



1933

## Lawlessness

North Dakota Law Review Associate Editors

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the company's elevators, another group being covered by other sureties. HELD: The mandatory character of a statute is to be determined from its language, but construed in the light of the purpose and intent of the legislature. Even where mandatory language is used, it may be merely directory; and where "the statute does not, in express terms, require the thing to be done, and the act provided for is merely incidental or subsidiary to the chief purpose of the law, and not designed for the protection of third persons, and the statute does not declare the consequences of a failure to compliance, the statute will ordinarily be construed as directory and not fatal to rights granted." These bonds are given for the protection of holders of warehouse receipts. The Commission "is the holder of the receipt for the purpose of enforcing the storage contract and has all the rights and privileges of the party to whom the receipt was issued. Should a surplus develop in the trust fund in the end the right of the sureties thereto can be determined, after claims of receipt holders are satisfied.

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### ROSTER LOCAL ORGANIZATIONS

Accepting the responses to our last publication, some of which were in the nature of threats of damage suits, we again publish the list of local organizations. With a little further assistance, it should become complete and prevent the threatened drain upon our bank deficit.

First District—President, D. S. Ritchie, Valley City; Secretary, Leland J. Smith, Fargo.

Lake Region District—President, R. J. Roberts, Lakota; Secretary, O. M. Thorson, Lakota.

Third District—President, Charles Coventry, Linton; Secretary, Clarence G. Mead, Lisbon.

N. W. District—President, H. L. Halvorson, Minot; Secretary, C. E. Brace, Minot.

Capital District—President, N. J. Bothne, New Rockford; Secretary, Edgar P. Mattson, New Rockford.

S. W. District—President M. L. McBride, Dickinson; Secretary, M. S. Byrne, Bowman.

Burleigh County—President, A. H. Helgeson, Bismarck; Secretary, Geo. S. Register, Bismarck.

Cass County—President, George A. Soule, Fargo; Secretary, M. A. Hildreth, Fargo.

Grand Forks County—President, Tracy R. Bangs, Grand Forks; Secretary, T. A. Toner, Grand Forks.

Stark County—President, G. R. Brainard, Dickinson; Secretary, Theo. Kellogg, Dickinson.

Ward County—President, John H. Lewis, Minot; Secretary, H. E. Dickinson, Minot.

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### LAWLESSNESS

The Chief of Police of a large city is credited with the statement: "If I have to violate my oath of office or violate the Constitution, I'll violate the Constitution."

This statement, says Judge Yankwich of California, "is illustrative of the shallow and vicious thinking in many police circles. Shallow, because in the oath of office of every state official, everywhere in the United States—from village constable to Governor—is a pledge to support the Constitution of the United States, the Constitution of the State, and—last, not first—to perform the duties of the particular office."

Justice Oliver Wendell Holmes, in *Olmstead vs. U. S.*, 277 U. S. 438, stated, "A system based upon this basic principle—as ours is—cannot tolerate lawlessness, upon the part of any of the officers charged with the administration of law. Any such lawlessness does violence to the rule of law and is subversive of it. It makes the government, (i. e., we all who compose it), play an illegal, as well as an ignoble part."

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### BELIEVE IT OR NOT

You will find the following two laws in the volume of the 1933 Session Laws for the State of North Dakota:

#### *Chapter 153*

Three months from and after the taking effect of this Act, every mortgage of real estate which has not been renewed or extended of record within fifteen years after its due date or when no due date is shown in the mortgage, then within twenty years after the recording of such mortgage, shall be discharged of record by order of a Judge of the District Court within the district in which the mortgaged real estate is situated upon application of any party interested and without notice.

#### *Chapter 259*

From and after the passage of this Act, the real estate taxes, either current or delinquent may, at the option of the taxpayer be paid in installments of not less than ten per cent of the amount of the tax, penalty and interest, if any, due and payable, but each such installment in no event to be less than \$10.00. Credit shall be given on the tax records for the installment payments so made, and penalty and interest shall only be computed upon the balance of the tax remaining unpaid.

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### PRACTICE OF LAW

*Berk vs. State*, 84 A. L. R. 740 (*Ala. 1932*), carries an exhaustive discussion of what constitutes the practice of law. It is accompanied by numerous citations; and this is followed by the annotations, beginning on page 749. While Alabama has a statute defining the practice of law, the decision is broad enough, we believe, to cover the situation without a statute. It holds that the practice of law is not limited to the conduct of cases in court; that it embraces the preparation of pleadings and other papers, conveyancing, advice to clients, and all action taken for clients in matters connected with the law; that a collection agency contracting with patrons to turn over to a lawyer for legal proceedings matters handled, when necessary, exacting fees from makers of notes under provisions therein for collection of costs, etc., and threatening debtors with legal proceedings, constitutes the practice of law.