today, and it is more important than purely interstate, as I will state presently. Those air commerce regulations cover the licensing and inspection of airplanes, the operation of airplanes, the licensing of pilots, and while they are mandatory only for interstate flying, excepting the air traffic rules which are of universal application, yet the federal licensing and inspection is optional for the man who does not desire to fly interstate. As a practical matter, since almost every plane owner and every pilot desires to be able to fly and operate interstate, if he sees fit, pilots are taking advantage of the provisions of the Federal Act, and today they are practically all licensed under the federal law and their planes subject to federal inspection. I know of nothing that has contributed to the development of aviation and its ever increasing safety to the extent that these air commerce regulations and their administration have done. If any of you should be interested in knowing more of them in detail, write the the Secretary of Commerce and ask him to send you Aeronautical Bulletin No. 7, which he will do without money or price, and you may find it of interest. All interstate planes have to be semi-annually inspected and licensed; all pilots have to be licensed in various grades; they have to pass definite and specific examinations; they have to show a definite degree of knowledge and skill before they can be licensed, and must show semi-annually for renewal of license that their fitness continues. Today seven years of intelligent regulation and supervision by the Department of Commerce under the Act of 1926, aided by co-operation on the part of the aircraft industry, have brought civil aviation to the point where it is my personal view, if you go out to an airport and see an airplane with the government license marks on the lower left and upper right wing, and tail surfaces, consisting of a number preceded by the Letters C or NC, and look into the cockpit and see a little paper about that size reciting that the plane is federally licensed, and you ask the pilot to show you his license, and you find it is a federal transport license, bearing his picture and description, and

you get in that plane for a flight, you will be safer in that plane than you would on almost any automobile trip. Of course, that is a matter of personal opinion.

After the passage of the Air Commerce Act, the states very promptly undertook to regulate the matter of intrastate flying. It is regulated in every state now so far as I know, except possibly Georgia. Those regulations were primarily by uniform law. One uniform law was proposed and approved at the Conference of the Commissioners on Uniform Laws in 1930. Two other drafts of uniform acts were suggested by the Department of Commerce. One of three has now been adopted in most states. These state laws proceeded along three definite lines; one of them, the uniform commissioners act, is the one that you adopted here in North Dakota in 1929. It provides for a state administrative or regulatory body, and in North Dakota, it is your state board of Railroad Commissioners, and it provides that those commissioners shall require for airplanes and for pilots either a state license under such regulations as they may prescribe, or a federal license, and authorizes the railroad commissioners to require a federal license in North Dakota, if they see fit, by resolution.

Your board of railroad commissioners established the rule that to fly an airplane in North Dakota, the plane must be federally licensed, and the pilot must be federally licensed; in other words, you now have a local administrator and inspecting body, to-wit: the railroad commissioners, but the requirements for local flying in North Dakota are identical with the federal requirements for interstate flying. Some states like my own state of South Dakota made no provision for any local enforcing or inspecting body, but simpy established, as a matter of law, that any airplanes flown in the State of South Dakota for any purpose, even intrastate, must be federally licensed and all pilots must be federally licensed. In other words, we simply put in force the federal requirements for all flying. That is fine in theory, but it has this difficulty; the enforcement of that sort of law—lacking provision for a specific inspecting and enforcing body—must necessarily be by the local police officers. Your railroad commissioners have taken some interest in the matter and they do make some inspections and endeavor to enforce the law here, while in South Dakota, it is left with the sheriff and state's attorney, and I do not suppose there are five of them who have any idea of what the federal regulations are or how to find them, or of what they consist. I think it is a fine thing to have some local body charged with administration, inspection and enforcement.

After you adopted the Uniform Act in 1929, you took a curious turn up here in 1931, and have placed yourself in a unique position among the states, so far as I know. By Ch. 91, Laws 1931, you amended your licensing law, not as to pilots, but as to airplanes, providing that the inspection and registration of airplanes should be required only when flown for hire. A pilot to fly in this state, for any purpose whatever, must be federally licensed, if he is going to fly an airplane for hire, although only within the state, the airplane must be federally inspected and licensed, and inspected every six months with a thorough inspection. But the plane itself need not be licensed unless operated for hire, and may be flown intrastate, however dangerous its condition.

I think I have now summarized, in substance, the status of general aviation law, and regulations, as they exist in this country today, with regard to the general matters of regulation of flying and licensing of airplanes and licensing of pilots.

The question of negligence has been pretty well settled now by judicial decision. Of course, where the Uniform Aeronautics Act provides absolute liability for persons or property injured on the ground underneath the plane, that question is out of the way, but elsewhere and as to injuries to passengers or property in the plane itself, the trend of decisions has seemed to be that the usual rule of negligence cases applies and the trend of the decisions also seems to be (at least where the particular aircraft is not a common carrier) that the doctrine of res ipsa loquitor does not apply. In other words, you must plead and prove your negligence before you can have recovery.

I have endeavored briefly to review the manner in which the legal problems concerning aviation, that we first suggested, have thus far been dealt with. The question of international air sovereignty has been settled in favor of the theory of absolute sovereignty in the subjacent nation. So far as concerns the question of air sovereignty between the United States and the several states, as a matter of nice legal theory, I suppose it has never been settled. The states have assumed sovereignty of the air, excepting so far as concerns interstate commerce and the United States has assumed it for purposes of interstate commerce, and for the provision of traffic rules for all navigation. No question appears ever to have been raised, either by the United States or by any state, as to the validity of this practical solution of the matter. The Federal regulations for interstate flying have been adopted in some fashion or other by practically every state for purposes of intrastate flying. So, as a matter of fact, there is practically uniform regulation and requirement, and the question of authority as between the United States and the several states is very largely academic. I believe that it will continue to be chiefly an academic question, because a federal license is so valuable to the pilot that he desires to have it, whether the state law requires it or not.

I believe you will have but a few sporadic cases, and they will be fewer as time goes on, where a pilot in any state undertakes to operate a plane, even intrastate, unless both plane and pilot are federally licensed. Jurisdiction of torts and crimes appears to reside in the state without any serious dispute. So far as ownership of air space is concerned, the "ad coelum" theory has not met with the approval of the courts, and it is now universally conceded that mere flight over land at a safe altitude, and one which does not interfere with the landowner's use of his land or the air space above it, does not constitute a trespass. Whether, under some circumstances and conditions, it may constitute a private nuisance is an interesting question, the development of which will have to be for the future.

There are many other features of aviation law which are very interesting from a legal point of view and which I would like to discuss. There is, for instance, the question of tax on gasoline when purchased in a state, or purchased outside the state and stored therein, and then placed in planes in the state for use in interstate operation. I suppose the law on that question now is pretty well settled by the very recent

decisions of the Supreme Court of the United States in Eastern Air Transport v. South Carolina, 285 U. S. 147, and Edelman v. Boeing Air Transport, 53 Sup. Ct. 591, holding, in substance, that such a tax does not impose an undue burden on interstate commerce. There are also various interesting questions in connection with the operation of an airplane as a common carrier, applicability of workmen's compensation laws to aviation, and the effect of aviation upon life and accident insurance contracts.

These matters are interesting to me and I like to talk about them, but I have already trespassed too long upon your courtesy and I am not going to take any more of your time. I thank you.

PRESIDENT HUTCHINSON: I am sure we all appreciated this very interesting and instructive address given by Judge Campbell. It was especially interesting to me and I am sure that it was to you all. We thank you, Judge, for bringing us this information and this interesting way of bringing it to us.

PRESIDENT HUTCHINSON: Are there any other unfinished matters on the program to be taken care of? The reports, I believe, have all been taken care of that have been made and filed. Is there any other new business that any one has in mind that they would like to bring before the Association at this time?

MR. HOOPES: As indicated yesterday, I have a subject upon my mind. I don't know whether it is the proper time to take it up or not.

PRESIDENT HUTCHINSON: We can take it up right now.

MR. HOOPES: I have discussed the subject a little bit with some of the members individually. I don't seem to get a very good hearing. I am referring to the docket fee. It is a great thing for this organization to cooperate and harmonize with the national organization of lawyers. I also have in mind that since the commercial branch of lawyers are numerous, it is equally important that they harmonize with and cooperate with the national association, the Commercial Law League. If it is in order I will be glad to make a motion to the effect that that provision in our law requiring a docket fee be eliminated.

PRESIDENT HUTCHINSON: What is your motion, please?

MR. HOOPES: That the requirement, the adoption by this organization that a docket fee be charged, be eliminated.

PRESIDENT HUTCHINSON: Oh I see, that was the matter that was adopted at last year's meeting, I believe.

MR. HOOPES: Correct.

SECRETARY WENZEL: It has reference to these slips, I believe.

MR. HOOPES: Yes.

PRESIDENT HUTCHINSON: Is there any second to this motion?

MR.————: Second the motion.

PRESIDENT HUTCHINSON: It has been moved and seconded that the resolution adopting in last year's session with reference to the charge, I believe, in docketing a collection be annulled. Are there any remarks?

MR. HOOPES: Mr. President, I would like to hear a discussion of it. I am not taking a position I am so thoroughly convinced, I could not be induced to alter my opinion, but as suggested in my preliminary remarks, I do suggest we are in harmony with the national organization. It has been suggested we should have uniform ideas and theories. The subject came up yesterday with regard to uniform fees to be charged, and as our friend down here to the right suggested, it is no use making laws and fixing fees and then violating them. That is what is being done in this particular instance. I know of no one complying with that law; I mention that as my personal opinion and I suspect I will get into an argument, but it doesn't seem to be practicable, the lawyers don't do it, don't pay the docket fees.

When the matter was brought up at the Commercial Law League, we seemed to be the only state in the Union that has taken such stand. They didn't do anything with it down there. There was nothing to do but mention it and pass it by. We are outstanding in that respect as being the only state in the union which has attempted to put over such a practice. I say attempted, because that is all we have done, and that has been a mighty weak attempt. I will agree that some of our local lawyers are charging it and collecting it, but I met a great many in the meeting last month, and no one seemed to be living up to it. If they are, they are deceiving me, because they tell me they are not paying it. I would be glad to hear this subject discussed.

MR. LEWIS: Was the motion to do away with the docket fee of one dollar, is that the motion?

PRESIDENT HUTCHINSON: Yes.

MR. LEWIS: It is a subject about which I know very little. I am not a collection attorney. Mr. Hoopes does a large business of that kind and ought to know more about it than most of us, but I have my own opinion. I think it is an entirely reasonable regulation. It has come to where we are bothered beyond the limits by the sending of poor accounts, so I think we should have this regulation and ought to live up to it. I agree with Mr. Hoopes there isn't much use in having a regulation if we don't live up to it. If we haven't reached the point where we are willing to live up to it, perhaps we better drop it and not lie to the people, but personally I would like to see that made a real issue. I might say one thing more, that if for no other reason, I like myself to be able to find an easy way to get rid of the poor trade, by sending in a dollar with that little slip, and if they don't send it, I don't want the collection anyhow.

MR. HOOPES: May I have another word? In reply to the suggestion made about taking issue, if you have that idea, and sincerely, I would like to see him take it up in the proper place, the Commercial Law League, not in this organization here. That is where it should be taken up and let them consider it and if he is strong enough to put it over there, I am with him. The only thing I would disagree with is the one dollar fee. I would like to see it made ten, but we are wasting our time fooling with it in this organization. If any members of the Commercial Law League who are here favor such a movement, take it up in the Commercial Law League at the next meeting and have it put over where it should be put over and make it effective. My contention is we are unable to do it here.

MR. TRAYNOR: Our office lives up to the docket fee and insist on it. We find the collections we don't get by reason of enforcing the docket fee are not worth having. I say it is for this Association to adopt and stress the fee, if we think it is right. If the State of North Dakota, as a whole, will live up to that regulation, then they have got to go through the lawyers in North Dakota to have these collections taken care of. It is simply a question of keeping faith with each other in the State of North Dakota. I venture to say within the next ten years at least, maybe in five, the Commercial Law League of America looking at the experience of North Dakota, if we live up to this regulation, will adopt it nationally. I don't think we have to wait for the Commercial Law League of America to adopt it in order to put it in force in North Dakota.

We haven't very much to say in the Commercial Law League of America. I venture to say there weren't half a dozen from North Dakota to that convention and probably Mr. Hoopes was the only one from here. We can't expect to have much influence there in putting over any proposition. I used to attend the national meetings and Mr. Flynn also attended and was President of the Association. I found in my attendance there I had mighty little to say. There was always a certain element that ran things and the fellow from outside in these small North Dakota towns didn't have much to say.

I believe in the docket fee; it is a just fee and gets rid of the absolutely worthless collections, and it disposes of those that have gone through every agency and from pillar to post. Sometimes we even find in our own town that a collection has gone through two or three different times and has finally come to us. Other lawyers have had the same experience. I say we ought to live up to this regulation for at least another year. It was started in our district and I think they are living up to it pretty well. That is the information I get. If we live up to it in our state, Mr. Hoopes will be mighty glad we maintained it.

MR. ELLSWORTH: It seems to me that the same rule would apply to this matter of the docket fee that applies to the entire fee schedule. There is a vice that attends the adoption of the fee schedule that possibly some of the membership of this Association have not thought of and that is this. If a considerable part of the membership of this Association does not observe the fee schedule, we had very much better eliminate the fee schedule altogether for this reason. When the price cutter is trying to determine what the professional lawyer will charge in a certain case, he has our fee schedule to refer to, and if he hasn't the honor to comply with it, it gives him an opportunity he wouldn't otherwise have, so it is better to eliminate the fee schedule entirely if a very considerable number disregard it. What is true of that, I think applies with general or equal force to the docket fee.

There is another matter here, the fee for making a report. Is that not included, Mr. Hoopes, in your motion to eliminate? As I remember, it is upon this slip with the one dollar fee for docketing the claim. Now if it is the general feeling that a very small, or a very considerable part of this association does not want to observe the rules adopted by the association, we better drop it, or on the other hand, if there is only a small portion of the membership that disregard it, we better continue with the fee schedule.

MR. TRAYNOR: I think that whether we generally live up to the fee schedule or not, it is a mighty good thing to have by way of guidance. I don't think we ought to eliminate a fee schedule, but I do think we ought to try to live up to it, and ought to make the minimum reasonable so we can live up to it. Whether we live up to it or not, it is always a guidance which is advantageous. I do not think we should eliminate it.

MR. CAMPBELL: I would like to suggest that if you examine the lists over which this business is forwarded you will note certain information advising prospective clients of the basis upon which collections are taken. Now when the new lists come out, we could perhaps show that the counsel and attorneys of North Dakota whose names are listed in those lists are thereby soliciting business and following this bar association regulation, and we could possibly see to getting in those lists some indication that they expect to live up to this regulation. I think perhaps we could remedy the situation here, and I don't believe it is fair to allow individuals to solicit business through these lists and then use the blue slips to return them, and then later they send them to somebody whose name isn't in that list.

MR. ADAMS: One matter of these forwarders which has been referred to. They do object to this dollar docket fee. I am in favor of it. Almost every fellow who handles collections, gets an item he doesn't care to handle on a ten per cent basis, so he writes back and says it is a very difficult collection and will have to have half of it, and they stand for that, but kick on the one dollar. Of course the fifty per cent comes out of the client and doesn't come out of the forwarder's pocket. I am in favor of this docket fee, but we don't do much collection business; however, when we have to turn back an item, we don't feel badly about it because I think we make in the long run.

PRESIDENT HUTCHINSON: Any further remarks? This matter was gone over pretty thoroughly last year. At the meeting last year they seemed to be quite unanimous in passing this resolution and it provided for the printing, I believe, of these slips, did it not, last year, and they have been distributed generally by the secretary to the lawyers. If anyone has any experience or any opinions to offer, why now is a good time to get them off their chests. (Questions called for).

MR. HOOPES: I don't seem to have brought out a very general discussion of this yet. A lot of people will express themselves, I presume, when they go to vote. As one of the speakers stated, there weren't many good North Dakota people down there—there was just one man down there. I was alone and from what I saw there, I am satisfied that is the plan to take. I am satisfied with the year's experience we have with it—the chairman stated it went through last year with no dissenting vote. I had nothing to say against it last year, but we have had a year's trial and our office has had a lot to do with it. As I remarked before, I talked with forwarders down there, and a great many of them informed me of their disfavor, and I have formed my opinion from the facts I have gathered the last twelve months. I am mighty strongly of the opinion we are just fooling our time away trying to deal with it.

Speaking about being in favor of it, as I remarked you couldn't make the fee too high to suit me, but it is a different matter when it comes to getting it. We don't get it, and I am satisfied we can't get it, to be just and fair with you.

MR. LAMBERT: I think the trouble with most of us is we don't care anything about it. If there was some way of finding out how the commercial men do feel about it. I did get a bunch of them but I lost them, and I figure I get quite a little advertising when I write back and tell them my time is so taken up by my large active practice, that I can't take care of those collections, so there is no use sending them to me. I don't think they would ever send a dollar and it is just absolutely immaterial to me after all, but if I could find out how those fellows wanted it, I am with them.

MR. GRAY: I am satisfied that if we stood by this docket fee unanimously, it would be only a question of a short time until these collection agencies would have to come into line and pay the docket fee. The trouble in our town is that the man who represents the largest number of these collection agencies has refused to abide by the rule that was adopted by this association a year ago, and although I have labored with him, I have not been successful to get him in line.

Among the forwarders from whom we receive business, there was one concern in the Twin Cities that has been sending the docket fee along with each collection, and they wrote us a letter saying they understood the Bar Association of the State adopted this as a rule, and they have adopted it as their rule, as they want to conform to the practice, and so along with each collection that came into the office for a considerable time, there was a docket fee of a dollar. Of course, the difficulty with us is, if our neighbors in the other towns are not living up to the schedule, it simply means that if we refuse to take the claim, that it will go to them, but I am satisfied that these commercial collection agencies can't handle these outside claims except through the members of the Bar in the state, and it is just simply a matter of whether we will stand shoulder to shoulder in that matter, or whether the business will come and it will add just that much to the income of the different members of the profession. Like Mr. Traynor here, I think we ought to continue for the time being, and if we can induce different members of our profession to live up to it, why there won't be any trouble about putting it across. Of course, if more than the majority of us refuse to do that, we can't put it across, and one of my purposes in coming to this meeting of the association was to find out what the practice was over the state in reference to insisting upon the collection of this docket fee.

MR. COOPER: I second Mr. Hoopes' motion. I think this docket fee is a subterfuge. It can't be enforced. I tried, and don't think it can be enforced. It simmers down simply to this question. This gentleman said we should force the forwarders to send us business. If we insist on the docket fee, all it means is that some collection agency will

simply step in and get the business now coming to a few of us. It is business we all need and I doubt if there are ten men in this assembly who are collecting the one dollar docket fee. I know I haven't done it, and I admit it openly before you. It seems to me a lot of this talk is a poor subterfuge; it doesn't mean a thing and everyone knows it is just an excuse by an attorney to send collections back, and I don't think it amounts to a snap of your finger. I don't believe this Association should stand back of it. I am disagreeing with my good friend Traynor; it may be in Ramsey County and Devils Lake they can enforce this regulation, but I am satisfied it cannot be enforced, and I believe it is time to do away with it. Let's go back to the old basis and forget about these excuses for sending back business. I would much rather waste a three cent stamp and inform them it was uncollectible, than to resort to some excuse and not say anything.

MR. LAYNE: I like the frankness of the remarks of the gentleman who just spoke. To get at this, I suggest that everybody who charges that dollar, stand up.

MR. HOOPES: They are all charging it but not getting it. Let's see the follows who get it.

MR. LEWIS: I for one am charging it and getting it once every year or two. I am not so interested in getting the dollar, as I am in getting rid of these organizations that are constantly bothering us with collections that should never be sent out at all. That is the biggest reason I want that dollar. I am delighted to charge it and have gotton away from these poor collections in doing so.

MR. ELLSWORTH: I stand up also to say I charge it but don't get it.

MR. HALVORSON: Most of the forwarding lists provide a schedule of fees, and they also in most instances, provide them subject to local bar rules and regulations. Would it not be a good idea to have a committee of this organization take this matter up with the Commercial Law League, the organization to which most of the commercial lawyers adhere, and see if they can't have them recognize the situation. If we are to keep it in effect, it seems to me that most of the collections come over contracts, and if the body doesn't understand that as part of the contract, naturally they won't send the dollar. If you get a collection or claim that has some substance to it, you are not going to jeopardize sending it back requiring a dollar. If we had a committee in the organization to take the matter up with the Commercial Law League, it really sets the fee for most of the big lists, I believe we can rest easy for a while.

MR. HOOPES: May I ask this man a question? How do you propose to keep these agencies springing up from the cities, sending out collectors out here in our territory and making these collections, how do you propose to stop them?

MR. CAMPBELL: Mr. Chairman, I would suggest that would be easy, if every individual listed in these lists sent this commercial business, indicated as Brother Halvorson suggested, charging bar rates, and get the rates to them so the men knew they were expected to comply with that ruling. There would be no expense, not even a three cent stamp in returning it, no further attention would need to be given.

MR. ADAMS: Our office is a member of the Commercial Law League. That is practically controlled by laymen. It is laymen opposing it, as you will find the lawyers do not control the Commercial Law League. I have been reading about this question, and there is much discussion about it, but the League is not unanimous on the question one way or the other, so they haven't been able to act. The majority have been afraid to take a definite position. It isn't the lawyers solely, but the laymen.

MR. BOSARD: Most law leagues forwarding business in this state comes out over certain lists that are set up and contracted for; when those lists are contracted for the rates are agreed upon and they are practically all the Commercial Law League rates. If this notation that the bar association adopted last year is to become effective in this state, it is my opinion it means that when they make their next contracts, all the members who are represented in it under these lists, that they must do so with the notation that these bar rates, this docket fee as approved by the bar rates, applies, and in that case, they note it right in the list, that the bar rates of North Dakota apply, and whatever they are. Now if every representative in the state do that as in the U. S. F. & G. list, for instance, which is one of the bonded lists, put that proposition up to them, they would undoubtedly print right at the head of North Dakota what this proposition was. Certainly a lot of us couldn't put that proposition that they adopted last year because we had contracted from July for a year on the basis of the rate that these lists carry. The American Lawyers Quarterly carries, and Commercial Law League, the U. S. F. & G. carries practically the same thing. They have their rates printed right in them, practically every one of the lists known as commercial lists, whether they are bonded or whether they are not, carry these rates, and when you contract for them and take the representation, you are right up against the guns if you attempt to throw the claim back, on the ground that they have got to pay this docket fee, and if they are going to continue it, they should make their contracts subject to this. Now in taking several of those lists, we find Montana, Wyoming and Iowa has right in front of the name "Bar lists apply" and they take the collection under that basis. That is the basis they have got to start on, if they are going to carry this thing through as far as commercial business is concerned. So far as Mr. Hoopes' statement is concerned, if we charge this docket fee, we can't compete with the collection agencies of the Twin Cities, what do we care? As a matter of fact, if they can collect these claims from sitting down there and writing on them, probably half the claims we get, that has been done, and that is the reason they send them out to us. During the 25 years

I have been practicing, they have had representatives traveling this country, making trips through this country with collections. Just as long as they can make that pay, they will do so, and it is when they can't make it pay, they will do something else. Certain houses send their claims out direct, largely over the U. S. F. & G. list and if they provide for a docket fee, there won't be any trouble about them getting it; when they send their claim out over the bonded list, they look that proposition up to see what rate is charged.

My idea is to continue this docket fee, and once the fee has been made a matter of contract between the representative and list, so the representative using that list will know what they are required to pay, the trouble will be over. So far as I can see we might just as well leave the proposition alone, and let them contract with the lists in accordance with the regulation. Then if it don't pan out, it will be time enough.

MR. .....: This gentleman has brought up that very question. Last year in making my contracts, I attached one of these slips to my contracts, and while I haven't been able to enforce docket fees in some cases, I have generally, and I know that there are lawyers who are not able to enforce it on account of certain conditions, but I think it should be maintained, and that in time it will work out. We will all agree to it after while, and so far as the Commercial Law League is concerned, I used to be a member, but I didn't figure that the laymen had anything to do with fixing the rates and rules and regulations for lawyers, and consequently I quit and I don't believe that any of us have any business in the Commercial Law League as lawyers and I think the docket fee should be retained and that in time we will be able to work it out.

MR. COOPER: It seems it is the attitude of a good many members that we ought to keep this rule in force, and force a lot of us to break it. We want to adopt a fair attitude in the hope it will work out some day.

MR. HOOPES: I would like to make a motion, but I would like to violate the rules a little bit by making a remark beforehand. I believe there are only a few of us here deeply interested in this subject, and I wish to move that this be laid on the table for the present to be taken up later this afternoon. In the meantime, can't those of us who are interested in commercial collections get together and have a little heart to heart talk and see what we can decide upon among ourselves, and at a later time in this meeting bring it before this organization for their consideration. I do not believe the general practitioner cares to inflict upon us commercial lawyers a hardship. It seems to me the commercial lawyers should get together, and I am making that motion, as I explained, that this be laid on the table at the present in order that the commercial lawyers may get together and it may be called from the table and considered later.

PRESIDENT HUTCHINSON: I can just delay action on the motion, if it is favorable to the membership here until 1:30. Is there any

objection to delaying action on Mr. Hoopes' original motion until 1:30? If there is no objection, we will just delay action on it, Mr. Hoopes, and then will take action at 1:30.

MR. HOOPES: I make the request, Mr. Chairman, that you designate some place where the commercial lawyers may assemble.

PRESIDENT HUTCHINSON: I will let you make that announcement yourself, if you want to lead them your self, Mr. Hoopes. I don't know who they are, if you want to make the designation where you can meet and when you can do so.

MR. HOOPES: It has been suggested by my neighbor here that we meet in the County Court Chambers following adjournment of this meeting. The commercial lawyers interested in this subject who want to battle it out with the other fellows will meet in the County Court Chambers immediately upon adjournment.

MR. MCINTYRE: May I make a motion at this time ?

PRESIDENT HUTCHINSON: You may.

MR. MCINTYRE: I listened with a great deal of interest to the address of Judge Campbell this morning. I am not aviation-minded for a very good reason—it costs too much these days. I also listened with a great deal of pleasure to the address of the young man from Washington. I at this time desire to move that Judge Dwight Campbell and Mr. Arthur Fleming, be made honorary members of the North Dakota Bar Association and that their addresses be printed in the record of the meeting for this year.

MR. NESTOS: Mr. Chairman, I second the motion.

PRESIDENT HUTCHINSON: It has been moved and seconded that the Honorable Dwight Campbell of South Dakota be made an honorary member of this Association, and also Arthur S. Fleming of Washington, D. C., and that their addresses be printed in the annual proceedings; all those in favor of this, signify by the usual sign; opposed; it is carried. I have the honor to announce that you are an honorary member of this Association, Mr. Campbell, and we will be glad to have you with us whenever we meet. You do not have any vote but I guess that won't make any difference anyway. Are there any other notations or any other new business before we adjourn before lunch? If not, we will adjourn until 1:30 o'clock this afternoon.

AUGUST 22, 1933

Afternocn Session

PRESIDENT HUTCHINSON: We might as well come to order so we can conclude the meeting. I have a telegram here that was sent to Mr. Lewis, which I will read.

"Attorney John Lewis, Chairman, Minot, North Dakota: Will you please kindly express to our brother attorneys my keen disappoint-

ment in being unable to attend the convention as planned today. The sudden death of a friend prevents. You may be certain that your warm invitation is much appreciated, and that it is a genuine inspiration to know that the fellows realizing the many difficulties, are so splendidly aiding me. With greetings to them. William Langer, Governor."

At the close of the meeting this morning, we left for consideration the motion of Mr. Hoopes. What disposition do you want to make of that matter now?

MR. HOOPES: Mr. Chairman, we had a very informal gathering of the collection lawyers, so very informal that no provisions were made for making a report; at least no one was designated to make a report. The collection lawyers were there, and of course, a sprinkling of others. I rather got the impression that the collection lawyers, as a rule, think that provision is impracticable, but that was not reversed in that gathering, and personally I am very much disposed to promote harmony. I think it was the concensus of that meeting that this motion be withdrawn, that we allow the rule to stand for another year to give it another trial, with the consent of the second.

MR. COOPER: With very reluctant consent, I withdraw my second.

MR. HOOPES: With equal reluctance on the part of the mover, the motion will be withdrawn. I don't know what Mr. Cooper and I will do unless we get hold of Judge Lewis and see if he has given out all of those little green slips of paper with Lincoln's picture on them.

PRESIDENT HUTCHINSON: Well that disposes of that motion, I guess, Mr. Hoopes.

Is there any motion, or any further action to be taken by the Association before we adjourn?

MR. TRAYNOR: Mr. Hoopes made a motion, I think this morning did you not, which was to be renewed this afternoon. It was, I believe, substantially that the new administration appoint a committee for the purpose of advocating to the Commercial Law League of America the adoption of this docket fee, in principle the same as we have in this state, and to also present the matter to the various lists asking them to note in their lists that subscriptions to the lists in North Dakota, should be subject to the North Dakota bar ruling regarding the docket fee, and also that that committee should have as one of its duties the matter of education of the bar of the state with reference to this fee and if that motion is not on record, then I make it now.

MR. NESTOS: Mr. Chairman, I second the motion.

PRESIDENT HUTCHINSON: You have all heard the motion made by Mr. Traynor. As we didn't have a very clear record of it, we will consider it as now made, and it has also been seconded. Any remarks?

MR. HOOPES: Mr. Chairman, might not that motion also authorize and empower and urge upon that committee to take this subject up also

with this other great national association, the American Lawyers, and see if they won't charge a docket fee of one dollar, also the American Bar Association, and see if they won't impose a docket fee also.

MR. TRAYNOR: These amendments are acceptable to me.

MR. NESTOS: And to me.

PRESIDENT HUTCHINSON: Very well, any further remarks? All those in favor of this motion as amended signify by the usual sign; opposed; the motion is carried.

MR. LAMBERT: Mr. Chairman, don't you think it would be in order to sing the doxology now that this thing is fixed up?

PRESIDENT HUTCHINSON: Any other motions or matters that should come before the Association now?

MR. TRAYNOR: I am not clear regarding the report of Mr. Bangert as to whether or not we adopted their recommendation to the incoming administration to continue that committee on the prosecution of unauthorized practice of law in force, that is it should be continued next year.

PRESIDENT HUTCHINSON: I think that was in the record.

SECRETARY WENZEL: It is in the record.

PRESIDENT HUTCHINSON: Any other matters overlooked or any unfinished business?

Are the resolutions committee ready to report?

REPORT OF RESOLUTIONS COMMITTEE

Be It Resolved, That we, the members of the North Dakota Bar Association in convention assembled, most graciously convey to the attorneys of Ward County our thanks for the delightful and instructive program with which they have favored us during our stay with them at the annual meeting. We wish especially to thank them for the generous spirit of hospitality extended our guests, the ladies, by the members of the bar, the women of Minot, and especially want to express thanks to Judge Lewis for the beautiful flowers furnished by him to decorate our assembly hall, the banquet hall and the hotel rooms.

We wish to acknowledge our appreciation to Arthur S. Fleming of Washington, D. C., for the inspiring address delivered by him. To Judge Dwight Campbell of South Dakota, for his instructive talk on the law of aeronautics, and the kind greetings he brought with him from the bench and bar of our sister state.

We wish to express our appreciation to President Hutchinson for the able and constructive administration he has given the State Bar Association during his administration.

We also wish to express our appreciation to Secretary Wenzel for the efficient manner in which he has conducted the affairs of the office.

ALOYS WARTNER, Chairman,
J. J. JOHNSTON,
JOHN M. LAYNE.

MR. WARTNER: I move you that the resolutions presented be adopted.

MR. BANGERT: I second the motion.

PRESIDENT HUTCHINSON: I presume that the motion includes that the report of the resolutions committee be adopted and printed in the proceedings. Any remarks?

MR. CAIN: I hope this has established a precedent on the part of Mr. Bangert because in other organizations I have known Mr. Bangert to oppose resolutions, even after they have been adopted.

PRESIDENT HUTCHINSON: I presume, Mr. Cain, if he had been among lawyers, that is where they were all lawyers, he would have felt this confidence that he expresses today.

PRESIDENT HUTCHINSON: It is moved and second that the resolutions be adopted as presented. All those in favor of same signify by the usual sign; opposed; carried.

I believe that closes the work of the Association for this year and I will now declare the meeting adjourned and will express to the incoming president, Mr. Cain, my willingness to do everything that I possibly can in the ranks to assist his administration.

Legislation

The Committee on Legislation submits the following as its report:

The Committee met at the call of President Hutchinson, at the Courthouse in the City of Bismarck, Burleigh County, N. D., during the Session of the Legislature.

For reasons already well known to most members of the bar, it was not deemed advisable by your committee to undertake to obtain the enactment of a great deal of Legislation.

At the time of the meeting of the Committee, it appeared that the uniform act to secure attendance of witnesses from outside the State, as proposed by Judge Bronson at the last meeting of the Association, had already been presented. Some such law was enacted as Chapter 217, Session Laws 1933.

There had also been presented by Mr. Swendseid a measure proposed to clarify the law relative to appeals of civil cases tried without

a jury. This procedure was clarified by enactment of Chapter 208 Laws 1933, and also the procedure for claiming property exempt in garnishment by Chapter 209.

These bills introduced by Mr. Swendseid, and their enactment, is not due to any particular action of the Committee of the Association.

The Committee caused to be introduced Senate Bill No. 291 through the courtesy of Senator Matthaei. This was enacted to law as Chapter 210, and amends Sec. 7571 A-2, 1925 Supp., merely changing the law in effect so it no longer becomes necessary to file the Garnishment Summons and Affidavit within ten days after service. Chapter 210 provides that the Garnishment Summons and Affidavit shall be filed at the time the Summons and Complaint in the action are filed.

Your Committee considered this as merely a minor change and not of great importance; however, it will probably have the effect of saving filing fees in many actions that are settled before being placed on for trial.

Your Committee also caused to be introduced a bill attempting to make more workable the provision of law relative to service of Garnishment Summons where the fund to be garnisheed is due for wages. However, this apparently failed of passage.

Certain members of the Committee, at the request of President Hutchinson, appeared before the Judiciary Committee of the Senate on the proposed law relative to the dismissal of actions without final determination on the merits, the same being the change proposed in Section 7597, C. L. 1913, Sub. 3. Your Committee, as instructed by the Association, was opposed to the change. However, the Legislature under House Bill No. 32 enacted the law with the change therein, but this was vetoed by the Governor.

Your Committee learned that an act for the proposed repeal of the so-called bad check law had been presented to the Legislature. Therefore, no action was taken relating to the repeal of this law, but the law, as proposed, had the backing of the State's Attorney of Burleigh County and others, and was apparently killed in the committee or not passed, as it failed to become a law.

It is apparent that the merchants' and retailers' association are opposed to the repeal of the bad check law.

Your Committee has very little to report in way of accomplishment. Certain conditions existing at the last Session of the Legislature, coupled with the general upheaval taking place throughout the State, appeared to make it almost impossible to accomplish anything in the line of constructive legislation. The lawyers were in bad standing before the Committees, and this standing was in no manner enhanced by the action of certain members of the bar in informing the Judiciary Committee, at which your Committee appeared, that the lawyers appearing were not representative of the Bar of the State, and that the action desired by your Committee was not, by any means, the desires of the Bar as a whole. In view of these things, it was deemed advisable to let matters rest during the Session of 1933.

In view of the fact that there is no legislative session until 1935, no recommendations are made as to any new measures to be sponsored by the Bar Association. Your Committee believes this is a matter that should be taken up by the Legislative Committee acting for the coming year, so that such proposed measures can be considered at the annual meeting of this Association.

W. H. HUTCHINSON, Chairman,
W. H. STUTSMAN,
F. G. KNEELAND,
F. E. MCCURDY,
ALFRED ZUGER,
C. L. FOSTER,
T. H. H. THORESEN,
A. W. FOWLER,
F. J. GRAHAM,
HAROLD B. NELSON.
Legislative Committee.

In Memoriam