North Dakota Law Review

Volume 7 | Number 1 Article 1

1930

Proceedings of the State Bar Association, at Its Annual Meeting, Held at Devils Lake, North Dakota, August 15-16, 1930

North Dakota State Bar Association

PROCEEDINGS OF THE STATE BAR ASSOCIATION, AT ITS ANNUAL MEETING, HELD AT DEVILS LAKE, NORTH DAKOTA, AUGUST 15-16, 1930

Friday, August 15th

MORNING SESSION

A. M. Kvello, President, Presiding

PRESIDENT KVELLO: The thirty-second annual meeting of the Bar Association of the State of North Dakota will please come to order. We will all rise and listen to the invocation by Rev. George Loftness of Devils Lake. After the invocation, I wish you would remain standing for a few moments in silent tribute to our Past President, Horace Bagley, and the other men who have passed on since our last meeting at Valley City.

(Invocation by Rev. Loftness.)

PRESIDENT KVELLO: Now if any of you feel uncomfortable on account of the heat, you may feel perfectly free to remove your coats as we do not stand on formality.

It is not necessary to have the people of Devils Lake tell us they are glad to have us with them. We know from past experience that is true. However, we are glad to have them tell us again and so we have a number of representatives of the beautiful City of Devils Lake here to give us a word of welcome, and the first on the list will be from the Ramsey County Bar, Fred T. Cuthbert. In view of the fact that he is three quarters of an hour late, we are going to dock him that much on the address of welcome, and we hope he will take that in consideration,—Mr. Cuthbert:

MR. CUTHBERT: Knowing you as I do and having observed that there was a preacher here, I do not know why you should have wasted the time waiting for me that could have been well put in praying for the lawyers.

The best address of welcome that I have ever read, and I say "read" advisedly, because I never heard but one, and that was when I was President—I am like the rest of the lawyers, usually don't get around in time to hear the addresses of welcome,—but the best address of welcome I ever read, consisted of these words, "Gentlemen, you are welcome." However, I suppose it would hardly befit the dignity of the local Bar and the Lake Region Bar to simply welcome you in that manner. I do not know of any address that is so difficult to make, because every time I think of something to say, immediately there comes a second thought, "What has that to do with an address of welcome?" In trying to think of something to say, like a ghost this question would rise up and haunt me. The only thing that would keep coming to my mind were those famous words from our distinguished jurist, exhorted in one of the solemn moments of the meeting of the Judicial Council, when he said, "Give them hell." I have tried to think of something that might be apropos. I would like to say, "You gentlemen are generous," and yet after looking at these statistics which my friend, the learned Secretary, compiled a short while ago about the earning capac-

ity of the average lawyer in North Dakota, I said, "That can't be done." I would like to say, "You are men of great learning and fearless," but after the way that you submit to some of the things that the Courts say about you, I can't believe that you have either learning or courage. I am prepared to state that you belong to a body that, in the past, has produced a few men of great learning, great leadership, starting with Patrick Henry, who said, "Give me liberty or give me death" down to Abraham Lincoln, Daniel Webster and various others who have shown wonderful leadership. We do know this, that there has been no great movement toward civic progress that has not had connected with it, at least in the late centuries, some member of the Bar, and that is a great thing, I am sure, to consider.

You are welcome here. We are glad to have the lawyers of North Dakota here. We hope that out of this meeting there may come something that will inspire us as lawyers to greater study of the social as well as the purely technical side of our life. I am becoming more and more convinced that the lawyer should be something more in the community, state and nation than the mere trier of lawsuits of personal differences; that his office is of such a nature that he should, without running for office, still be a leader and a director of thought, directing things toward social justice. We may not agree but at least, if we can, in our community, stir up intelligent thought, intelligent discussion upon the serious side of life, we shall be doing something worthy of ourselves and of our name as members of this great profession.

In telling you that you are welcome, I may at this time very opportunely offer you an apology. Heretofore when we have entertained the association here, it has been somewhat beneath the dignity of the man who had the matter of the program in charge, to look after the entertainment; but Mr. Traynor, who has some ability, prepared the program, and did a great amount of hard work, thought that possibly his brother Mack and I might furnish you with the entertainment. We had our plans quite well laid when along came a letter from Judge Cole saying that nothing of that kind must happen to a Bar Association, so if this meeting somewhat reminds you of the Sahara Desert, don't blame it to the entertainment committee, take it out on Judge Cole the next time you see him. We are going to give you a trip out in the country to see some of the best dairy cows and the best farms in North Dakota and a few things like that, and if you think you can't have a good time doing that, then all I can say for you is that we will have to ask Rev. George Loftness to pray for you.

PRESIDENT KVELLO: There is an organization which has helped make the City of Devils Lake what it is, the Chamber of Commerce. It is one of the finest Chambers of Commerce in the State of North Dakota, and we have with us the Vice President, M. G. Graham, owner and publisher of the Devils Lake Journal, who will speak to us on behalf of the Chamber of Commerce,—Mr. Graham:

MR. GRAHAM: Mr. Chairman and friends: I am something like Fred, I guess, who said it was the hardest thing in the world to make an address of welcome. Of course, it is always nice to have somebody go ahead with it. It gives you something to think about and possibly to prepare a few remarks upon. Of course, after Fred got through speaking, I was convinced that as far as the rest of you people were

concerned, you had not been welcomed here. He didn't say anything about it except he had heard an address one time which was an outstanding address of welcome, but he didn't tell it as though he was delivering it to you people.

When I was asked to come up here, I must confess that I was a little scared when I thought of mixing with you attorneys, or coming into the court room. About the only experience I ever had in the court room was once when I was called on the witness stand. You will recall there are two rather intelligent looking individuals down in front who start to work on you. One of them is very friendly for a while; in fact they both start out very friendly, but before they get through, you have one friend and one enemy.

The situation is somewhat changed this morning, and you are going to be cross examined by the Chamber of Commerce. The people of Devils Lake are one hundred per cent friendly. We consider it quite an honor that you have selected our city for your meeting, and when you go away from here, we want you to feel as though you have enjoyed yourselves and want to come back again.

While Fred was talking, I couldn't help but be reminded of the story of Mark Twain, who was a guest of honor at a banquet. A close friend of his, an attorney, was also a guest at the banquet, and after the dinner was over, Mark was called upon to make a speech and he performed as he usually did. Then his attorney friend got up and put one of his hands down in his pocket and said, "Gentlemen, doesn't it seem rather peculiar that a professional humorist should really be funny?" Well about the only reply that Mark could think of when he got up, was, "Doesn't it seem rather peculiar to you that an attorney has his hand in his own pocket?" But we want to say to you to feel free to put your hand in anybody's pocket in town and get whatever you can out of it. I don't know what will be there but we want you to enjoy yourselves while in our city.

PRESIDENT KVELLO: The City of Devils Lake, being over 5000 population, has a commission form of government, and the President of the Commission is here to extend to us a few words of welcome. I am pleased to introduce to you the Mayor of the City of Devils Lake, Mr. A. V. Haig.

MR. HAIG: Mr. President and members of the North Dakota Bar Association: As I have been sitting here the past few minutes, I could not help but wonder what in the devil I was here for. It seems to me that for a group of thirty or forty men you need more welcoming than anyone I have ever known. But I believe we had a convention here one time that needed a sort of double barreled welcome—the Business and Professional Women, but I have always felt they were entitled to a little more consideration than the average organization, but I want you men to understand we are just outdoing ourselves in welcoming you, although we are all going to say about the same thing. Mr. Cuthbert has told you how glad we are to have you here. Mr. Graham has told you the same thing and I am also going to tell you the same thing. We are delighted to have you in Devils Lake. I believe some four or five years ago you met here and at that time you received the official welcome of Devils Lake for all time to come. You remember, you men who were here, that City Attorney Wheeler delivered the address of welcome and he covered everything so completely that it was thought

you would never need to be welcomed again. Gentlemen, you are welcome here today and you always will be welcome in Devils Lake. It is a pleasure to have a gathering such as yours in Devils Lake. We are proud of our city. I think you men will admit we should be proud. We think we have a wonderful little city here and we want to show you everything that we have. It is our pleasure, not only the members of the local Bar Association, but the other citizens of Devils Lake, to join with them in acting as your host while you are in the City. All I can say is that if you have appealed to my friend Fred, and my friend the publisher, and if they have not delivered the goods, come right to headquarters and we will show you the real stuff.

PRESIDENT KVELLO: I hope the Mayor and his good friends will not think because we have only one response that we consider one lawyer equal to three laymen, but we have some regard for the passage of time and we know the limitations of the average lawyer on that. We have one response to three very fine addresses of welcome, and that will be given on behalf of the Bar Association by Hon. C. J. Murphy of Grand Forks.

MR. MURPHY: Mr. Chairman and the three musketeers of the Satanic magistrate's domain: I want to tell you gentlemen first, that it was not in my estimation an oversight for Fred Cuthbert to be late. It is a habit that these outstanding prominent attorneys have. They wait until the setting is almost perfect; then they march in with their chests thrown out and create an impression and await the applause and all that follows.

Now I want you to take the statement made by the representative of the Ramsey County Bar Association about this town being bone dry with a grain of salt. You keep close to Fred and watch the operation of putting a hand into pockets and I think you will fare quite well.

When I was in the habit of attending the bar conventions in the past, local arrangement committees did not have sufficient influence to induce the leaders of local religious, municipal and civic organizations to extend a welcome to visiting lawyers, and as a result the program and proceedings at those conventions were rather heavy and dry, even in the pre-Volstead days. The ordeal was entirely too much for some of us and we fell by the wayside and got out of the habit of attending these meetings; but in view of the new rule of dragooning these local leaders into making speeches of welcome, whether they felt that way or not, a lot of us backsliders are very apt to come into the fold and be in constant attendance at future conventions, because we will be assured of proper entertainment and protection.

Fred Traynor is responsible for me being in this position and undertaking this task. It is out of my line entirely. When I started in the practice of law, it was with Tracy Bangs. Perhaps some of you gentlemen have heard of him. He impressed me "right off the bat" with the idea that it would be my business to work around his establishment; that he could take care of all the idle talking that was necessary, and that he was very especially opposed to work himself. As a result, I have always been a mere laborer, trying to earn an honest living, even though I am in the profession of the law; and the only time that I have ever attempted to make a talk is when I thought I saw a pot of gold at the end of the rainbow, but usually the pot and the rainbow had the habit of disappearing suddenly in some unexplainable way.

However, Traynor made a few suggestions which overcame my natural disposition, and he said that our friend Cuthbert was going to make the principal address of welcome and that if he could get by, certainly I ought to be able to do the same. He said also that undoubtedly Fred would leave some opening for me to get even with him on account of all the mean, unscrupulous things he has put over on me during, lo! the many years when I have been obliged to meet him in the trial of lawsuits, and in other ways. Fred also said that the highbrows of this organization were fed up on frivolous speeches and that he was certain that the remarks and suggestions that would naturally come from me of a constructive and high order would be of great benefit to the members of this convention in their future deliberations. He told me also that it had become almost a precedent for one who could make a good responding speech to be elevated to the Presidency of this Association, and last but not least, he suggested that if the proceedings of this convention should become irksome, that he would assure me of fine entertainment on the quiet open spaces of the golf course.

Since Devils Lake re-entered the Union, I have always enjoyed my visits here. The people of this town understand, it seems to me, about as well as any community of the state, how to entertain and take care of visitors. This has not always been the case. In 1895 or thereabouts, there was a strike on the railroad and your people at Devils Lake almost unanimously seceded with the strikers. I remember getting off at the Great Northern station here one day in the rain with a few other nondescript representatives of Uncle Sam. The whole town was there as a reception committee to meet us, but what they said to us was entirely foreign to the expressions we have heard today. A few years later, the railroad boys decided they would like to go on another spree. They voted their cause was just and again went out with the strikers, even to the extent of the local militia abolishing a few of the scabs. Subsequently I had the none too agreeable task of prosecuting the offenders in Military Court. Before I got through I was almost convinced I was a culprit. However, we have all gotten over our ancient prejudice and we live now in peace and harmony and when you say to us, as you have, and representing the various organizations of the city, that we are welcome on this occasion, we are going to take you at your word. We believe you when you say we are going to be entertained and that you will give us a good time. We hope that is true; we will take advantage of the opportunity, and all the lawyers here and who may come here later, agree with me or before this meeting is over with, will agree with me. I desire to say to you on behalf of the visiting lawyers and on behalf of the Association, the Bar Association of North Dakota, that we appreciate very much your kindly greetings and hospitality, and we feel that the present situation that has been created through your attitude and by your cooperation will result in the work of this association being of a high standard, and that the meeting and the proceedings and the accomplishments of the association will be better than at any time or any convention preceding this one. I thank you.

PRESIDENT KVELLO: You will notice on the printed program the fact that there are a large number of committee reports called for. All the reports that have come in to the Secretary's office prior to the August issue of the Bar Briefs have been published in the July and August issues.

You will notice, too, that some of these reports do not contain any recommendations that require action on the part of the Association. They are full of interesting and valuable information for the profession but in order to expedite the business of the Association, it has been thought best that those reports which do not contain any recommendations, and which are printed in the July and August Bar Briefs be not read nor any time taken up in connection with them at the meeting here today and tomorrow. For that reason, only the reports of committees which contain recommendations for the action of the Association will be under consideration here during these two days, and in those reports which contain recommendations, I will ask the party making the report, not to read the report, but simply give the substance of the recommendation made in the report with such argument as he may wish to substantiate the committee's action. I think if we do this, we will get along with the business of the Association much more rapidly and much more interestingly.

The first report will be that of the Executive Committee on the part of the Secretary, R. E. Wenzel.

MR. WENZEL: Mr. President and Members of the Bar Association: There are really no recommendations on behalf of the Executive Commitee, but a brief review of its activities during the year may be in order at this time. The Executive Committee had only one meeting, which was the meeting that was called by our late President, Judge Bagley, who was elected at the last annual meeting and who was able to preside over only one meeting of the Executive Committee. That was in October, 1929. Following the suggestion of Judge Bagley, the Executive Committee outlined a program of action for this year somewhat different from that of previous years. It made the important thing for the year, the organization of the local Bar Associations.

With Judge Bagley's death, President Kvello took over the task and he has, in a very enthusiastic and faithful manner, carried out the ideas that Judge Bagley had in mind, and with the coming of this annual meeting, we are in a position to report to you that President Kvello has succeeded, by reason of his enthusiastic, zealous application to the task set out by Judge Bagley, in completing the organization of all the local Bar Associations, and will now bring to you, as I understand, the matter of further tying up the local organizations to the State Bar Association.

Retrenchment of finances was continued, and in the various appropriations for this year, the budget was again kept below the figures of two or three years ago. That budget has thus far been, or rather the expenditures under it, have been kept within the appropriations. It may appear from the items as listed that we have exceeded the appropriation for the President's account and the Miscellaneous account. This, however, is not true. The Executive Committee, at the suggestion of Judge Bagley, did away with the prize money contributed to the Committee on Citizenship and Americanization, and appropriated the amount of $200 which had previously gone to that work, to the organization of local associations. However, in submitting the vouchers for these several items, they were rather mixed up in various ways, so, rather than attempt to separate them, it was thought best to keep

the vouchers intact and not separate the items contained in the several vouchers. They have been listed under Miscellaneous and President's account.

The committee directs attention to the matter of the selection of names for recommendations to the Supreme Court for appointment on the Bar Board. The term of one of the members of the Bar Board, as indicated in the last issue of Bar Briefs, will expire in January, 1931. It is really necessary that this association adopt some definite method of making that selection. It was indicated in that last issue, that three methods have been followed. It is not necessary to repeat them here. If you have read that statement, you know what they are. Some action should be taken by this Association at this meeting with a view of clarifying the situation, with reference to the method of selecting names to be presented to the Supreme Court for the Bar Board.

Last night the Executive Committee went over the business of the Association and cleaned it up including the auditing of the accounts of the Secretary-Treasurer, which are my own accounts. The statement was printed in the last issue, the August issue, and shows that a balance of $1017.03 exists. Subsequent to the preparation of that statement, which was merely a tentative statement, other vouchers came in and checks were issued, some of which have not been returned by the bank, but at the present time, the actual balance is not $1017.03 as printed in the August issue, but $898.09. The items of receipts show that we had on hand a year ago $1096.51, since which time we have received from the Bar Board the sum of $2795 and $155 from the banquet committee of 1929, making a total income of $4046.51.

The expenditures I will simply refer to at this time in the order of budget appropriations. The expenses of the 1929 annual meeting, which were left over, amounted to $362.76. The expenses of the 1930 annual meeting to date are $37.79. The 1929 banquet $155.70. You will observe that for the first time in the history of the organization we came pretty close to paying for the expenses of the banquet by the sale of banquet tickets, being only seventy cents short. Printing and postage $91.67. Miscellaneous $210.41. Law Review appropriations $200. Annual proceedings $392.30. Citizenship Committee $200 which represents prizes for last year. Expenses of 1929 Citizenship Committee $27.54. None have been received this year. Secretary-Treasurer $710.00; Bar Briefs $360.50 and Executive Committee $159.31 and President $240.44, making a total of $3147.42, leaving a balance of $898.09. The account is verified by the Secretary-Treasurer, and is accompanied by the statement of the Cashier of the Bank of North Dakota, showing the balance in the bank on the 12th day of August, the statement of the State Auditor showing the amount which was turned over by the Bar Board to the Association, a statement of W. T. Sproul showing the amount turned over by the Banquet Committee of 1929. The account has been approved by the Auditing committee and is signed by P. W. Lanier, Charles Coventry, and E. E. Fletcher.

This is to certify: That there was paid over to R. E. Wenzel, as Secretary-Treasurer of the State Bar Association, the exact sum of $2,795.00 between the 3rd day of September, 1929, and the 12th day of August, 1930, representing the share of said Association out of the attorneys' license fees paid to the State Bar Board.

JOHN STEEN, State Auditor.

This is to certify: That there was paid over to R. E. Wenzel, as Secretary of the State Bar Association, the exact sum of One Hundred Fifty-five Dollars ($155.00), representing the amount received by our local committee for the sale of tickets for the annual banquet on September 5, 1929.

Dated September 13, 1929.

L. T. SPROUL.

FINANCIAL STATEMENT

State Bar Association of North Dakota

Receipts

Balance on hand at last report	$1,096.51
Received from Banquet Committee (1929)	155.00
Received from Bar Board, balance 1929 fees (30)	150.00
Received from Bar Board, 1930 fees (529)	2,645.00
1-29—184 fees $ 920.00	
2-28—205 fees 1,025.00	
5-17—110 fees 550.00	
8- 6— 30 fees 150.00	
Total	$4,046.51

EXPENDITURES ITEMIZED

1929 Annual Meeting

256	Youngquist, expense	$ 40.00	
257	Helmers	8.00	
258	Rudolf Hotel	24.20	
259	Horace Bagley	33.00	
260	People's Opinion, printing	5.50	
261	Lanier	9.50	
262	Kelsey	6.00	
263	Johnson	27.08	
264	President Clark	16.88	
266	Judge McKenna	26.10	
267	Wenzel	33.00	
269	Rudolf Hotel, guest expense	6.00	
270	Mrs. Morsbach	10.00	
273	Richards	10.00	
296	Hurd, reporter	107.50	
			$ 362.76

1930 Annual Meeting

359	Wenzel, expense speakers	$ 25.00	
373	Wolverine Art Shops, badges	12.79	
			$ 37.79

1929 Banquet

265	Rudolf Hotel	$ 155.70	
			$ 155.70

Printing and Postage

272	Quick Print, envelopes and letterheads	$ 9.50	
278	R. E. Wenzel	3.67	
279	Quick Print, letterheads	10.00	
283	Advance postal deposit	15.00	
304	Tribune, 6000 envelopes for Briefs	39.00	
369	Advance postal deposit	10.00	
371	Quick Print, envelopes	4.50	
			$ 91.67

Miscellaneous

268	Cuthbert	$ 1.00	
271	Fargo Forum, adv. bids	5.60	
274	Minot News, adv. bids	4.48	
275	Tribune, adv. bids	1.80	
281	Wenzel	2.70	
289	Wenzel	4.25	
292	Bagley, flowers	13.75	
293	Lewis, balance 1929	9.19	
295	Commercial Service	1.60	
298	Commercial Service	1.60	
299	Harris & Woodmansee, supplies	11.30	
300	Wenzel	2.10	
303	Wenzel	11.07	
307	Miss Angus, work on Proceedings	10.00	
337	Grand Forks Herald, adv. bids	8.00	
339	Wenzel	2.25	
345	Treasurer's Bond	5.00	
346	Wenzel	6.80	
348	Eilson, flowers	10.45	
350	Bagley, flowers	5.00	
351	Wenzel	14.12	
352	Wenzel	14.75	
354	Cuthbert	15.00	
357	Wenzel	6.50	
360	Goss, flowers	10.00	
363	Wenzel	3.70	
366	Wenzel	10.40	
372	Halvorson, Minot district	18.00	
			$ 210.41

Law Review

276	Balance 1929	$ 100.00	
356	First half 1930	100.00	
			$ 200.00

1929 Proceedings

302	Quick Print	$ 392.30	
			$ 392.30

Citizenship Committee

308 to 333 inclusive, Prizes	$ 200.00		
334 Horner	2.65		
335 Lindell	2.88		
336 Herigstad	22.01		
			$ 227.54

Secretary-Treasurer-Editor

277 September 1929	$ 50.00		
288 October	60.00		
297 November	60.00		
305 December	60.00		
306 January 1930	60.00		
338 February	60.00		
344 March	60.00		
349 April	60.00		
355 May	60.00		
361 June	60.00		
367 July	60.00		
368 August	60.00		
			$ 710.00

Executive Committee

282 Wenzel	$ 38.60		
284 Palda	29.42		
285 Fletcher	15.00		
286 Bagley	22.72		
287 Lanier	25.00		
290 Kvello	3.00		
291 Lewis (1929)	25.57		
			$ 159.31

Bar Briefs

280 September	$ 33.00		
294 October	33.00		
301 November	35.00		
342 January	33.00		
343 February	33.00		
347 March	33.00		
353 April	34.00		
358 May	34.00		
362 June	43.50		
374 July	49.00		
			$ 360.50

President

340 Expense	$ 38.16		
341 Miss Cadieux	40.00		
364 Expense	87.63		
365 Miss Cadieux	50.00		
370 Expense	24.65		
			$ 240.44
			$3,148.42
Balance			$ 898.09

I, R. E. Wenzel, do hereby certify that the foregoing is a true and correct record of all receipts and expenditures of the State Bar Association from the date of the last annual report (1929) to the date of the 1930 annual meeting.

R. E. WENZEL,
Secretary-Treasurer.

We, the undersigned auditing committee appointed by President Kvello, certify we have duly and fully audited the foregoing and find it correct.

P. W. LANIER,
CHAS. COVENTRY,
E. E. FLETCHER.

PRESIDENT KVELLO: Have you any recommendations, Mr. Secretary, relative to the clarification of the method of submitting names to the Bar Board? We shall be glad to hear them.

SECRETARY WENZEL: Well, Mr. President, I do not care to make any recommendations. I shall simply call the Bar Association's attention to the three methods that have previously been employed.

The first was the general referendum, submitting to the membership of the State Bar Association names for nomination. A a result of that method of procedure, you usually acquired a nomination list of something like 100 or 120 names with the three leading names probably receiving something like about ten or fifteen per cent of the votes.

The second method employed was the selection by the Executive Committee of a slate or ballot. In every case in which that method was employed, the Executive Committee selected twice the number of names to be chosen. Now in that method of procedure, the selection, of course, was limited primarily to the ballot but additional names could be presented and were presented so that the list usually ran about thirty or forty names, but the names selected, while still carrying only a minority vote, in many instances, at least had one or two names which carried pretty close to a majority, and sometimes over a majority of votes.

The third method employed only once was the method of direct selection by the Executive Committee. That was an emergency situation, the resignation of Judge Fisk making it imperative to get recommendations to the Supreme Court immediately. The Executive Committee being in session at the particular time, it proceeded with the matter of making recommendation directly.

Those are the three methods that have been employed. It seems to me that the direct referendum is a foolish way of handling the situation. We simply do not get anywhere near a representative vote for the leading men on the ticket. It is impossible. Some method of preparation of a ballot, whether by the Executive Committee or by a special committee, it seems to me, would serve best in making a selection.

PRESIDENT KVELLO: What is your pleasure, gentlemen, regarding the subject Mr. Wenzel has presented?

MR. CUTHBERT: Is there any law requiring this body to make recommendations to the Supreme Court, or is this a method of procedure we have adopted?

PRESIDENT KVELLO: It is provided for in the law. There is no particular method as to how it is to be done. The Bar Association recommends these names for the men to be appointed.

MR. LEWIS: It seems to me the best method would be for the Executive Committee to select double the number of names as nominees and then there may be additional nominations by a petition signed by ten members of the Association, placing other names on the ballot, and then take a referendum ballot of the Association. I believe that comes closest to getting the opinion of the Association, doing away with the objection to it.

MR. ADAMS: I move you that a committee be appointed by the President to carry out the suggestions of Mr. Lewis, Mr. Lewis to be chairman of the committee, they to report sometime tomorrow morning. There will be more members of the Association here, the committee to suggest to this organization any amendment to the by-laws necessary to effect the plans.

MR. FRED TRAYNOR: Second the motion.

PRESIDENT KVELLO: You have heard the motion, gentlemen, any remarks? If not, those in favor of the motion, please signify by saying aye. Contrary. It is carried.

The Committee will be appointed before the noon recess.

The next Committee Report is that of the American Law Institute, R. M. Cooley, Grand Forks, Chairman, together with Honorable George M. McKenna of Napoleon and Mr. O. H. Thormodsgard of the University. There has been no printed report submitted to the Secretary. If none of these gentlemen are here, the report will perhaps be filed, but if one is to be made, it will have to be made during the two-day session here.

The next Committee is the Committee on Bench and Bar Ethics, Mr. P. B. Garberg of Fargo, Chairman, Mr. L. T. Sproul of Valley City and Mr. Max Lauder of Wahpeton. Is that Committee ready to make a report? No printed report has been filed.

MR. SPROUL: Mr. President, the Chairman of the Committee has called no meeting during the year and I have had no correspondence with him recently although we have talked at times during the year. There was no mention of any recommendations being made and I do not know what his plans were for filing the report.

PRESIDENT KVELLO: If Mr. Garberg comes in during the sessions, we will ask for a report.

Next is the Committee on Citizenship and Americanization, Mr. Wartner of Harvey, Chairman. There has been no printed report filed and if there is no report to be made, it will be passed.

MR. MACK TRAYNOR: We have an address scheduled next by Hon. H. L. Berry of Mandan. Judge Berry sent his address to me and asked me to read it. Either I will read it or the Secretary may do so.

"The Jury Impaneling System," an address by Hon. H. L. Berry of Mandan, was read by Mr. Traynor.

THE JURY IMPANELING SYSTEM

JUDGE H. L. BERRY, Mandan

The jury impaneling system is not a very interesting subject. However its significance and relative importance becomes apparent when we consider its connection with the more important problem of the administration of justice, in general, which has sustained bitter criticism, for many years.

The National Economic League composed of representative prominent men throughout the United States by means of a preferential vote taken in January, to determine the paramount problems confronting the people this year, declared the administration of justice to be the most serious.

Just how much responsibility for the threatened breakdown of justice in the United States should be assumed by the lawyers is a question. Yet the fact remains that the problem is real and acute.

Chief Justice Taft, when President, called our administration of the criminal law a disgrace to civilization. Since that time nothing has happened to render it less disgraceful. Indeed, the failure of the juries to convict the defendants in the Doheny and Sinclair cases have afforded spectacular object lessons of the deplorable state into which the enforcement of law has fallen.

During the past winter the high schools of this state have debated the highly interesting question: Resolved, "that trial by jury in criminal cases should be abolished." The general conclusion arrived at during these debates and the prevailing opinion of lawyers and judges is that the jury should not be abolished, and for good and valid reasons. The sole causes of the deplorable state of the administration of justice is not the defects of the jury nor the vexations and expense of the laws delays; there are others. But they are not within the scope of this paper.

The subject at hand is the jury impaneling system, the impaneling of the grand and petit juries, not the trial jury,

Under our law the county commissioners are required to maintain two hundred names in the office of the clerk of court, from which the petit jury panel is to be drawn, as provided by sections 814 to 832 inclusive of the 1913 Compiled Laws, and chapter 81 page 147 Session Laws of 1921 being 814 of the 1925 Supplement.

It has been found, upon investigation, that these laws are not being substantially complied with. Year after year, in many counties, the same jurors have been found on the petit jury panel. It is evident that the boards whose duty it is to certify names to the county auditor return the same names for use, session after session.

Before the legislature is asked to amend the laws governing the impaneling of petit juries, it would seem, that the law as it now stands should be complied with. At least an attempt, in good faith, should be made.

Section 831 above referred to provides as follows:

"It shall be the duty of the respective boards in selecting and furnishing the clerk the number of persons qualified to serve as grand and petit jurors, so to select and arrange the names that no one person shall come on the jury a second time before all qualified persons shall have served respectively in rotation."

In order that this provision of law may be given effect the judges of our district, in December, 1929, issued an order to the officers and boards whose duty it is to assist in selecting the jury panel.

A copy of which order I hold in my hand and will leave with the secretary for reference.

In this order the attention of the officers and boards is directed to the provisions of statute governing the drawing of the petit jury panel and a brief outline of the requirements of the law is stated. This order has been printed by each county of the district and circulated by the clerk of court to the officers and boards, whose duty it is to assist in selecting and certifying the jury lists.

Since being called upon to talk to you on this subject I have written each clerk of court of the district for a report on what has been done in regard to the order. The reports show that prior to the issuance of the order the officers and boards were not familiar with the requirements of the law, but that they were glad to have the matter called to their attention, and a good faith attempt is being made to comply with the law. I feel that more care will be taken by the officers in impaneling the jurors in our district as a result of the issuance of the order.

It is the belief of the judges of the district that many of the criticisms of the jury system and the methods employed in selecting the juries may be avoided if the law is complied with.

In most of the counties it became necessary to buy a jury book for the use of the county auditor, in order to comply with the requirements of the law. Mr. Lee Nichols, County Auditor of Morton County, suggests that it would simplify matters to have a law passed requiring the assessors when certifying lists of qualified voters to also certify a full and complete list of all qualified jurors, as a basis for the use of the board in complying with section 831.

I do not feel that the time is ripe for a report, as to the beneficial results from our attempt to comply with the law. The jury lists in most counties have just been corrected by the county commissioners at the recent July meeting. A year from now we may be able to report progress, or make some suggestions for the improvement of the system of selection of petit juries.

How the Jury Should Be Drawn

From time to time we hear of complaints about the jury system and the methods employed in selecting jurors for the trial of cases. Many of the criticisms may be avoided, and expense saved the counties as well, if a little care is exercised in making the selection of citizens to serve on the jury. We believe the code provisions for the selection of jurors are adequate, if followed, and after consultation, we have concluded that a simple statement of the law governing the selection of jurors and juries will be of assistance to the officers who have these important duties to perform.

We recommend that, at the time names are selected for the jury list, chapter 81, page 147, Session Laws of 1921, being section 814 of the 1925 Supplement, be carefully read. It states the qualifications necessary and the exemptions allowed, to which we would add that either party to a lawsuit, at the trial, may object to a juror who cannot speak and understand the English language as it is commonly and ordinarily used in the court room. Each person summoned as a juror to attend a term of court, is entitled to five cents a mile each way from his home to the court house and also four dollars per day or part of day for attendance, and if not qualified will be discharged by the court, drawing his pay for attendance. Careful attention to these matters of qualification and exemption will result in a saving to the county.

"Jury Lists" herein referred to mean the names of the 200 persons from which the trial jury is selected and such list is kept by the clerk of court. "Jury Book" referred to is the book in which the names of jurors selected are recorded.

We assume that there is now a jury list for each of the counties of this district, in the possession of the clerk of court; that the clerk of court keep a book known as a jury book, and that each municipality —township, city and village—in the county, also has a jury book which is kept as hereinafter designated. If the township, city or village does not have such a book, it should obtain one at once, and put it into use.

The jury list must contain the names of 200 persons having the qualifications specified in section 814 of the 1925 Supplement, which list must always be kept at the maximum of 200 names. When the list falls below that number, which will occur after each jury term of court, the clerk of the district court shall make a requisition upon the Board of County Commissioners for the furnishing of as many names as may be necessary to keep the list full. The Board of County Commissioners, if then in session, or at its next meeting, shall proceed to apportion to the several townships, cities and villages of the county, its pro rata share of such requirement, and require the government bodies of said municipalities to furnish the required names. Upon receiving notice from the county auditor of such apportionment the clerk or auditor of the city, village or township, as the case may be, shall immediately thereafter cause to be posted in three public places in the city, village or township, as the case may be, a notice that the city council, board of aldermen or board of supervisors, as the case may be, will meet to draw the names of qualified jurors in accordance with such apportionment, which notice shall state the time and place of such meeting within the municipality and designate a day not less than 5 or more than 10 days from the day of posting such notice. The names appearing on the assessor's lists of the several townships, villages or cities for the preceding year shall be the basis for making such apportionment.

Three times as many names as are apportioned to the township, city or village, shall be selected from the names of the resident taxpayers thereof, having regard for the qualifications of such persons, and the clerk of the township or village and the auditor of the city shall write each name so selected in a book to be kept for that purpose, called the jury book. These names must be also written on a separate ticket or slip, and the tickets compared with the record list. The tickets are then to be folded, placed in a box and the box shaken. One of the

members of the board shall then draw from the box the number of tickets corresponding with the names so apportioned to the municipality. The clerk or auditor, as the case may be, shall then write the names so drawn, with the post office addresses of the persons so drawn, in the jury book, and transmit said names and post office addresses to the clerk of the district court. The letter and spirit of the law requires, and it is the duty of, these respective boards to so select and arrange the names THAT NO ONE PERSON SHALL COME ON THE JURY A SECOND TIME BEFORE ALL OTHER QUALIFIED PERSONS SHALL HAVE SERVED RESPECTIVELY IN ROTATION.

The jury list of 200 names is now completed. The drawing of the jury for the term of court next follows. The district judge orders the clerk to summon a jury. Within three days after receiving the order, the clerk must call a meeting of the county jury board to select jurors, which board consists of the clerk of the district court, the county auditor, county treasurer and sheriff, or a majority thereof. The sheriff will be disqualified from acting on said board if he shall be a party to any suit pending in the court, and may become disqualified for other reasons, in which event the county coroner shall be called in to sit in his stead. The clerk of court shall also, at least one day prior to the time set for the drawing of the jury, notify by mail each attorney or firm of attorneys in the county of the time and place when and where the board will meet.

Before selecting the jury, the clerk shall, at the meeting, go through the jury list, that is, he must read off the names on the jury list, and shall strike therefrom the names of any persons known to him or to the board to be dead, or who have removed from the county, or who are not citizens of the United States and of this state, or in case of duplication, and shall then write the name of each person remaining, appearing on the jury list, on a separate ticket or slip, which shall be compared by the other members of the board with the jury list as corrected, and, after correcting errors, if any, the tickets or slips shall be folded, placed in a suitable box, and the box shaken so as to thoroughly mix the tickets or slips. One of the members of the board, not the clerk of court, shall then draw from the jury box, by lot, the number required to form the jury so ordered.

The names so drawn to form the jury shall, thereupon, be stricken from the jury list, and at the termination of the term of court, for which the jury has been drawn, the clerk shall again make requisition to the Board of County Commissioners for a sufficient number of names of qualified citizens to fill the list to 200 names, when the same operation will be repeated.

The clerk of court will also write the names of those selected for jury service as hereinbefore specified, in the jury book, and also write in the jury book the names of those drawn for service as jurors.

F. T. LEMBKE
H. L. BERRY
THOMAS H. PUGH

PRESIDENT KVELLO: The Committee on Comparative Law has filed a very interesting and informative report, which was published in the August issue of Bar Briefs. Hon. A. G. Burr is Chairman. It

is worthwhile reading and if there are no recommendations contained in this report, we will dispense with the reading of the report and you may refer to Bar Briefs.

REPORT OF COMMITTEE ON COMPARATIVE LAW

It is not feasible to analyze and compare recent legislation of the various States, and the use of selected topics for analysis may not be profitable.

Your Committee deems it advisable to ascertain the amount of legislation and hopes by comparison with quasi-public returns to show whether the legislation correctly reflects public sentiment and demand, and thus be of more service to this Association.

Of the legislatures of the forty-eight States of the Union that of Alabama meets once in four years; New York, Rhode Island, and South Carolina annually, and those of the remaining States biennially.

Since January 1, 1929, all of the States, excluding Alabama, have held regular sessions of the legislature as have also the territories of Alaska and Hawaii. These legislatures have been prolific in the enactment of laws. Since January 1, 1929, 16,703 new state and territorial laws have been enacted. This is exclusive of special acts, concurrent resolutions, memorials and resolves.

Though Alabama had no session of the legislature in 1929 there were 400 laws enacted in 1927. The legislation of the remaining states and territories is as follows:

Laws enacted in 1929—

Alabama (no session) 1927	400
Arizona	114
Arkansas	375
California	891
Colorado	187
Connecticut, 513 special acts	302
Delaware	307
Florida, 1309 special acts	278
Georgia	400
Hawaii	258
Idaho	288
Illinois	418
Indiana	221
Iowa	416
Kansas	335
Kentucky	599
Louisana	293
Maine (public) 179 private laws and resolves	130
Maryland	578
Massachusetts	668
Michigan	326
Minnesota	434
Mississippi	380
Missouri, approximate	300
Montana	185
Nebraska	200
New Jersey	363

New Mexico	210
New York	713
North Carolina	218
North Dakota	260
Ohio	202
Oklahoma	357
Oregon	482
Pennsylvania	601
Rhode Island (general) 100 local and private	197
South Carolina	602
Tennessee, 83 special session	933
Texas, 137 special session	314
Utah, 12 special session	102
Vermont	187
Virginia	469
Washington (1927)	315
West Virginia	164
Wyoming	162
Wisconsin	537
Total	16,703

In addition we find a total of 927 laws were enacted in the first two sessions of the 71st congress out of 19,284 measures introduced.

Thus we see Florida stands at the head of the list in production having enacted 278 new general laws in 1929 with 1309 special acts during the past two years; Tennessee is a close second with 933 laws enacted at the regular session and 83 at a special session or a total of 1016 laws.

But California makes a respectable showing with 891 new laws at the last session of its legislature; and the Connecticut legislature nears that mark having adopted 302 general laws and 513 special acts.

New York's output was 713 general laws, which is found to be about the average annual production in that State.

The State with the least amount of legislation is Utah, the legislature of which passed but 114 enactments.

A large number of the laws are mere amendments to existing law. Frequently these changes are minor in their nature; but in a great number of instances the amendment is of such character as to change materially the statute, making it difficult for the ordinary citizen to know just what the law is on a given subject. Many of these amendments are products of experience in the use of the former legislation, and are called forth because of such experience.

The subjects dealt with by the different state legislatures cover every field of human activity from abandoned oil wells to the most intricate matters of finance both public and private. It does not seem possible that this flood of new legislation can continue unless the legislature should repeal a number of laws now on the statute books which have become obsolete, or are ignored by tacit understanding.

There have been a large number of amendments proposed to state constitutions. Easy amendment has been made possible through

change in the provisions for amendment, and the adoption of the principle of the initiative. The tendency today seems to be toward loading the constitutions with matters that were formerly left to the legislature.

During the past four years many laws have been enacted affecting the legislators themselves, generally for increase in pay. In Arkansas the legislators now receive $1000.00 for the two-year term and $6 per day for extra sessions, with mileage cut to 5 cents per mile. New York pays its legislators a set salary of $2500.00. Michigan pays each member of the legislature $3.00 a day during the term for which the members are elected. North Carolina raised the compensation of members from $4.00 per day to $600.00 a term with $8.00 per day for extra or special sessions of not more than 20 days.

Oregon attempted to fix the maximum at $10.00 a day instead of $3.00 but the bill was defeated; and we are familiar with the result of a similar attempt in our own state.

In Texas the state constitution allows not over $5.00 per day with 20 cents a mile as mileage. An unsuccessful attempt was made to increase the compensation to $1500.00 and traveling expenses.

In Wisconsin, where the legislators receive $500.00 a term, at a recent session of the legislature three proposals regarding pay of members were made, one to make the salary $1000.00 per term, another to permit the legislature to fix its own compensation and a third to remove from the state constitution all provisions regarding legislative salaries. The third proposal was ratified; and the others rejected.

Sessions and Terms

The legislative sessions range in length from 60 days upward; there being no limit in New York and one or two other states. West Virginia fixes the limit in that state at 60 days; thus eliminating the split session which had hitherto prevailed. California is now the only state having the compulsory split session; though Massachusetts has a provision permitting it.

Virginia makes members of the general assembly "ineligible to offices filled by it, but eligible to offices by appointment."

A resume of legislation shows administration of justice, transportation, public utilities, social legislation in various form being uppermost in mind. We have selected a few states which will give a fairly good idea of the trend of legislation. Making provision for dependents, defectives and delinquent children is a subject of legislation in Arkansas, California, Maryland, Minnesota, North Carolina, Ohio, Oregon, New Jersey, Mississippi, Michigan, Kansas, New York and almost all others.

Mothers' Pensions is a form of relief that is receiving attention in most States. Among those that have recently enacted laws on this subject are Florida, Minnesota, Kentucky, Mississippi, Nebraska, New Hampshire, New York and others. Old age pensions is also beginning to receive attention.

In all states taxation receives its perennial attention, and as this seems to be perhaps the most difficult question before the public, it is little wonder that many new laws on all phases of taxation are enacted

every two years. We see no evidence that efforts are being made to reduce taxation. The trend seems to be to appropriate more money and seek new sources of revenue. An interesting feature is that in a number of states bills have been introduced to make a qualification for voting on all municipal bond issues that the voter must be a taxpayer.

Railroad regulations has received attention; and banks and banking have brought forth laws on branch banking, cooperative banks, public depositories, duties, limitations and powers of directors, stockholders, insolvency, liability of banks on instruments, loans, minimum capital, and bank robbery. The lawmakers are trying to safeguard the rights of both bankers and depositors. Along with this banking legislation we find laws governing saving banks, trust companies, building and loan associations, etc.

The subject of public utilities receives attention. Arizona, California, Connecticut, Maryland, New York, North Dakota, South Dakota, Utah, Virginia and West Virginia require proof of value to the public as a condition precedent to doing business as selling stock. Wisconsin, Indiana, Maine and Maryland give their commissions wide powers in the matter of regulating rates. Massachusetts more fully regulates state supervision over rates and charges. Nevada includes radio and airship common carriers as public utilities. North Carolina provides that dividends shall not be paid if debts exceed three-fourths of assets. Vermont authorizes towns to appropriate money for aid to public utilities serving their inhabitants.

All kinds of insurance received attention in practically every state in the union. The tendency is to require absolute safety for the insured. Automobile liability and security laws are a live subject all over the country and many states have enacted laws to protect the public. This subject is to come before our meeting in another report so we shall not discuss the legislation that has been enacted on this subject. On account of the appalling list of casualties from auto accidents and the rapidly increasing litigation arising from auto accidents we believe that this subject should have the most serious attention of both lawyers and lawmakers. Many states are enacting laws regulating trades and professions. The barber as well as the doctor and the lawyer must be licensed to practice in most states. This resume must not be construed as indicating the subjects mentioned are being considered in these states for the first time. Much of the legislation is amendment, as we stated before, and has a familiar sound to us, for our own statute books show the same trend.

The initiative and referendum are being invoked more and more in matters and methods of legislation and particularly in the matter of amending state constitutions. These forms of legislation are in more general use in the western states than in those east of the Mississippi river. Oregon and Arizona lead in the number of initiated and referred measures with Oklahoma and North Dakota well represented.

If we were to offer a criticism on legislation enacted it would be that most subjects have been over legislated and too often there has not been enough careful thought in the preparation of bills. The advice to make haste slowly is pertinent in the matter of enacting laws as well as other fields.

As a general rule it may be stated that legislation reflects to a large extent the public agitation in government problems. This is borne out by a comparison of the subjects of legislation in the various states and the degrees of attention paid to these different subjects, with the proceedings of quasi-public organizations and organizations whose object is the intelligent discussion and solution of economic and political problems. Here we find a remarkable similarity between the subjects presented to the legislature and the subject attracting public attention. For example: The national Council of the National Economic League submitted a questionnaire to its members last January and asked that each submit a list of paramount problems of the United States for the present year. Some of the problems that were considered paramount were administration of justice, prohibition, lawlessness or disrespect for law, crime, law enforceemnt, taxation, education, law revision, unemployment, child welfare, election laws, highways and waterways, group banking, prison reforms, motor traffic regulation and many others.

Of course some of these problems, strictly speaking, are not so much subjects for legislation as they are for business conduct; but those subjects which are strictly speaking within the realm of legislation are the subjects which appear to be treated by the different legislatures. Better co-ordination of the efforts of the legislature with the work of these semi-public organizations might result in more serviceable and workable legislation.

It will be interesting to notice whether future legislation will reflect the present day discussions in the National Economic League and similar organizations in a field quite peculiarly our own. Just recently the following question was submitted to the members of this league:

"What, in your opinion, are the most important steps to be taken for the improvement of the administration of justice in your State?"

This question was addressed to members in every State in the Union. Over 7000 answers were received and of these

634 said: Giving more power to judges in instructing jury.

629 said: Better method of selecting judges.

596 said: Higher Requirements for admission to bar.

575 said: Giving less than twelve jurors power to return verdicts in both civil and criminal cases.

441 said: Providing for experts to determine mental capacity of defendant.

437 said: Providing small juries for misdemeanor cases.

437 said: Providing for arbitration of business disputes.

412 said: Better method of determining rules of practice and procedure.

396 said: Improving technic of lawmaking.

373 said: Giving defendant right to waive jury trial.

372 said: Establishment of judicial council.

342 said: Official state bar organization with powers of self discipline.

324 said: Unification of judicial system.

285 said: Change in tenure of judges.

247 said: Giving more power to court of appeals.

229 said: Reclassification of crimes.

202 said: Better method of prescribing organization of administrative and clerical side of courts.

181 said: Providing for public defenders.

Giving more power to judges in instructing the jury was considered to be first in importance in Arkansas, Colorado, Georgia, Louisiana, Maine, Minnesota, Montana, Nevada, New Hampshire, New Mexico, Virginia and Washington. Better method of selection of judges was considered to be of first importance in Alabama, California, Idaho, Illinois, Mississippi, Missouri, Nebraska, New York, North Dakota, Ohio, Oregon, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee and West Virginia.

Giving less than twelve jurors power to return verdicts in all cases was considered first in Arizona, Kansas, Kentucky, Rhode Island, Texas and Vermont. Lawlessness was placed first in Connecticut, Florida, Indiana, Maryland, Massachusetts, Michigan, New Jersey, North Carolina, Wisconsin and Wyoming.

Delaware considered improvement in rules of practice as the most important problem, and increased power of the judges second. Iowa placed improved technic of lawmaking first and increased power of judges second, while Utah placed unification of the judicial system first, and higher requirements for bar admission second.

Giving more power to the judges was first or second choice in twenty-two of the States, while higher requirements for admission to the bar was first or second choice in sixteen states.

Your Committee on Comparative Law presents this report in this manner trusting that the review presented may furnish information regarding the process of legislation, the subjects demanding attention and the currents of public opinion suggesting the same.

Respectfully submitted,

A. G. BURR, Chairman,
E. J. TAYLOR,
W. H. STUTSMAN.

We have next the Committee on Constitution and By-laws. W. A. McIntyre of Grand Forks is Chairman and the other members of the committee are Phillip R. Bangs of Grand Forks and J. E. Garvey of Cavalier.

SECRETARY WENZEL: Mr. President, I had a letter from Mr. McIntyre just a short time ago indicating that he would not be at this meeting and that there would be no report filed by his committee. The most important matter for the consideration of the committee was the question of the definition of the practice of law. I think that was referred to this particular committee. I do not know why he indicated in the letter he preferred to have the matter presented by the special committee that was appointed in the Third District. That is all we have from him.

PRESIDENT KVELLO: We have a couple of distinguished guests with us today and tomorrow. I will introduce one of them at this time. Those of you who were at Valley City last year had the pleasure of meeting the President of the South Dakota Bar Association. He is here today to bring us greetings from the South Dakota Bar. He will also be on the banquet program Saturday evening. I take pleasure at this time in presenting Mr. S. W. Clark, the President of the South Dakota Bar Association.

MR. CLARK: I am beginning to appreciate the truism of the statement that it is better to be born lucky than rich. When I accepted my present position as President of the South Dakota State Bar Association, it was with some reluctance and some misgivings. I did not anticipate the pleasures that would come to me to convey the greetings of the South Dakota Bar to the North Dakota Bar on two separate occasions. I enjoyed the meeting very much at Valley City and know that I will enjoy myself here in view of the kindly words of welcome by the three distinguished citizens of Devils Lake. As indicated by Mr. Kvello, there will be a time and place upon the program where perhaps it will be more appropriate for me to extend the greetings in a more formal way. I certainly am happy to be with you and happy that the Bar Association of South Dakota is represented here. There has been some suggestions in the past between members of your Association and between your president and ourselves with reference to establishing a closer relationship, a closer contact between the two associations than has been had heretofore. I do not know who was responsible for the first idea of having a representative from one association visit the other. But when we received the first invitation from Hon. John H. Lewis of Minot, it was accepted as quickly as received. We have been apprised of the fact that you will have a representative with us at our annual meeting this year, and we are indeed pleased to know that such will be the case. There have been some suggestions that it would be better to have a joint meeting next year rather than to send representatives, and so in order to make sure that I was able to express the unanimous sentiment of every member of the South Dakota State Bar Association, I have a letter which I desire to read, before presenting it to you, Mr. President. It is addressed to Hon. A. M. Kvello, President of the North Dakota State Bar Association:

Redfield, South Dakota,
August 14th, 1930.

Honorable A. M. Kvello, President,
North Dakota State Bar Association,
Devils Lake, North Dakota.
Dear Mr. Kvello:

I am authorized and directed by the South Dakota Bar Association to extend to the North Dakota Bar Association our urgent invitation that you join with us in annual meeting for the year 1931 at Rapid City, in the Black Hills of South Dakota.

We have rejoiced in the closer contact and association between our respective state organizations, and we entertain the hope that the exchange of visits through a representative may be amplified by a joint meeting next year. I take pleasure in extending this invitation

not only because it represents the wishes and hopes of our members but also by reason of the urgent request of the lawyers of the Black Hills that we meet at Rapid City for our annual meeting in 1931, and that we have our North Dakota brethern with us if possible.

Rapid City is the gateway to the Black Hills. It has ample hotel accommodations and its citizens as well as the citizens of the Black Hills generally are noted for hospitality and good-will toward all visitors.

It will be a matter of pride and gratification to the lawyers of South Dakota if you will kindly accept this invitation. Should it be accepted, the date of the joint annual meeting will be selected to best suit your convenience.

Cordially yours,
S. W. CLARK,
President South Dakota State Bar Association.

May I say, gentlemen, that it is our hearty wish that you join us, and may I carry back a message of good will from your Association to ours, and tell them that you have accepted our invitation? We desire closer contact and closer association. Now it so happens that at one time this Black Hills Region was a part of the great territory of Dakota. It is still yours as well as ours. It is a place where every one can come and receive joy and inspiration and closer association between the lawyers of the two sister states. Just a word to those of you who may not have visited the Hills. Rapid City is a town of some 10,000 people. It is very nicely located on the very shoulders of the canyon and lies in the Hills. It has ample hotel accommodations, the best hotel in the State, tourist park and other facilities and a short distance away in the canyon, is the dashing mountain stream. Those of you who accept this invitation to come, bring wife and family and enjoy yourselves. I was talking with a member of the newspaper fraternity the other day and he spoke about a meeting that he was to attend very shortly. I said, "You will have a good time at this association." "Yes," he says, "some of us have a good time and others of us bring our wives." But in the Black Hills bring your wife and family. You will have a good time. Without further words, gentlemen, but simply expressing the fervent hope that our members may share the joy and pleasure and satisfaction of meeting the members of your association at Rapid City next year, I trust you will accept the invitation.

PRESIDENT KVELLO: We thank you for the invitation. It is a very appealing one to me. In order to get the matter before us in more concrete form, I will appoint a committee to consider the invitation and report before the meeting is adjourned.

We have a special committee at this time I would like to have report. It was provided for at the last annual meeting at Valley City. It concerns the codification of the law or revision of the present statute. E. J. Taylor of Bismarck is the chairman of the committee. I wonder if that committee is ready to report at this time.

MR. TAYLOR: Mr. President, I have not a very extensive report to make. It consists merely of reading the correspondence I have had with two of the leading law publishing firms of the United States. As President Kvello has said, at the last meeting of the State Bar Association, a movement was inaugurated to see if something could be done

toward a recodification or recompilation of the laws of this State. You know how necessary that is, a great deal better than do I, and as suggested I entered into correspondence with Callaghan & Company of Chicago and the Lawyers Cooperative Publishing Company of New York. I believe they are two of the best qualified companies in this country to undertake a work of that kind but I was unable to secure from them the information Mr. Kvello seemed so very much to desire and which I think the members of the Association would like to have, but as I say I will simply read to you the correspondence I have had with them and then it will be up to the Bar Association as to whether any further steps will be taken. After receiving instructions from Mr. Kvello, I wrote the Callaghan Company and the Lawyers Cooperative Company. (Letter read.)

In reply to the letter, I received the following letter: (Letter read.)

Now I have spoken to the representatives of these publishing houses as they have been in the State of North Dakota and they stated that the greatest difficulty in submitting figures on a proposition of this kind is the lack of information as to the probable sale of the codes. As you know the number of codes that would be sold would be decidedly limited and it is a very expensive proposition. If every practicing lawyer in the State were to buy one, that would only be 550 and then your counties and state would purchase a certain number and possibly the state would purchase quite a few for the legislature as they have done in the past. Every legislator that goes to Bismarck gets a copy of the code which is supposed to be for his use while he is there. I am told a very large number of them never come back to the Secretary of State's office so of course they have to buy additional copies if they keep them up from year to year. If some means could be devised whereby the companies would be assured of a definite number of copies that would be sold, they then could give us figures. We had difficulty—I think it was handled largely by Judge Burr of the Supreme Court—in getting some one to work on the digest. They could not give definite figures until they had assurance a certain number of copies would be purchased.

The last Legislature, as you remember, passed a law, directing the purchase of 250 copies of each volume of the digest and then the State furnished to the Judges of the Supreme Court and District Court and numerous other officers who find them necessary in carrying on their work as public officers, so I think the first thing which is necessary in this respect is to find out if possible, just how many copies of a new code would be purchased, but I do think it is necessary to go to the Legislature first, and how easy a matter of that kind will be with the coming Legislature, it is a pretty hard thing to estimate right now. Our Legislatures look with suspicion, to say the least, on any proposition of that kind. Yet I think when they can be convinced of the necessity of something of this kind, that they are willing to enact the necessary legislation, so Mr. President, my report really means nothing except that these companies feel that definite information is necessary before they can submit even estimates.

PRESIDENT KVELLO: What is your pleasure regarding the report?

MR. KNAUF: I move you that the report be received, that the Committee be continued and instructed to act with the Executive Committee in making possible arrangements for a recodification of the laws of North Dakota.

MR. CUTHBERT: I assume Judge Knauf intentionally used the word "recodification." Most certainly it would seem to me that considering many instances, particularly with reference to such laws as the school laws and matters of that kind, where we have a different law covering the same subject, that we do very much need a recodification rather than a compilation and I would like to have it the sense of this meeting that this recommendation be along the line of recodification rather than recompilation. I am just expressing my own ideas on the matter.

MR. ELLSWORTH: I would like to inquire of Mr. Taylor if in these letters the term "codification" is used synonymous with revision.

MR. TAYLOR: I do not know that I need to answer that, Mr. Ellsworth. The companies preferably use the word recodification and also compilation and recompilation and I presume that they distinguish between the two. Callaghan & Company distinctly does so, but in all the correspondence we expressly called upon them to give estimates for both recodification and recompilation or a compilation, but we got figures on neither, but the companies understand that there is a vast difference as is indicated by Mr. Cuthbert.

MR. ELLSWORTH: I do not think there is any question but what there is a vast difference between the two terms. As I understand it, the only revision of the laws of the state we have ever had is that of 1895. The compilation of 1905 was something quite different as I understand it. I think it is important to determine just what is meant by this term "recodification." If I understand the application of the word "recodification," it would be somewhat improper as we have never had a codification in that sense unless it is entirely synonymous with revision. Now a revision of the codes, as we know, is a very extensive piece of work which involves years of labor and expenditure of many hundreds of dollars that would not be required in the case of a compilation. I think we should settle that right here.

PRESIDENT KVELLO: I think the statement should be brought down by revision or recodification. I understand Mr. Knauf's motion was to consider it from the revision standpoint. We have a lot of compilations now.

MR. BUTTZ: It seems to me if we ought to have anything, we should have a codification. We have a compilation in the supplement that is pretty well down to date except legislative enactments since and it strikes me that what we need if we are going to have anything at all is a codification, not a compilation.

MR. CUTHBERT: I do not want to talk all the time but I do not see why any recommendation need be made to have any ambiguity by using the word "revision". Every lawyer knows what codification is and we know what compilation is. I fully agree that the compilations have not helped us very much; even the supplement does not help us very much except in the annotations. We have conflicting laws on the same subject all the way through and I fully agree with Judge Knauf, who has just conferred with me in a whisper, that the committee on Legislation should have the power to change these ambiguities, or even suggest changes, which is frequently done in codification of amendments or additional legislation, or the striking out of certain lines so that we would get back to a real code. In much of the legislation that

is put through, the language is very uncertain, many times not even correct English is used, and with a company like Callaghan or Lawyers Cooperative Publishing Company, with distinguished writers to assist, and a committee from the state that knows the local situation to work with them, we ought to get results. Possibly we could get the Legislature to let us use some of the Bar Fund that is now being turned into the State for that purpose so that we could have a real code. That is my idea.

PRESIDENT KVELLO: I think that was the sense of the motion and with that as the sense of the motion, is there any further discussion on it?

MR. ADAMS: I still think there is a tremendous difference in those terms. I agree with Judge Ellsworth that what we really need is a revision, not a recodification. I think there is a tremendous difference and what we need in this state after thirty-five years of getting along with our code is a revision. It is hard to get that but I do not see the necessity of doing half a job and getting just a recodification. They talk about changing the words or phraseology and revising the language. Well I know that the Revised Code of 1895 is entirely a different thing than any we have had since. Do you refer to that as a codification?

PREISDENT KVELLO: I do not know whether it is a codification or not.

MR. ADAMS: Since 1895 we have called that the revised code. It has been called such by lawyers of the state. If that is not a codification, then I am for a revision.

MR. TAYLOR: I would like to read the definition as given by Callaghan & Company. He says to advise them whether we desire a codification or a compilation. He says, "Codification, of course, would involve a change in the language of the law wherever in the opinion of the editor it was necessary to secure harmony or remove ambiguity while in compilation it would simply be an assembling together."

MR. CUTHBERT: Codification has never had but one meaning. Codification may include the insertion of entirely new laws and every lawyer comprehends that codification is the making of a new set of codes whereas revision may be used synonymously, although I doubt whether it is as broad as codification.

PRESIDENT KVELLO: Is there any further discussion? If not, those who are in favor of Judge Knauf's motion, which would mean recodification in its broadest sense, please signify by saying aye.

A MEMBER: What was the motion?

MR. KNAUF: I will restate it. The motion is that the Committee be continued and directed to act with the Executive Committee, the Executive Committee to have power to secure, if possible, a recodification of the laws of North Dakota.

PRESIDENT KVELLO: Does that meet with your pleasure? Is that the understanding, Mr. Cuthbert?

MR. CUTHBERT: Yes this re-statement of the motion meets with my approval.

MR. ELLSWORTH: There seems to be a vagueness about this which is not understood by the members of the Association. I think it ought to be understood at this time. It is not merely technical or merely trifling. If recodification is a better term than revision, I do not think I would be in favor of it; if revision is synonymous with codification or recodification, then I do not see why we could not use the term that seems to be well understood and which we all know about because we have one revision of the code. I move therefore as an amendment to Mr. Knauf's motion that the word recodification be changed to revision. Then I would be in favor of the motion.

PRESIDENT KVELLO: Does that amended motion receive a second? If not, the question is still on the original motion. All those in favor of the original motion, please signify by saying aye. Contrary minded the same. The motion is carried.

At this time I will appoint those two committees. Mr. Lewis of Minot, Chairman of the Committee to prepare a resolution of instructions to the Executive Committee on the method of choosing members for the Bar Board, with Mr. Hanchett of Valley City and Mr. Coventry of Linton as the other two members of the Committee.

The Committee to consider the invitation of the South Dakota Bar Association to meet with them jointly—Fred J. Traynor, C. J. Murphy and F. E. McCurdy, and I would like to have these committees ready to report tomorrow forenoon.

We have another special committee that I am going to ask for a report at this time, but a word of explanation is probably in order. There have been in the past association meetings efforts made to draft and get behind the law defining what is the practice of law. The matter has now come up again in acute form. Nothing has been done about it before. We have had the advantage of the study of the Minnesota State Bar Association which drafted a law and which was unanimously endorsed by that committee. I met with the committee in Minneapolis and secured copies and submitted that copy to the special committee in each district. At that time, five of them voted for consideration of this law, but with various suggestions for changes.

We have appointed a special committee composed of Mr. McIntyre, Chairman, Mr. Ellsworth of Jamestown and Scott Cameron of Bismarck. Mr. McIntyre could not be here. Mr. Ellsworth is here ready to report for that committee, which report they have prepared by way of suggesting a bill defining the practice of law. I will ask Mr. Ellsworth to take this up at this time. It is possible that any discussion on this will be deferred until this afternoon. The matter is of such importance that we will take ample time for discussion before we close this afternoon.

MR. ELLSWORTH: I believe I am the only member of the Committee here. The draft of the law was prepared by Mr. McIntyre and submitted both to Mr. Cameron and myself. The other members of the Committee could not be here so it was referred back to myself for presentation, but I regret to say that I did not bring the draft with me this morning. I did not expect the matter would come up this morning as I had no notification of the fact so I left it at the hotel.

PRESIDENT KVELLO: In view of the fact that Mr. Ellsworth does not have the report with him, we will take the matter up after lunch.

Is Mr. Lanier here? Mr. Lanier, will you report at this time for Committee on Local Organizations?

REPORT OF COMMITTEE ON LOCAL ORGANIZATION

The Committee on Local Organization begs leave to submit the following report:

All of the Judicial Districts in the state which did not have an active organization prior to October 1, 1929, have been reorganized and officers elected, with the exception of the First District, but this will be organized prior to the annual meeting.

All of the Judicial Districts have held one meeting in 1930 and several are planning a second meeting prior to the annual meeting.

Your committee would respectfully recommend that Article 5 of the Constitution be amended to read as follows:

> "Executive Committee: The executive committee shall consist of the officers of this Association and one person from each Judicial District of the state, who shall be the President respectively of each Judicial District. In the event that any Judicial District shall not have a duly elected President then the President of this Association shall appoint a member from such Judicial District who shall serve until the following annual meeting of the State Association."

Under Article 10 of the Constitution this amendment cannot be acted upon at the Devils Lake meeting this year but must lay over until the following annual meeting.

The amendment is now proposed for the purpose of securing the approval of the Association for action at its next annual meeting.

The purpose of the suggested amendment is to more closely knit the district associations with the State Association. It will in this way give the district associations a direct voice in the management of the State Association and consequently we believe would create a greater interest in its affairs.

Respectfully sumitted:
A. M. KVELLO, Chairman,
F. T. CUTHBERT,
P. W. LANIER,
H. G. NILLES,
C. H. STARKE.

MR. CUTHBERT: I desire to point out that the language of the proposed amendment is rather unfortunate. It refers to the district associations as embracing the Judicial District. That should be changed. For instance, the Lake Region Bar Association has members from three districts, and the geography of our state is such that ofttimes it will not be convenient to follow judicial district lines. For instance, the Second Judicial District goes clear across the State and naturally Minot is going to take in part of the Second Judicial District. We have with us in the Lake Region Association, Pembina County, Cavalier County, Walsh County and Nelson County. Pembina is in the second; Cavalier

is in the second; Walsh is in the second, but Nelson is not, and it seems to me that we should amend that in some way so that it simply makes a district association without any reference to the judicial district.

MR. LANIER: Mr. Chairman, I think the point made by Mr. Cuthbert is well taken and before moving any action upon this, I move you, sir, that the quoted portion of the report which I have read be so amended as to meet the suggestion made by Mr. Cuthbert, namely, that instead of referring to Judicial District, the reference will be to the District Association. Is that right?

MR. CUTHBERT: That is right.

PRESIDENT KVELLO: Do you make that as an amendment?

MR. LANIER: Yes, I make that as an amendment.

MR. CUTHBERT: I second the amendment.

PRESIDENT KVELLO: You have heard the motion to amend the suggested article of the Constitution. Are there any remarks?

MR. WENZEL: Mr. President, might it not be well to be just a little more definite when we use the term "districts". You had in mind a certain number of districts, but when you talk about district organizations, you may have three, four, five, six or seven. It seems to me you ought to definitely determine, if you are going to pass this, whether it shall be the district organizations as now organized or whether it shall be a larger number or a less number. Suppose another district organization comes into being in the course of the next year, the next six months or the next three months. The question may arise whether that district is to have a share in the operation of the Executive Committee, will have a representative upon it, rather. That could definitely be arranged at this time, it seems to me, by using the term "districts as now constituted."

MR. LEWIS: I do not know but what I shall talk to the point, but it looks to me as if there was a good deal that might need to be worked out here. The boundaries are not fixed. This does not need to come up, I understand, perhaps until next year. That may be all right, but for the time being I am opposed to this amendment, not on general principles, but because I think that this is an experimental matter all the way through and we should allow sufficient time to elapse before we take definite action. It is some job to "monkey" with constitutions. It looks like a good thing. I have great respect for the opinion of Judge Bagley and the President. It looks to me as though we were building the Association from the bottom up, but I would suggest that we try it out for a while. Perhaps it would be a good idea, if you want to adopt that policy, to offer a resolution requesting the incoming President of the Association to appoint his committee from the Presidents of the various associations and in that manner, no doubt, he can comply with it and can try it out for two or three years before putting it into the Constitution.

MR. LANIER: On behalf of the Committee offering this report, I would like to have the motion to amend passed upon in order that I may properly present the report as amended to the meeting for full discussion.

PRESIDENT KVELLO: The question now before the Association is upon this amendment.

MR. CUTHBERT: I am going to ask Mr. Lanier to include in his proposed amendment, language which will cover the objection raised by Mr. Wenzel and I think words like this "as organized at the present time," because the whole state is organized.

MR. LANIER: I agree to the amendment of the motion.

PRESIDENT KVELLO: Now then, if you will call for the question on the amendment. Is there any further discussion? If not, those in favor of the motion as amended, please signify by saying aye. Contrary minded the same. The motion is carried.

MR. LANIER: Now, Mr. Chairman, I move the adoption of the report with the recommendation.

MR. ELLSWORTH: Could we have the motion read as it stands now? I am a little confused as to just how it reads.

MR. WENZEL: Well, as I understand it, Mr. President, the wording of the amendment to the constitution would be as follows: "Executive Committee. The Executive Committee shall consist of the officers of this association and one person for each district organization of the State as now organized, who shall be the president of such district organization. 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 who shall serve until the following annual meeting of the State Association." Is that correct?

MR. LANIER: Is there anything in the records of the State Association that shows the boundary of the District as now organized so it could be referred to in connection with that resolution?

PRESIDENT KVELLO: There are only two organizations that take in territory larger than their judicial district or smaller; that is two counties on the north side and the Lake District takes in Nelson County and one other county on the west. Was there a second to the motion?

MR. CUTHBERT: I second it.

PRESIDENT KVELLO: The motion is now before you, and what is your pleasure regarding it?

MR. LEWIS: That means it is passed practically on the first reading.

PRESIDENT KVELLO: Yes, if it is passed, it will pass that way. Are you ready for the question?

MR. ADAMS: Traynor here is bashful and suggested a thing which seems to me is important. Suppose that your District Association elects its President six months from now, how long shall he serve on the Executive Committee?

PRESIDENT KVELLO: It will be the one that will be in office at the time of the annual meeting.

MR. ADAMS: And he would serve for a full year?

PRESIDENT KVELLO: Yes.

MR. ADAMS: I think that should be understood.

PRESIDENT KVELLO: All those in favor of the report of the Committee may signify by saying aye. Contrary minded the same sign. Carried.

I notice that Mr. Wartner has come in and I believe, Mr. Wartner, you were chairman of a Committee on Citizenship and Americanization. No written report has been received by the Secretary, he states, and we would like to know if you have a report.

MR. STORMON: I would like to offer at this time a resolution such as Judge Lewis suggested, namely, a resolution to the effect the incoming President appoint the Executive Committee from the Presidents of the Association and next year when we meet to vote on this. We will have had one year of experience on it and will know whether we want to amend the Constitution or not.

PRESIDENT KVELLO: That is a very good suggestion.

MR. CUTHBERT: I second the motion.

PRESIDENT KVELLO: Any expression on that resolution?

MR. FLETCHER: I believe it is unfair to burden the incoming president, whoever he may be, with the appointment of an involuntary executive committee.

MR. WENZEL: Mr. President, that was the objection that was raised by Ex-President McIntyre in a letter accompanying his statement that he could not be at this Bar Association meeting. He voiced rather expressively the fact that the President would be compelled to adopt a cabinet which might not be in harmony with his policies and he very seriously objected to that resolution.

MR. STORMON: He is not compelled to choose Presidents of the Associations. It is just a suggestion.

PRESIDENT KVELLO: I would suggest that the vote be left open until this afternoon or tomorrow morning. Judge Lewis' suggestion seemed very good to me and it would just give us a year of experience before actually tampering with the Constitution. Will it be entirely satisfactory to put it over until this afternoon or tomorrow to vote on it or discuss it?

MR. CUTHBERT: If we had a President who could not get along with the other Presidents, possibly he could resign.

PRESIDENT KVELLO: If there is no objection, I will move that along until tomorrow morning.

Mr. Wartner, are you now ready to report?

MR. WARTNER: The Committee on Americanization and Citizenship has no report to make at this meeting. I might explain that it was impossible to get together with the majority of the committee. There seems to be one from every county, or practically every county in the state, and I saw a number of the men during the year and they said they were doing their best in their own communities to further the objective. I did the same thing. I made a number of talks in our community on Citizenship and Americanization and also took it up with the Superintendent of our Schools and the local superintendent and they all did some work in connection with that line. That is all I have at this time.

MR. TRAYNOR: In that connection there is a pamphlet or leaflet which is being given out at the Registration Clerk's desk down at the hotel which was sent to me by the Secretary, who obtained it from an

organization in behalf of the Constitution in Chicago. I think the material, the suggestions in that little leaflet, are very good. If you want to have any program on the Constitution, you will know where to get the material.

MR. KNAUF: At this time, I would say the matter of a report on the State Bar Board is not called for in the program. If it should be the desire of the Association to have such a report, the Board is ready to give it any time now or later.

PRESIDENT KVELLO: I have it on my calendar, Mr. Knauf. Thank you for calling it to my attention.

At this time, are there any announcements to be made? Mr. Fred Traynor, Chairman of the Local Committee, have you any announcements at this time?

Announcements made.

PRESIDENT KVELLO: Mr. Knauf, how long will your Bar Board report be?

MR. KNAUF: Probably ten minutes.

PRESIDENT KVELLO: We will hear the Bar Board report at this time.

BAR BOARD REPORT

To The State Bar Association:

The State Bar Board wishes to report to the State Bar Association a resume of the proceedings had before the court.

Since our sessions at Valley City in 1929, your Board has had under consideration the matter of charges against some sixteen attorneys:

Five of these cases are pending in the Supreme Court.
One before referee.
Two reprimanded.
Five dismissed.
Two foreign State Applications denied.
Twenty-three students admitted to practice.
Two foreign State Applicants admitted.

Some question has been raised, from time to time, as to the qualifications of applicants for admission to the Bar. The Board has been using every means available for the right slant on various applicants for admission to the Bar and in addition to the affidavits as to character of applicants for admission to the Bar, the Board has sent a number of letters of inquiry, as to the character and fitness of applicant, to attorneys and various laymen both in and out of the State, and from these inquiries we have received most beneficial assistance and aid as to the character and fitness of the applicants and as a result of such assistance the applications of two men, admitted to practice law in other states, have been rejected and great assistance has been lent to the Bar Board in its examination of students for admission to the Bar.

We have likewise called for similar assistance in cases where applications have been made, by disciplined attorneys, for reinstatement in the Bar, and we must extend our thanks to the attorneys who have so conscientiously assisted the Board. The communications have been treated as confidential, of course.

Some serious charges have been made and filed against attorneys in the State; some, on investigation, have been found based on gross prejudice and malice and without foundation in law or fact. In these several instances the investigations have been complete and dismissals had in the court on the report of the Board.

The Board has passed a resolution asking that a change in the rules be had so as to require law school students to take at least six months training in the law office of some practicing attorney within North Dakota before taking the examination, and the Board is of the opinion that one year of such additional training would better fit these students for practice and in the care of the interest of clients.

We have found the affidavits of some attorneys, as well as laymen, filed with applications for examination, and for admission to the Bar of North Dakota, more "than perfunctory." We have found them false. Attorneys making affidavits for men registered as office students, to the effect that such students have actually studied in "his office for a period of five years," when as a matter of fact, such student was operating a bank over thirty miles away, or was principal of a school some thirty miles distant and in either instance, came to the law office not to exceed from fifteen minutes to two or three hours at odd intervals of from one to six weeks during the years—while in another case, the registering student was a collector and out on the road a goodly portion of the time, and in all of which instances an attorney makes affidavit of the office work—misleading and untrue, rendering it almost impossible to get at the true facts. We believe it to be, and we feel the court would be justified in holding the makers of such false affidavits as in contempt of court; however, for the most part, attorneys have been very free in their assistance to the Board and this we appreciate. In one instance the entire Bar of a County signed a protest against the application of one of their citizens to take the examination or to practice in this State. In other instances, confidential letters have been sent, which readily lead to further investigation and saved future discipline.

Some 25 new lawyers were admitted to practice in North Dakota since our last session. On the whole, we think the class of students has risen in qualifications—the college men older, more mature, and the office men better prepared, having a better preparation or pre-law education. The reading of, and marking of examination papers shows clearly the advantage of the more highly educated, in point of reasoning and in the use of language, so that we have no hesitation in arriving at the conclusion that two years of college work makes the student better fitted to reason, study, understand, and master the law—and we believe the full four year college course most essential to a proper foundation for the study of law.

Among the grievous and hard matters the Board has to contend with are the charges of "soliciting business," and of "ambulance chasing" in attorneys seeking business. We have complaints charging that attorneys, through their own names or the names of fictitious persons, agencies, or corporations, seek collections which will run into lawsuits. Then complaint that licensed practicing attorneys write generally to persons receiving injuries through some catastrophy, soliciting their cases against the person alleged to be at fault. Then, we have complaint that some attorneys deliberately seek clients of other attorneys and by underbidding, or by smooth tongue methods seek and secure the litigant as his client. Then complaint is made of other attorneys, and sometimes of attorneys from other states sending agents to persons injured, or having other litigation in North Dakota to secure such prospective litigation. Complaint comes frequently that attorneys in the Twin Cities send literature, as well as agents, seeking litigation in North Dakota.

There is now pending before the Supreme Court one of the complaints filed and investigated, and on which we expect soon, a decision on which the court will analyze the matter of the solicitation of legal business, and if the decisions of Wisconsin and New York are followed then the violation of the Bar Code of Ethics in this and other matters will be sufficient ground for disbarment or other discipline. In any event, it is hoped that a strict adherence to the code of ethics will be had, and that the Bar will generally carefully consider this code and that each local Bar Association will give one of its monthly or annual meetings to a consideration of the code.

Then charges of mental incompetency; charges of embezzlement; charges of drunkenness; charges of professional misconduct toward court and opposing counsel, have been made and investigated and prosecuted, or dismissed. Some six cases are now pending.

Since "time immemorial" the Bar Board has felt its investigations should be held secret until the prosecution has been ordered by the court unless such investigation has been made public by the accused or accuser, we feeling the right to practice law sacred and of the greatest import to the attorneys, and we will continue to so act until otherwise directed although such is not the practice in some of the other states. These matters often give the Board much concern and impose duties far from pleasant and we crave the assistance of every member of the Bar in our work in this record. We are glad to report that the legal profession, as a whole, ranks as high as the profession generally, and the equal if not higher, than of any of the other professions in North Dakota, the ministry not excepted.

The costs of the various matters coming before the Bar Board would indicate the large amount of work necessary on the part of the Board, especially so when you consider their salaries at $10.00 and actual expenses per diem. The disciplining of attorneys is very costly and runs from the sum of $150.00 in the default cases up to $2000.00 or over in the heavier and more contested cases. A total outlay on expenses of investigations, salaries and prosecutions during the year ending July 1st, 1930, was $6368.78 and the figures show as follows:

FINANCIAL REPORT

Report State Bar Board

Fiscal Year July 1, 1929, to July 1, 1930

Balance in fund June 30, 1929, as per records of State Auditor	$ 4,201.69
Collections between June 30, 1929, and June 30, 1930	6,170.00
Total	$10,371.69
Expenditures	6,368.78
Balance, June 30, 1930	$ 4,002.91

Distribution of Expenditures

State Bar Association	$ 2,985.00
Secretary, Salary and Expenses	312.10
Per Diems and Expenses, Members of Bar Board	1,813.82
Attorneys Fees and Expenses, Disbarment cases	474.28
Postage	74.86
Supplies	43.28
Printing	214.40
Clerk Hire	250.00
Miscellaneous	56.18
Judicial Council	144.86
Total	$ 6,368.78

Again we thank the members of the State Bar who have so splendidly assisted the Board in the past.

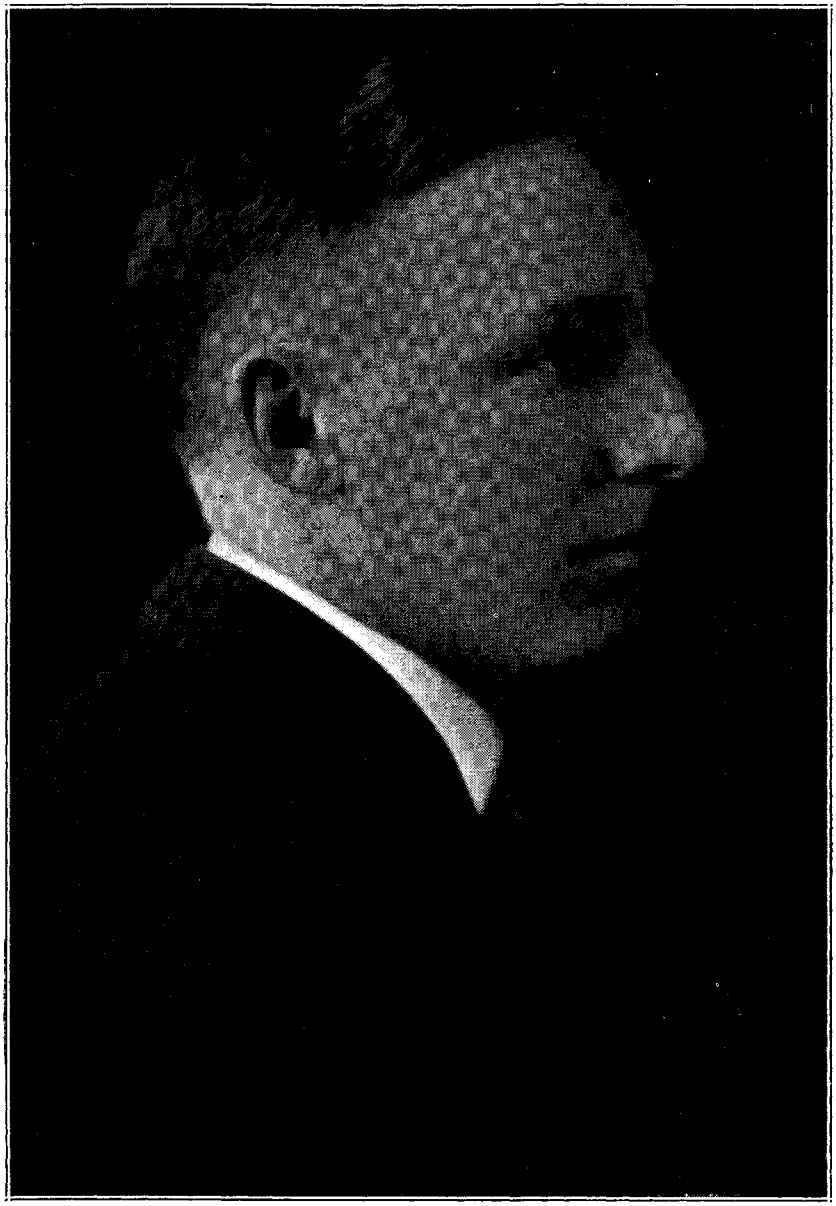
Very respectfully submitted,
State Bar Board,
JOHN KNAUF, Chairman,
S. D. ADAMS,
C. L. YOUNG, Members.

Attest:

J. H. NEWTON, Secretary.

I wish to move the adoption of the report and in support of the motion, I want to say to you it is indeed a very bad thing when charges are filed in the Supreme Court. I know personally from talking with each member of the Supreme Court that when a matter of this kind comes up, that it is given very great consideration. Then the matter is referred to the State Bar Board and I can assure you that every member of the State Bar Board is heartbroken when it is found necessary to begin the investigation for discipline of anyone.

We wish it were just otherwise, that no such Board were necessary, but it seems to have been necessary in the past and is necessary at the present, but in any event, men, when applications are made before the Bar Association, we want the confidential assistance of every member of the Bar who may know anything regarding them. We do not want before the Board recommendations such as some of the attor-



ARTHUR E. JOHNSTON, K. C.
Winnipeg, Canada

neys have, given regarding men whom we could not possibly recommend to the Supreme Court for admission to the State. Some attorneys are so derelict in this duty, or sense of duty, that they will give the highest kind of recommendation for men who have no right or standing in the community in which they live, and no right, either by knowledge or practice or character for admittance to the practice of law in the State of North Dakota, so again we want to ask you for the kindly harmony and most confidential treatment that we can possibly get as to the applicants for admission to the Bar with the end in view that eventually there will be no necessity of this committee.

MR. WARTNER: Second the motion.

PRESIDENT KVELLO: Is there any discussion? If not, all those in favor of this motion please isgnify by saying aye. Contrary minded the same sign. Motion carried and the report is received.

The program calls for a resumption of activities at two o'clock. At the request of the Committee on Golf, we have decided to advance the program one-half hour so that this afternoon instead of meeting at two o'clock we will meet at 1:30; then adjourn one-half hour earlier in order to allow forty or fifty of the men to do this qualifying round at the golf course so if you will kindly tell those not here of the change in hour.

MR. FRED TRAYNOR: Before you adjourn, I have a member of the Canadian Bar I would like to introduce.

PRESIDENT KVELLO: I have the pleasure of introducing to you Mr. Arthur E. Johnston of Winnipeg, Manitoba, who has come to talk to us at the banquet tomorrow evening. I want you all to meet him and greet him and give him all the information regarding our Bar and help him have just as good a time as he possibly can.

MR. JOHNSTON: Mr. President, I am going to have a good time.

PRESIDENT KVELLO: We will stand adjourned then until 1:30 this afternoon.

Friday, August 15th

AFTERNOON SESSION

PRESIDENT KVELLO: Gentlemen, please come to order. I will ask Chief Justice John E. Burke to take the chair while the President delivers his address.

MR. BURKE: Mr. Chairman: Gentlemen, I have been asked to preside here and introduce the President of this organization to this assembly. I do not know that there is anything that I can tell you about him that you do not know. I assume that you knew all about him when you elected him President of your organization, and I am just going to introduce him to you. Mr. Kvello, President of the Bar Association will now read his annual address.

OUR THREE-FOLD CONTRACT

A. M. KVELLO, President

Less than a year ago our late President Bagley prepared an address to be delivered at the Grafton meeting of the Lakes District Association, of which we are guests today. In that message he started out by saying:

> "First as to the Bar Association. That is what I am here primarily to speak to you about. It is my main interest in life at present."

That message was not delivered to you because death came to him before the time appointed for your meeting. Death came to him, too, as we feel, before his allotted time. In the passing of our friend, the Lakes District and the State Bar Association have lost one of their most influential and loyal members. His life typified our highest conception of the ideal lawyer. He was what we call a Main Street lawyer of whom there are so many in this State. His profession was to him, as he said, not only a way of living but a way of life and it was life in all its creative fullness and usefulness.

We know that he looked forward to his year of service as President with a fine, almost boyish, eagerness and enthusiasm. For him it was but another and larger opportunity to do further service for his profession and his beloved State. It has been a matter of poignant regret to me that he could not have lived out his "main interest" to the end of his term. Had he been permitted to do so we would then have been immeasurably his debtor.

Since the time that he laid down his work the State Bar Association has also been my major thought and interest. And it is about the Association, its present and its future, that I wish to speak to you today. I feel that I can pay no finer personal tribute to my friend than to try to outline to you the work he had so carefully planned. The message that I desire to bring to you is therefore not original. It will be but the raising again of the standards that have been set up for this Association. This I do, not by way of preachment, but with the simple hope that we may see more clearly the way before us.

Our profession enjoys at least one unique distinction. Before we can begin our work as lawyers we must be "sworn in." No other regular occupation or profession is required to take an oath to support the Constitution of the United States of America and the State of North Dakota, as we are required to do, before embarking upon the interesting task of making a living. That oath has a double result. It marks our entrance upon the practice of our profession and it also marks our admission to membership in the State Bar Association of North Dakota. At one and the same time we enter two fields of activity, our profession and our professional organization. This is true of no other field of endeavor in this State. With the exception of five other States, it is a situation not found elsewhere in the United States.

Our admission oath does another thing for us, it makes each one of us an officer of the Courts of this State. We share with the Judiciary from then on a distinct and peculiar responsibility. We are jointly responsible with them for the administration of Justice. As Senator Hoar has said:

> "The lawyer is then the chief defense, security and preserver of free institutions and of public liberty."

We are therefore first and primarily Ministers of Justice. That is our heritage from the past and that is our present high position. The Association has recognized that responsibility in the Constitution that has been heretofore adopted as guide and authority for the profession.

The figure three is an interesting numeral. It shares historically with its sister number "seven" much of fact and fancy in the past as well as in the present. The symbolic nature of the numeral three we all appreciate and it will not be necessary to remind you of how often it has figured and does still figure in the affairs of mankind. So our Constitution divides our responsibility into three parts. This trinity of objectives is found in the second article of our organic law and is the very heart and soul of that document. All else therein is merely routine. This three-fold declaration reads as follows:

THE OBJECTIVES OF THIS ASSOCIATION SHALL BE:

1st—TO PROMOTE THE ADMINISTRATION OF JUSTICE;

2nd—TO UPHOLD THE HONOR OF THE PROFESSION; and

3rd—TO ENCOURAGE CORDIAL INTERCOURSE AMONG THE MEMBERS OF THE BAR.

This is a complete set of plans and specifications for the way of life of the lawyer and is both foundation and superstructure of our Association. At the expense of appearing trite and of dealing with the obvious, I wish briefly to speak about this three-fold contract of ours. It is not merely a scrap of paper. It is your contract and my contract. It follows the oath that you and I have taken at the beginning of our work as attorneys. It is the platform upon which we all stand.

The first plank of this platform is the very essence of our professional obligation. If that is carried out in spirit the two following will naturally take care of themselves. For we can neither uphold the honor of the profession nor have cordial intercourse among ourselves if we do not first promote the Administration of Justice. We cannot fulfill the first without thereby substantially performing the other two parts of our contract. For our contract is what we know in the law as an indivisible contract, each provision mutually dependent upon the others. Failure to carry out one provision carries the rest down to defeat. In adopting this first purpose we have but recognized a well known opinion of the public which believes that the administration of justice is our peculiar responsibility. If we fail in any particular part of this responsibility then the public is not slow to criticize. But with public criticism we are not today concerned. What we should be primarily interested in is our progress in the promotion of our objectives.

This age, in addition to whatever else it may hereafter be called, whether the Age of Machinery or the Age of Materialism, might be described as the Age in Search of Efficiency. In every line of human endeavor present methods are being placed under the searchlight and tested as never before in the world's history. In that search for efficiency every lawyer should be interested. But at the outset we are handicapped by a natural heritage, the stand-pat—if I may so express it—conservatism of the profession. This conservatism in the past has led many of our best men to oppose many necessary reforms as, for ex-

ample, the organization and enlargement of the jury system; the establishment of equity jurisdiction in our Court; the emancipation of women's acts; the homestead laws; workmen's compensation laws, etc. When our National Constitution was first submitted to the public for adoption many an eloquent plea was made against it by the then leading lawyers of this country on the ground that it would destroy liberty as then existing and throttle it in the years to come. There has been, in so many historical instances, a spirit of pessimism against change of any kind on the part of our profession. This dread of the new by the legal fraternity has seriously retarded and impeded many essential reforms. In our district meetings where we have been discussing some of the matters of proposed reform that I shall mention today, there has been distrust simply because the matters under discussion were in the nature of innovations or were different from the existing and accepted order of things.

No matter what may have been thought in the past as to the unchangeableness of the law, we know today that nothing is static. The law is not an exact science, and change and development are the order of the day in this field as well as elsewhere. And that very change and that very development is the life of the law. It, too, must adjust itself to changing conditions in human affairs if it is to take its place in the march of progress.

Justice Cordoza of New York has aptly stated this fact in this way:

> "As the years have gone by and as I have reflected more and more upon the nature of judicial process, I have become reconciled to the uncertainty because I have grown to see it as inevitable. I have grown to see that the process in its highest reaches is not discovery but creation—and that the doubts and misgivings, the hopes and fears are part of the travail of mind, the pangs of death and the pangs of birth, in which principles, which have served their day, expire and new principles are born."

If our profession is going to respond constructively to the first of our objectives it must welcome new ideas with an open mind. While I am far from advocating the acceptance of every new theory or claimed improvement of method, I do believe that in this day and age when the creative genius of our profession is so much needed to bring our procedure for the administration of justice in a fair measure up to the progress in other branches of human endeavor, we should cultivate a more critical attitude towards the technique of our profession. It is far better that we become our own severest critics than have that criticism come from outside. I sometimes wish that we could all have a dash of the mental attitude expressed in Louis Untermeyer's lines, where he says:

"From sleek contentment set me free
And fill me with a buoyant doubt."

We need to cultivate what Edwin Mims calls "Our constructive imagination."

There must be a change in the mental approach to new methods of procedure on the part of our profession if progress is to be made. Procedure does not exist for its own sake, but as a means to an end.

What I am hopeful of is that we may carefully examine this procedure to ascertain how well it works under present day conditions, and if it does not work, why not, and if it works only fairly well how it can be improved. While our rules may, in the past, have given a fair degree of satisfaction, are they now adapted completely to the changing conditions of today? It seems to me that a careful inquiry into these questions is always proper and advisable.

Some of the suggested methods of improvement I wish briefly to mention.

The Bench and Bar are governed largely by rules made by the legislature. Our practice is standardized by regulations prescribed for us by an agency that has nothing to do with their operations afterwards. If delay and expense sometimes result because of these hard and fast rules we, and not the legislature, are held to blame by the public. Such a condition seems unreasonable. As a substitute it has been suggested that the Supreme Court make the rules. It originally had that power. With this suggestion I am in hearty accord. President Lowell has said:

> "The ability of popular government to endure will depend upon its capacity to use experts."

The field of law seems to be the one exception where this is not in full practice. It seems begging the question to state that in order to satisfactorily administer justice, the rules for its proper exercise should be determined and prescribed by those who have a practical understanding of what we call the "mechanics of operation." And that the improvement of these rules should be gradually accomplished by the same understanding source. That there is much of surplusage in our procedure and many survivals from a time of extreme technicality in practice arising largely from a tenacious clinging to old ideals of substantive law and procedure, cannot be denied.

There is much of reform in the trial of actions that is likewise desirable. A short time ago I sat through a trial that lasted four days and I am sure that I am not exaggerating when I say that better than one whole day of that time was consumed in the making of and arguing about objections of a technical nature to admission of evidence, to hypothetical questions, to fine drawn distinctions between fact and opinion, in determining whether answers were or were not conclusions and much argument upon the mere form of the questions. And to no ultimate purpose except to confuse court, counsel and jury. Much of this method of procedure is in line with what some one has described as:

> "The meaningless mumble of the objection of incompetent, irrelevant and immaterial sounds through the courts like the drone of destroying locusts."

If experience is a safe guide and teacher then we have ample grounds for the conclusion that the remedy lies in giving supervision of our rules of procedure to those who are experts. The experience of Equity rules and practice, of Admiralty rules, of Bankruptcy courts and of Administrative boards of every kind including our own Workmen's Compensation Bureau which yearly handles vast sums, shows clearly that regulation by experts is the simple and effective way. It

demonstrates that in this way judicial procedure can be kept in constant adjustment to new conditions and demands, meeting, as has been stated "the needs of readjustment of the frontiers of justice."

There would then be no need to wait for the uncertain action of the legislature. Such a means of regulation would tend to minimize the present importance of mere procedure to the detriment many times of the proper application of the substantive law. I know of no more important matter that we lawyers can be interested in either individually or collectively than the fostering of this reform.

Other suggested improvements which I have only time to mention are, among others:

A more practical method of selecting juries.

Giving more power to Judges in selecting and instructing juries.

Giving less than a majority of the jury power to return verdicts.

Better technique in lawmaking. Suggested schools for legislators-elect prior to the opening of legislative sessions. Some states have research bureaus for this purpose and others have committees of bar members to sit during the legislative term as free advisers on questions in proposed legislation.

Improvement of the conditions surrounding the judiciary. The voters at the last election approved the extension of time of service of both district and supreme court judges.

Better salaries of Judges and officials of the state legal department.

Election of Judges by the members of the Bar.

Public defenders.

But if we agree on any of these suggested measures, that is only the first part of our duty. Unless we can bring home to the public the necessity for these reforms by giving it the facts in each instance and demonstrating the advisability of the adoption of the change, we have labored in vain. This is one of our most important responsibilities, next to getting together on a program. Every means of publicity should be taken advantage of including a friendly press, collective advertising and having members of our profession on the programs of public meetings of all kinds. We should be militant missionaries for these reforms for which we stand. The public is fair. With the facts before them and a united bar behind them they will do their share in a matter that is also their concern.

Second—UPHOLD THE HONOR OF THE PROFESSION. This can be done largely in two ways.

First—Raise the standard of education and qualification for those seeking admission to the profession so that the unfit and the unprepared may be barred in the first instance.

Second—Require strict adherence by members of the Bar to the statutory obligations and Association standards as evidenced by our Code of Ethics.

The career of the lawyer has been referred to as one of the dramas of our civilization. The lawyer by virtue of his calling has always been on a pedestal. There is no profession or business that is subject to more severe scrutiny by the public. Notwithstanding our conservatism we have always been in the forefront of those who have made history. Our creative genius is responsible for much of the progress of the past in all lines of human endeavor. In the realm of governmental activity I am content to cite but one instance. Our profession firmly established the principle of the right of the courts to declare statutes of States and Acts of Congress as well as acts of the executive void. By thus placing the courts supreme above other governmental agencies the Union has been preserved. In addition to its leadership in the field of the administration of Justice the Bar is also found in positions of leadership in executive and administrative work.

To maintain this position we must place increasing emphasis upon higher standards of preparation. Our State College of Law is doing splendid work along this line. Our committee on Legal Education and Admission to the Bar has made some recommendations that will further this work and this should receive our hearty approval. Advocating additional requirements over those now in force will be charged as selfishness on our part. For those inside to urge raising the bars against those on the outside seeking to gain admittance will always give rise to this criticism. But there is no vested right in the privilege of practicing law. With the increasing complexity of our civilization much more is required as a fundamental basis for the service we are under obligation to render than ever before in the past. There is a new standard of service that requires a new standard of preparation. A lawyer without thorough basic knowledge and preparation is not equipped to meet the responsibilities of today. That knowledge we believe cannot be obtained in a grade or high school course but requires University or College training in addition. But mere book learning is not enough. That is only a part of the necessary preparation. Here again the number three comes into play, for we find that there are three requisites. Our first, as stated, is adequate scholastic and legal education.

Our second ground of preparation is character training. It is the moral foundation of the individual that counts here. The question is always "Has the prospective lawyer the moral stamina to 'stand by' under all circumstances?" I realize that we are on debatable ground when we attempt to establish rules that measure this element of our qualification. Our Committee on Legal Education and Admission to the Bar has suggested the adoption in principle of the Interlocutory Bar. Briefly summarized this provides for a conditional license to practice for a period of years, not exceeding five. Strict supervision of the practitioner is maintained for the conditional time and at the conclusion a final check up and examination is had and the applicant then given a full license. If this were adopted it would give an additional anchor to the new practitioner that I believe would hold in most cases. It has been stated that there is no profession in which moral character is so soon fixed as in our own. The experience of our Grievance committee and Bar Board and lately the experience of the California Bar Association under its self-disciplinary Act proves that most offenses are committed in the beginning years of practice, when character is being moulded and developed. Would it not be the part of wisdom as well as charity to surround the beginner with the safe-

guard of this new idea? To uphold the honor of our profession it is of the highest importance that we are of high moral character and purpose with courage to maintain those high ideals against the pull of materialistic influence.

The third requirement as a part of our preparation is a fundamental knowledge of the working forces of society; of the motives that govern men and women and of the history and traditions that underlie these motives of human action. Again this cannot be gained in a grade or high school curriculum. It can, outside of the realm of experience, only be gained by a broad, practical and cultural education as is being increasingly furnished in our higher institutions of learning.

We must realize that our profession is something more than an agency for giving legal advice to clients. We should remember that it is also our duty as well as privilege to be in the vanguard of the army of progress in legal, social, economic and governmental science instead of being content to sit in our house by the side of the road merely mending the troubles of those who have made wrecks of their social and economic affairs. To be able to do this we must have sufficient intellectual and mental training to appreciate what justice means, what social science means, what economic and political science means so that we may assist in applying them and aid in their adjustment to present day problems.

This brings me to the second point of our plan to uphold the honor of the profession and that is in the matter of the discipline of our delinquents. I have had the opportunity during the past year of my service to know of the work of the grievance committee and the Bar Board and it is very gratifying to learn how very few complaints are filed with these agencies of correction. They are mostly of a trivial nature. All complaints have been carefully investigated and adjusted. The Association owes a duty to attorneys unjustly complained of to right the wrong thus done. This has been religiously done. We likewise have required strict adherence to statutory and ethical standards on complaints that have been found well taken. The public is quick to criticize the bar for delinquencies unremedied. The Bar never has taken the position of shielding offenders within its ranks. We believe with Attorney Harry D. Nims of New York that:

> "To insist that the bar shall be made up of men fitted morally and mentally for reasonable public service is not to sacrifice a single principle of democracy. To set up a plan by which the incompetent lawyer who neglects his clients' business, who by dilatory methods increases the expenses of justice, who fails to bring his cases to trial, who disregards the convenience of court and public, shall be disciplined by his own profession so far as it may be necessary to remove these abuses cannot be otherwise than healthful and right, both from the standpoint of the bar and the public."

We also agree with the conclusions of the Carnegie Foundation's annual review of legal education when it says:

> "The more relentlessly and the more publicly this machinery operates the greater confidence will the public at large have in the moral integrity of the legal profession as a whole, and the greater will be the disposition to allow its claim to public leadership as a selected and courageous body."

The legislative committee has recommended with certain limitations that we adopt the California method of discipline within the bar association itself. I believe that this would be of benefit to the Association. To hold us responsible for the conduct of our membership and at the same time give us no disciplinary control over it has always seemed to me to be the height of inconsistency and absurdity. Let us have the responsibility and we will cheerfully assume the criticism. The very knowledge among the membership of our home rule responsibility will have a heartening and steadying effect, I believe.

Our third and last objective is to

ENCOURAGE CORDIAL INTERCOURSE AMONG THE MEMBERS OF THE BAR.

There is much of need for this constructive work. While other businesses and professions, in order to advance their interests in the changing conditions of today, are becoming more closely organized we seem to lack that enterprise. There are plenty of objective symptoms that indicate that we are going to suffer as a profession and individually if we do not do something. Our pride in our orthodox individuality is destined for a severe shock. We need but to consider the fact that banks, trust companies, public accountants, insurance companies and individuals masquerading under the guise of collection agencies and otherwise, have entered the field of service that has been heretofore the sole legitimate province of our profession in the drawing of wills, drafting of contracts and other forms of legal work, to get a fair idea of the tendencies of the times for us. And this work is done by these agencies without any of the safeguards thrown around it in our hands. We need but to contemplate the huge combinations and mergers that are gradually withdrawing from our field of usefulness lucrative business that used to be ours to appreciate what further may still be in store for us and for those who are contemplating entering the profession and for whose future we are now trustees. We can regain this lost ground and consolidate for the future in only one way and that is by a close knit organization in which the majority of the members participate. It seems strange to me that the great profession to which we belong, second only in social and economic importance to that of the government itself, is so thinly organized. While our creative genius has heretofore shaped and launched many a professional and economic organization that is most effectively doing its work in the world today, we have failed to bring that creative spirit into our own field. There is not one good reason why we cannot do so. The problem is to arouse the members from their present lethargic indifference. We need a new vision of the grandeur of our profession and its importance in the social scheme of today. We need a rebirth of the sense of our obligation to ourselves, our fellow attorneys and the communities in which we practice. We need a clearer appreciation of the outstanding fact that our fullest expression is possible only in organized cooperation within the Association. We need to shake off another kind of pessimism that blinds us to the real situation. We are suffering from a decided indifference both as to our mission and as to our ability to carry out that mission. "The world is too much with us" and dulls that fine sense of appreciation of responsibility to our profession which is today ours more than ever in the past. If we but appreciated the power that is ours, and would concentrate our efforts we could accomplish many important things. For the properly equipped lawyer is by education

and training fitted for leadership; is well versed in the history of jurisprudence and governmental problems; his faculties are trained and his mind disciplined; clearness of perception and power of expression are his also; creative genius and resourcefulness are his hand maidens; he tempers his judgments with sympathy and insight and he possesses the courage of compromise. This, backed by a long heritage of respect for constitutional government and for "liberty within the law," gives him justification for his position of claimed leadership.

As our first step towards the utilization of this now largely dormant and unused power of the profession, we have followed Judge Bagley's plan of completing the district associations. That work is now happily accomplished. Every Judicial District, as well as numbers of city and county units, have now been formed and officered. We wish now to consolidate our position. Our first suggestion in that direction is to make the heads of the district organizations members of the executive committee instead of continuing the present method of open choice by the President. This will bring together the executive heads of the State Bar and all the Judicial District organizations and thus coordinate and correlate the work of all of them. If there can then be added self-government within our organization by giving to us the power to admit new members and also the power of self-discipline, with the final judgment resting as now with the Supreme Court, we shall then have the additional advantage of these responsibilities which will help keep the Association active. If the District Associations would then have two or more meetings yearly in the nature of clinics and combine with them social features we could then, possibly, break down that spirit of solitariness which is the state of the average lawyer today. We could then build up that solidarity of the profession which is our greatest need. And when we have accomplished this task of working shoulder to shoulder as friends within the Association we shall have gone far toward making the Association a living, moving and constructive force in the State of North Dakota.

We can then as individual members truly say that as Ministers of Justice of the great State of North Dakota, which we love, we have substantially performed our part of the three-fold contract which I have tried to present to you today.

MR. BURKE: President Kvello, I am sure the members of the Bar appreciate very much your practical comprehensive discussion of the ideals of our profession and the many suggestions of ways and means for maintaining its honor and its integrity. I will now ask you to assume your duties as President.

PRESIDENT KVELLO: Thank you, Judge. Just before the luncheon hour adjournment, we were to consider the report of a Special Committee on the definition of the practice of law. Judge Ellsworth of Jamestown is now ready, I believe, to discuss that matter.

MR. ELLSWORTH: Mr. President, Gentlemen of the Association: As our President has indicated, this Committee of which I am a member, was appointed especially. It was appointed as I understand it for the purpose of filling an emergency, an emergency that should not wait for attention until the close of the year. Mr. McIntyre of Grand Forks was appointed its chairman and Mr. Scott Cameron of Bismarck the other member. Both of these members find it impossible

to be with us although they both expressed a desire to be present. The committee is unanimous in concurring in the recommendations that I will propose to the Association.

The situation which brought about the appointment of the committee is a very delicate and difficult one. I remember that in 1916 in the Conference of the delegates of the American Bar Association when they met at Chicago, this matter was first brought to my attention. It had been agitated somewhat before that time but it was becoming impressed upon the minds of lawyers all over, that there were certain influences that were not only making inroads, but they were destructive, in a sense, on the work of the individual lawyer and the Association but they were permitting acts which were in a large sense prejudicial to the public interests. That is a great many individuals engaged in business and corporations, great corporations some of them, were engaged in what I shall designate as the unlawful unauthorized practice of law; that inroads that at first were almost unnoticed, were becoming so frequent that they were actually taking under their control great departments of what had always been considered legitimate law practice, or as I might say, practice that should only be submitted to learned and professional lawyers in the public interest.

This has been going on for a period of twenty years or more and it is going on with increased activity today. I want to call your attention to the fact, if you have not already had it called, that Bankers' Associations of the State are actually using circulars or price lists for certain services that every member present will agree are law business, properly law business. A year or more ago I had in my hands one of these circulars. Unfortunately I have misplaced or lost it now. I submitted it to some other members of the Association who are present here today and they remember, as I do, just about the items that were contained, and in that circular there were twelve items that I believe, and that they believe, were law business properly, which the banking association undertook to do for a small fee. Now, for instance, one of the items was contracts. Just think how broad that item of itself is—the very fundamental of the practice of law. It did not specify any particular contracts. All classes of contracts were included under that heading and the price that was set there, I think, was $2.00 for any kind of contract covering any human relation. This bank that issued the circular would undertake to produce for a party who was willing to pay a fee of $2.00. It included more than that. Deeds, real estate mortgages, practically include the whole subject of the conveyance of real and personal property, bills of sale. I expected to find in it wills, but I want to say in justice to this particular circular it did not include wills. I understand that there is a question of including them now.

The will as we all know is considered one of the most difficult and intricate of all the acts that comes within the provision of the lawyer. I do not know though that the will is more intricate, or more difficult, or of any greater importance than a contract, that is some classes of contract, but these parties that undertake to do that kind of business have great nerve. They will undertake anything, it seems to me, and a person that is entirely unlearned in the practice of the profession of the law who would undertake to execute all of the duties that I saw on that list would undertake to command a warship without any previous experience.

I wonder how often any of you gentlemen nowadays are asked to prepare a warranty deed or a mortgage, however much the amount involved or however great the value of the property, which is done by somebody entirely outside.

The foreclosure of mortgages, another very important duty of the lawyer, is going the same way.

Now some of you are familiar with the activities of trust companies. They attempt to impress people primarily, of course, with the fact that it is a trust company and can probably furnish a more satisfactory means of administering estates than any individual or any firm of lawyers but they are not satisfied to stop there. The proposition that they are continually making to members of the Bar is that the Bar members join with them to get business, that is to get the business of the administration of the estates including the drawing of the will. Probably the drawing of the will will be relegated to the lawyer but the objectionable feature of this is that it joins in a kind of partnership persons that are not licensed to practice law and we all know that is in direct violation of the code of legal ethics, not only of this State but also of the American Bar Association.

Now I referred at the beginning to means of meeting this situation as being delicate and difficult. The general opinion among the public would be this, if certain work. no matter what its importance, can be done by a bank or trust company or some person that is not licensed to practice law at a much lower rate than a lawyer would do it, why should he not be permitted to employ unlicensed persons? Of course, we know that the reason is that that person does not have the learning and experience that enable him to do the business properly, and that service generally depends upon its proper dispatch and that the whole value of it depends upon that, and that this small fee that they pay to the unlicensed person is just money thrown away, because they have not any guarantee that the business is properly transacted, and usually they are deceived with paying that money for nothing.

Several states have become interested. At this point I may say that North Dakota, although it refuses to approve an unlicensed medical practice, does apparently approve unlicensed practice of law. There is not a scrap in our code; there is not a statute of the state that in any language or under any penalty whatever forbids an unlicensed person from practicing law. It makes the ones that are licensed to practice pay for it pretty well. It makes them acquire learning and skill before they are licensed to practice at all, but the unlicensed person is under no discipline whatever. He can go ahead and if he makes a mistake, well, he can plead he didn't know any better and anyhow he didn't charge very much for it, but coming to the original proposition, we have no law on the statute books, no law that in a few words prohibits the unlicensed practice of law or fixes any penalty whatever for the unlicensed practice of law by any person.

Minnesota is interested and last year the State Bar of Minnesota drew a proposed statute which not only prohibited the unlicensed practice of law but undertook to define what it is. It seems to me that that form of statute runs on and to great length. It covers about three typewritten pages. It is very satisfactory in a certain way but I would be afraid that the average Legislator would be somewhat awed merely by the dimensions of it.

Missouri has such a statute. Illinois has a statute just as in California prohibiting the unlicensed practice of law and quite recently the Chicago Bar Association has proposed a bill or drawn a bill and is about to propose it, as I understand, defining at very considerable length what is the practice of law.

Now I have a copy of the Minnesota Law here, the proposed law; also the Illinois statute; also the statute proposed in California. If any member would like to look them over, I would be pleased to put them at your disposal at any time.

We worked over as well as we could the work of this sort that had been done in Illinois, Missouri, Minnesota and California and we were all impressed with the proposition that the bill must not be lengthy; in fact at first we thought merely of trying as a starter a bill that would prohibit the unlicensed practice of law and penalty. Finally we went to a little greater length and briefly defined it and I am going to submit this bill to you for approval or disapproval, gentlemen, as the case may be. I will read it—it is not very long.

AN ACT DEFINING THE PRACTICE OF LAW IN THE STATE OF NORTH DAKOTA AND PROVIDING FOR PUNISHMENT FOR VIOLATION OF ANY OF THE PROVISIONS THEREOF

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Sec. 1. That the practice of law within the State of North Dakota shall consist of one of the following acts: the giving of legal advice to another, the holding of one's self out by any sign, advertisement or otherwise, as competent and qualified to give legal advice; the preparation, drawing or preparing of any pleading or instrument in or about the prosecution or defending in any manner of any action in any Court of the State of North Dakota, and taking part in any manner as counsel or attorney for another in any proceeding or action of any kind in any Court of the State of North Dakota; the preparation of any deed, mortgage, assignment, discharge, lease or any instrument affecting real estate, the drawing of wills or codicils thereto, and the drawing of any instruments affecting the disposal of property after death, or the estate of a decedent.

Sec. 2. Any person who shall do or perform any act so defined as constituting the Practice of Law within the State of North Dakota, not duly licensed as an attorney at law within the State of North Dakota, and who shall ask or receive directly or indirectly compensation of any kind for any such act shall be deemed guilty of a misdemeanor and upon conviction shall be subject to fine of not to exceed Five Hundred Dollars for each offense, or punishment by imprisonment in the County Jail of not to exceed ninety days for each offense, or subject to both fine and imprisonment, in the discretion of the Court administering punishment.

Sec. 3. This act shall not apply to any corporation or voluntary association lawfully engaged in the examination and insuring of titles to real estate in the preparation of any deeds, mortgages, assignments,

discharges, leases or any other instruments affecting real property, in so far as such instruments are necessary to the examination and insuring of titles.

Sec. 4. This act shall not be construed to prevent attorneys duly licensed to practice law in any State other than North Dakota and in good standing in the State in which so licensed from appearing in the Courts of this State, as provided for under the provisions of Section 793 C. L. of North Dakota for 1913.

Now, Mr. President, in order to bring this matter fully before the Association, I move that the proposed bill be received and approved by the Association and that it be referred to the Committe on Legislation with instructions to formulate the same in any particular in which it is not properly formulated and presented for submission to the Legislature, preserving, however, the substance of the Act and to bring the matter before the next Legislature in regular course.

MR. C. J. MURPHY: Will you read that clause relative to drawing contracts, mortgages and releases wherever it is found, your definition?

MR. ELLSWORTH: Do you wish to have me read it all?

MR. MURPHY: No, just that part relative to drawing deeds, contracts and mortgages.

MR. ELLSWORTH: (Portion of bill read which was requested.) You understand, of course, all of this is open to amendment or suggestion if the Association should think anything has been omitted.

PRESIDENT KVELLO: You have heard the motion, gentlemen. Is there a second?

MR. LACY: Second the motion.

MR. LANIER: Read the caption again please.

MR. ELLSWORTH: (Caption read.) I want to say, Mr. Lanier, with reference to that caption, that is a matter which should receive careful attention from the Committee on Legislation who are assumed to be more expert than we are in drawing titles.

MR. KVELLO: Is there any discussion on the motion? It is now before the Association. (Question called for.)

MR. LEWIS: I think Judge Ellsworth is entirely right in suggesting that the importance of this is for the public. I haven't any sympathy with the action of any profession in trying to get a monopoly for itself. I do think that it is vital to the public that legal work be done by the lawyer and whether or not we could prevent such work from being done by people other than lawyers is questionable because there are emergencies where it should be done that way rather than not at all. There is an exception to that bill I am not sure should be there, the exception as to the drawing of instruments in regard to insuring of titles. If they are going to charge people for the work of examining titles, I believe it should be done by a lawyer. I have thought of this subject more or less as we all have from time to time. I think from a selfish standpoint we do not care for any such bill. I believe we can make more money through the mistakes of the bankers than we can through

the enactment of such a bill and anything that is adopted should be for the protection of the public and consequently most legal papers should be drawn by a lawyer.

PRESIDENT KVELLO: All those in favor of the motion, please signify by saying aye. Contrary minded the same. Motion is carried.

I notice Mr. A. W. Cupler is here now and you are chairman of the Committee on Information and Cooperation with the Press. Mr. Cupler have you any report? None has been filed with the Secretary.

MR. CUPLER: I must plead negligence, perhaps indifference. I am sorry to say that I have not had the committee together. If you will give me the names of the members of the Committee—I have mislaid the slip the Secretary sent me—I will try to get the committee together this afternoon or evening.

PRESIDENT KVELLO: The other members of the committee are W. A. McIntyre, F. T. Cuthbert, C. L. Young and John Lewis.

The next report will be the Internal Affairs Committee—Mr. Wenzel:

MR. WENZEL: President and Members of the Bar Association: There is only one matter that needs to be brought up at this time so far as the report of the Internal Affairs Committee is concerned. That report was published in the July issue of Bar Briefs. In that report, you will observe reference to a complaint filed sometime ago, in which the facts briefly were something like this. Collection had been made of a definite sum of money, something around $60, and was not remitted. The complainant employed another attorney in another town to take the matter up. There was no response for some time and finally a check was forwarded to this attorney which was returned by the bank for the reason that there were no funds. The attorney followed the matter up and could receive no response, and finally turned it over to the Internal Affairs Committee, which had the matter in charge for a period of about four or five months and could receive no reply from the attorney who had originally collected the money. The second attorney who filed the complaint got disgusted with the matter and asked leave to withdraw his complaint. The question I raise here is this—should this Bar Association in a case of that kind, where the facts definitely establish conduct on the part of an attorney which will entitle him to consideration by the Grievance Committee or by the Bar Board and the Supreme Court, permit the withdrawal of the complaint, or should the Association, as a matter of policy in a case of that kind, require the committee to which it comes to prosecute it to a final determination. That is the issue raised, and I would like that question answered for the guidance of the Internal Affairs Committee next year.

PRESIDENT KVELLO: What is your pleasure, gentlemen, in connection with this suggestion?

MR. HUTCHINSON: I move that it be the sense of this meeting that any matter coming before the Internal Affairs Committee or Bar Board be disposed of regardless of whether the complaint is withdrawn or not.

MR. FRED TRAYNOR: I second the motion.

PRESIDENT KVELLO: The motion has been made and seconded. Any discussion in connection with that matter? If not, are you ready for the question? (Question called for.) All in favor of the motion, please signify by saying aye. Contrary minded the same sign. Carried.

REPORT INTERNAL AFFAIRS COMMITTEE

It will be recalled that the last annual meeting again placed the routine work of this committee in the hands of the Secretary, designating him as Executive Secretary of the Internal Affairs Committee. During the past year, therefore, the committee has functioned, in most cases, through the Secretary. In only four cases was it necessary to submit the record to other members of that committee.

Twenty-six complaints were filed during the year, dealing with matters within the legitimate scope of the activities of the committee. Four of these cases are now pending.

In three of the cases the Secretary was unable to obtain any response from the attorney involved. One of these, concerning a minor matter, was closed at the suggestion of President Kvello; another of these was closed with the suggestion to complainant that he submit the matter formally to the Bar Board; and the third was withdrawn by the complainant through the attorney who presented the complaint.

The case last referred to above concerns a matter of sufficient seriousness to justify consideration of the annual meeting as to a question of policy. It involves a specific collection of more than sixty dollars, for which the collector issued his check in 1927, payable to attorney for complainant. The check was returned "N. S. F.", and has never been paid. On a clear-cut presentation of such facts, the question arises, "Should withdrawal of the complaint be permitted"?

Of the three other cases of a serious nature, one is now pending, and two were submitted to the whole committee. In one of the two last referred to the action of the committee was unanimous in demanding a retraction of the charges, and this was obtained in writing. In the other the committee voted unanimously to exonerate the attorney complained against, and a majority of three voted to demand a retraction. The complainant, in that case, has now indicated his intention to press his views further by formal presentation of the charges to the Bar Board.

As usual, a considerable number of the complaints related to failure to report progress on collections or minor disputes about the amount of fees chargeable.

In addition to the twenty-six cases considered as legitimate complaints, there were fourteen others, dealing with matters outside of the jurisdiction of the committee or the Bar Association. Most of these, of course, were from laymen, and a detailed statement was sent in each case to explain the non-relation of the stated facts to any possible misconduct on the part of the attorney. One of these fourteen, however, came from a nationally-known publishing house, engaging liberally in credit sales. The letter of complaint spoke freely of the "highhandedness" of North Dakota attorneys in general, and the one complained against in particular. To this complaint the Secretary made the following reply:

"Your letter of May 13th, with enclosure, received. The check and your invoice are herewith returned, and we beg to advise that the State Bar Association is not in the collection business. It owes no duty to the public to see that members of the Association pay their bills. People in your line of work occasionally buy groceries, for which they are unable to pay. The grocer, in turn, occasionally runs an account at the haberdasher's shop, and some stock market crash or other unfortunate event makes it hard to satisfy the haberdasher financially. Neither situation places any obligation upon the grocery business or your business to assist either creditor in collecting his bill. Why, then, should there be a different standard for attorneys, and why should North Dakota attorneys be characterized as 'high-handed'?

"You do a credit business at your risk, not ours. You get your credit information from sources that you deem reliable. Possibly, you add enough to your charges to take care of mistakes that are thus made, and result in losses.

"Mr. . . . . gave you a check, indicating that he intended to pay for his purchase, but he stopped payment, which again indicated something, possibly that there was some breach or failure on your part. Instead of submitting your claim to some attorney in North Dakota, you turned it over to a . . . . . 'Credit Clearing House'. That concern was not and is not licensed to practice law in North Dakota. It is not bound by oath to perform the duties of an attorney. In order to do business here that Clearing House submitted the matter to a North Dakota attorney.

"The latter attorney sent a refusal to start suit, with the notation that the judgment would not be collectible. That notation should have advised any business man that the debtor is not financially responsible, and brings us face to face with the gist of your whole complaint, to-wit: That you now find that the man to whom you made a sale of goods on credit hasn't sufficient property to enable the seller to recover through regular court procedure.

"Doubtless, the debtor should advise you why he does not pay your bill. Probably, he has. Perhaps, he should return the goods sent him. He may have offered to do so. In any event, so far as this Association is concerned, your transaction involves no conduct or misconduct as an attorney. Hence, we decline to assist you, decline because we have no responsibility in the matter. It may get you into the same difficulties you allege to have had in Wisconsin, but we can't help that.

"In closing, may we respectfully suggest that you leave your legal business here for residents of North Dakota who are equipped by training, experience, proper license and an oath of office? Then, when any of those so qualified transgress the rules of ethics of the profession (of which there is no indication in this case) we shall gladly assist you in bringing the delinquent one before the proper committees or other official departments."

R. E. WENZEL, Executive Secretary.

MR. LEWIS: May I indulge just a moment to speak out of order on the practice of law? There is a good deal to be said about the practice of law through trust companies by lawyers. There are two things about that, sometimes it is that the fee charged by the trust company is not really paid to the lawyer. That of course is wrong. The other

point is that the lawyer doing that work is employed by the Trust Company and does not have direct responsibility for the work to the client. It seems to me when you think that over it is a pretty important point. A lawyer should work directly with his client and the practice of having lawyers employed by trust companies, who are responsible to the trust companies and not to the client, should be definitely discouraged. That the lawyer is not doing his duty unless working for the client direct is something we all understand.

MR. KVELLO: I will ask Mr. Fred Traynor to introduce one of our prominent guests who has just arrived.

MR. TRAYNOR: I take great pleasure at this time in introducing to you the speaker that you will hear this evening at the Town and Country Club, Mr. H. A. Bergman of Winnipeg, Manitoba. He is President of the Manitoba Bar Association and a King's Council. However he was born in North Dakota in Pembina County. He was a resident of North Dakota up to the time he entered the University of North Dakota and graduated from the Law Department and then transferred himself to Winnipeg where he was admitted to the Bar. If he has a few words of greeting, we would like to have it at this time from the Manitoba Bar.

MR. BERGMAN: Mr. Chairman, Gentlemen of the North Dakota Bar: As I am speaking to you this evening, I feel that will be sufficient infliction upon you, if you hear me once without listening to me this afternoon as well as this evening. There is one word I would like to say to you now; that is this—when Mr. Traynor wrote me in my capacity of President of the Manitoba Bar Association suggesting the possibility of some cooperation on the part of our Association to make your meeting a success, it was felt on account of the conflict of dates, it being the same time as our Canadian Bar Association, that any general participation was impossible, but our Executive Committee expressed its desire that I, as President of the Association—and a member of the Executive Committee, Mr. Johnston, has since been kind enough to share the task—that we should come here and do what we could to contribute to the success of your meeting. I was also instructed by the Manitoba Bar Association to extend to you our very friendliest greetings and to express the hope that your meeting will be an entire success.

PRESIDENT KVELLO: We have a committee carried over from last year, which I believe is one of the most important and interesting committees—the Committee on Automobile Insurance and Regulation. Since last year, John H. Lewis has been added to that committee and I think that committee is ready to report, Mr. Lewis and Mr. Lanier.

MR. LEWIS: This subject of automobile insurance and regulation is something on which we could talk for one hour or three very easily, but I know that five minutes is all you will want to listen. Last year the majority report favored compulsory insurance but I find this year they are against compulsory insurance, against liability for all drivers on the road, but they feel that there are two things which should be required. The first is the driver's license as a requirement for everyone who is operating an automobile on the roads of the state, and the second is a provision for insurance in cases which by their past history have proved that they are not normal drivers. The Compulsory Insur-

ance for all has been tried in various places and appears to be a success to a certain extent. However, in Massachusetts, the only place in this country where it has been given a thorough trial, the general opinion is pretty strong to the effect that it has not been a success in Massachusetts. I happened to talk with a member of the Committee for recommending changes and making general recommendations regarding that law a few weeks ago and he admitted to me frankly that he would not advise any other state to try it. He thought, and I agreed with him, as long as Massachusetts had tried it for three years, they should try it a little longer and experiment with it, and he would advise other states to "let George do it" and not take the thing on. There are, of course, two main objectives in enacting a law of this kind. The bigger thing, it seems to me, is to make the roads a safe spot to drive and to decrease accidents. Of considerably less importance is to see that those who are hurt on the road by the fault of others should get compensation. The Massachusetts law does that, and has been fairly successful. However, the first objective has not been accomplished. The accidents have increased since the law was passed. Of course, you cannot say that is due to the law. It has only had three years trial. Now what the committee recommends is that there should be driver's license and that should include a physical examination of the driver as to eyesight; that there should be no compulsory insurance for drivers in general but for those who show themselves to be extra hazardous drivers such as those being classified as reckless drivers and those being involved in accidents should thereafter be barred from the road unless they put up a certain amount of insurance against the damages or liability in case of an accident, and also that when there is any judgment against the man for automobile accident, that he should not be allowed to use the roads again, even though he puts up insurance until he has paid that judgment. So far as I understand it, the committee are entirely unanimous. The majority of the committee also favored cutting down the exemptions to absolute exemptions for judgment for liability in automobile accidents. Personally I feel that we ought not to interfere with the exemption law, that automobile laws are so classified themselves to justify special return on them. I do, however, go along with Mr. Stark and the majority of the committee in favor, not only of our present law passed by our last Legislature, that the automobile may be attached, but that it should not be exempt. In other words, let the judgment take the right; let everything concerned in the accident, help pay for the accident. I have tried to state as far as I could the views of the majority or minority report. Mr. Lanier has possibly other views and for the purpose of getting the matter before the association, I will make a rather peculiar motion, because the majority and minority reports are really not conflicting, but rather to the contrary, so, Mr. President, I move you that the Minority and Majority Reports be accepted and approved and legislation along those lines recommended with the provision that the automobile concerned in the accident shall not be exempt but that otherwise the general exceptions shall prevail.

PRESIDENT KVELLO: You have heard the motion. Is there a second?

MR. LANIER: I will second the motion with these remarks. It is true as Judge Lewis has stated that the report is practically unanimous, but I have this difference with your committee on the report as it stands now, and that is the phase of the report that recommends that when one has a judgment against him on account of an automobile accident, that such person shall be barred from the road until such time as that judgment be paid in full. That is a flat provision. I do not believe that should be applicable to every driver that travels the road. I believe that the members of this meeting will see the point I am making. In my experience over twenty-three years of practice there have been times when I have thought lavish judgments were rendered for damages sustained. Now it is possible that one might own an automobile, drive an automobile, have an accident and out of that accident a lawsuit grows and a judgment for $20,000 or $25,000 might be entered against that person; it might be one of those lavish judgments, but nevertheless the fact remains that person would never be able to pay that judgment and forever barred from the road. I believe before such rule be enforced against such individual, that individual should be classified among subnormal drivers or reckless drivers, that some provision be made there. That is the only objection to the report as it now stands.

AUTO INSURANCE REGULATION

Your committee on Automobile Safety Regulations and Insurance reports as follows:

That they have continued their study of the problem of Automobile Safety Regulations and Insurance as applied to the State of North Dakota, with a view to presenting to this body recommendations which might later become the basis for legislative action. Death, bodily injury, and damage due to automobile accidents continue to increase, and this State has taken no effective measure to remedy the situation.

After a two year study of the proposition, we are agreed that, as applied to North Dakota, compulsory insurance is impracticable—primarily because this being an agricultural state in which more than half of the automobiles are owned by farmers who are generally our more careful drivers, it would be unfair to place on them this additional financial burden, in order to meet a condition caused to a large extent by the careless and the reckless.

We therefore recommend that this association go on record and endeavor to secure the passage by the legislature of a safety responsibility law embodying the following features:

First—A driver's license law.

Second—(a) That whenever any person shall have been convicted of reckless driving, or driving while intoxicated, or the violation of any of the statutes regulating the operation of motor vehicles upon the highways, his driver's license and automobile license shall be suspended and shall remain suspended until such person shall file with the Registrar of Motor Vehicles a certificate from an insurance

company or surety company, doing business in this state, showing that he has a liability policy or contract conditioned to pay any final judgment against the insured for any injury to person or property or damage for causing death of any person by reason of any act of the insured, his agent, employee, or driver in the use or operation of the motor vehicle covered, upon the highways of this State. That such insurance shall be in the sum of $5,000.00 for one person and $10,000.00 for more than one.

That in lieu of the filing of such liability policy or insurance the applicant may deposit cash or security with the registrar to the amount of at least $5,000 conditioned as provided in said insurance policy.

Such contract of insurance to cover all motor vehicles registered in the name of the insured, to continue for three years, and to be noncancelable except on ten days notice to the insured and the Registrar of Motor Vehicles, and the surrender of the license plates and operator's license of the insured. Upon such cancellation the suspension shall again become effective and shall not be removed until a new certificate of insurance as aforesaid shall have been filed.

(b) That wherever a judgment for personal injury or damage to property because of negligence in the operation of a motor vehicle has become final, such person's operator's license and his automobile license shall be suspended and shall remain suspended while such judgment remains unsatisfied and until such person shall file with the Registrar a certificate from an insurance or surety company conditioned as provided in paragraph (a).

That upon an execution issued upon a judgment for personal injury or damage because of the operation of a motor vehicle only absolute exemptions shall be allowed. That any person operating a motor vehicle upon the public highways with the consent of the owner, either express or implied, shall be conclusively presumed to be the agent of the owner.

(c) That a State Safety Council be established, whose duty it shall be to educate the public in accident prevention and safety measures.

C. H. STARKE, Chairman.

MR. WENZEL: I am in receipt of a letter from Phillip R. Bangs, one of the members of this committee, which he desires to have read into the proceedings at this time, and I shall therefore read it.

August 14, 1930.

Mr. R. E. Wenzel, Sec'y,
No. Dak. Bar Association,
Devils Lake, No. Dak.

Dear Dick:

Will you please file the following, as my objection as one of the Committee, to the adoption of the majority report of the Committee on Automobile Safety Regulations and Insurance, as set forth in the August issue of Bar Briefs?

The words, "or the violation of any of the Statutes regulating the operation of motor vehicles upon the highways" in Subdivision "A" of the second recommendation, should be eliminated.

The forfeiting of a License, or the suspension of a License for one convicted of driving while intoxicated, should meet with the approval of everyone.

The forfeiture of a driver's License, for a mere reckless act, is something that opinion might differ on.

The forfeiture, however, of a driver's License, for violation of any of the Statutes regulating the operation of motor vehicles upon the highways, is most certainly too broad and too drastic. For instance, while driving at night, one of your headlight lamps might burn out and if you continued to drive your car, you would be violating one of the Statutes regulating the operation of a motor vehicle upon the highways and would lay yourself open for a suspension of your License, and that might be true, even though you did not know that the light had burned out. There are numerous other instances that one might think of, but this one illustration should suffice.

As to the provisions of Subdivision "B", I am opposed to the recommendation that only absolute exemption should be allowed, in case of a judgment for personal injuries or property damage, and agree with John J. Lewis, in his minority report, on that point.

In Subdivision "B" I am also opposed to that part that provides, "That any person operating a motor vehicle upon the public highway with the consent of the owner, either express or implied, shall be conclusively presumed to be the agent of the owner."

I do not believe in the rule that the owner of an automobile should be held responsible for injuries sustained through the operation of his automobile, where he had no interest in its operation. Under your proposed law, the owner of a garage renting automobiles for hire, would be responsible for every injury caused by one of his cars. In addition to that, if one should loan his auto to another, the owner would be liable for all damages caused by such person in the use of the auto.

I can see neither justice nor any sense, in such a rule of law.

Subdivision "C" should be entirely eliminated, as it is merely the creation of another job, without any need for it, and an increase in taxes.

Will you please read this letter to the Association, in connection with the Report of the Committee?

Yours very truly,
PHILIP R. BANGS.

MR. FRED TRAYNOR: I do not believe that this Association ought to definitely commit itself to any particular recommendation made in that report, and if the motion approving and accepting it, commits the association, I would be against it. I would like therefore to move a substitute motion or amendment to the motion, that the report of the

committee be received and printed in the record and that the report of the same committee last year which was received and accepted at that meeting, along with the present report, be referred to the Legislative Committee with instructions to tender both reports and the services of the Committee to the Legislative body at its next meeting for such information and help as the Bar Association can thus give to the Legislature.

MR. MURPHY: Second the motion.

MR. LEWIS: I hate to be on my feet all the time but that brings up quite another question. This is an opportunity to do something. This question is coming up more and more each year and it gives an opportunity for the Bar of the State to do the job that they feel they should do, to help constructively toward legislation. If you adopt that substitute motion, if you simply refer both reports to the Legislature, you are evading that job, and what you are going to get very likely is compulsory insurance. That is the tendency of our State and then the tendency probably will be to make a state monopoly and we do not want that and we are agreed practically as to that and we are going to help that along, if we do that. It seems to me with all due deference that it is quite important that this association should do its part in the constructive work of urging on wise legislation toward the problem. The matter was postponed to give it further study. The committee are in unanimous agreement on many points and if we refer to the legislative committee something that the whole committee are practically agreed on, I think we are doing a very dangerous thing.

MR. MURPHY: I am in favor of the substitute motion because of the lack of unanimity of the members of this committee upon several important features of this matter. I am in favor of this motion because I am certainly opposed to debarring the owner of automobiles from the use of the road, simply because a judgment has been rendered against them. In a negligence case, there may be circumstances outside of the mere rendition of judgment which would justify taking away a driver's license such as drunkenness, but the mere rendering of a judgment in a litigated case where notwithstanding the judgment, the owner may be entirely innocent of any wrong, is certainly too severe a penalty to impose upon a man and not a justification for depriving him of the right of driving an automobile on the road. We all have had some experience in connection with negligence cases growing out of automobile accidents. I would just as soon be a railroad trying to defend a damage suit as the owner of an automobile before the average farmers' jury, where injuries sustained by the plaintiff are at all serious. Such judgments are rendered very frequently upon passion and prejudice more than upon real evidence. I am utterly opposed to any such drastic punishment as that. Now it is all right, I would be perfectly willing to refer this matter back to the committee and see if they could get together, somewhere near together, on the vital proposition, but it seems to me that all this report amounts to at this time is a few recommendations of divergent views of the committee and this association is in no position at this time to adopt or recommend the report for passage as law.

MR. LEWIS: Pardon me once more. The greatest portion of my law practice happens to be defending those suits. I simply mention it to indicate that I am not utterly prejudiced against the automobile owner, but if this Association thinks that we are not together enough to want to put in a detailed recommendation to the legislature, well and good. I have no opposition to make to that but I do hope that you will not leave this open without agreement so that the legislature will think this association is half way plainly disposed toward compulsory insurance. It is a great danger, gentlemen. When you have compulsory insurance, then you have to insure everybody. The ultimate principle of insurance is violated—the principle of the selective risk. They have to take everyone. They can only cancel it by appealing to the Board of Appeals which does not work out making revocation worse and making the situation far worse. As to the details, I admit we had a long job to figure them out. I would like to see this Association take action because this probably won't wait. The Legislature dealt with it in part last year, and whether we do anything with it this year or not, I believe the Legislature will take up the question again next year. If you think we have not got down close enough to the details, perhaps we have not, but it takes hours and perhaps weeks of discussion, all right, but let us at least put in a recommendation that will quash compulsory insurance for all and along the lines of compulsory insurance for those who have shown themselves not to be normal users of the road.

PRESIDENT KVELLO: Any further discussion of the substitute motion, or the original?

MR. HUTCHINSON: I think we might all agree that we could recommend that we should have driver's license. That is the first recommendation of the committee. I favor that as a law in this state. Whether or not the license should be taken away except by the court is another thing. I mean just taken away because of some provision of the law. I doubt whether we should do that but I think we should have a driver's license.

MR. FRED TRAYNOR: I do not believe that the general recommendation of this body has a whole lot of weight or will carry any more weight with the Legislature than the recommendation of the committee who have had this matter under consideration, and I am satisfied that if they go before the Legislature and explain how they have arrived at those findings, that it will carry as much weight as a recommendation from this body. As far as I am personally concerned, I am willing to go on record as being opposed in principle to compulsory insurance but I do not think that this report is in such shape that we can adopt it as a report and finding of this association.

MR. LANIER: As a member of this committee, I am frank to state that I did not know this difference existed among the members, and I am heartily in sympathy with the expression made. This difference of opinion among members of the committee, I think, is sufficient in itself to not send in the recommendation and I agree with Judge Hutchinson that we might recommend a driver's license, but this recom-

mendation, after all, covers a lot of territory and I want to join with Judge Lewis in requesting this body to make no recommendations whatsoever by sending in this report as it stands today, for something might come about on some of the recommendations that we will be sorry for and I think we better not send it in at all unless we are satisfied and the body is satisfied.

MR. LEWIS: With the consent of my second, I would like to withdraw my motion and make a motion to this effect, that this association accepts and places on file the Minority and Majority Report and recommends to the Legislature the principle of the drivers' license; recommends against the principle of universal compulsory insurance and in favor of requiring insurance from certain classes who by their conduct have shown that it should be required from them, and instructs the Legislative Committee to take the matter up with the Legislature along those lines. Would that suit the idea of those who are opposed to the original motion?

MR. WARTNER: Second that motion.

MR. FRED TRAYNOR: With the consent of the second to my amendment, I will withdraw the amendment to the original motion.

MR. MURPHY: Yes, I consent.

PRESIDENT KVELLO: The substitute motion or amended motion is withdrawn and the question is now on the new motion made by Mr. Lewis. Is there any discussion on that. Are you ready for the question? (Question called for.) All those in favor of the last motion made by Mr. Lewis, please signify by saying aye. Contrary minded the same. Carried.

MR. WENZEL: In order that there may be no misunderstanding, I think a statement of the position of the Bar on that question ought to be made at this time in very brief form. The position is, as I understand it, that you are in favor of drivers' license law, but what in addition to that?

MR. LEWIS: As stated in the second recommendation in our printed report.

PRESIDENT KVELLO: The North Dakota representative of the American Judicature Society is Mr. A. W. Cupler, Past President of the Association, and this Association is doing very fine work. Very few are familiar with its work and Mr. Cupler has agreed to tell us something about the work of this Society. Mr. A. W. Cupler will speak to us at this time.

AMERICAN JUDICATURE SOCIETY

A. W. CUPLER, Fargo

Mr. President and members of the North Dakota State Bar Association: Before entering upon a discussion of the subject that has been assigned to me, let me say just a word on behalf of the members of the Bar of the City of Fargo, that wonderful city, the gateway to the state, 150 miles or so from here. We had a meeting last week at which we organized a First District Bar Association. At that time Mr. Kvello was there and explained the purposes and good points of the Association, and we had a very large attendance. There was a caravan started out from Fargo this morning to attend this convention. Now where they are I do not know. We had a little trouble. Mr. Lacy, the driver, and Mr. Van Osdale, Secretary of our Association, and myself were riding in a car and we stopped on the side of the road, and a North Dakota car, a Packard car, came along behind us and bumped into our rear end and made no apology whatever, stopped for just a second but not long enough to see whether or not we were hurt, turned out and went on. I don't know whether it was from Fargo or not but I thought I saw in that car driving it, Charley Pollock and sitting in the rear seat, Francis Murphy, and I think next to Charley was Herbert Nilles, but I know there are three more somewhere. They started at eight o'clock this morning and should be here now. I am sure there will be others beside those three come to this convention. About eighteen expressed their intention to come and I know their intention is good whether they get here or not.

It is rather a difficult subject that has been assigned to me. I noticed it is prefaced by the remark "Address". I can't possibly make any address on that subject. All I can do is in a few moments tell you something perhaps you know, or maybe you don't know about, an organization that is in existence and has been since 1913, called the American Judicature Society. I am not just so sure about the pronunciation, on second thought, but I know how it is spelled. I happen to be the director of the Society in North Dakota so I presume they picked on me to come here and tell you about it.

We have nothing to sell. We are not soliciting memberships and I assure you that the only purpose of my talk is to endeavor to enlighten you on the subject I think would be of interest to you. The field of procedure and practice I think is even more important than the field of substantive law. I think that the subject of judicial reform, and by this I mean reform of our administration of justice, has demanded more of the time and attention of similar organizations than any other subject. I know and you know that that is the subject that the lay mind is interested in, and it is to that subject that I think the criticisms of the courts and the lawyers are mainly directed, and every criticism of our profession, I think, is based upon a defect or defects in the system of administration of jusice. There is no organization independent of any other organization that is engaged in that particular work. You all know, you men who have attended the sessions of the American Bar Association, that there was a man by the name of Chevron who comes from Virginia whom we thought was rather cracked on the subject. For many years he harped on the subject of judicial reform from the standpoint of practice and procedure and sometimes it became rather

burdensome as the talk of anyone who is engaged in one subject. He sees nothing else, but it takes men like Chevron to arouse public interest and to carry forward and put into effect an idea. That I think was prior to the organization of this Society and I do not know that Mr. Chevron had anything to do with the organization of the American Judicature Society, but it was organized in 1913 as a corporation.

The main object and purpose of the organization is to promote the efficient administration of justice. Now those words become commonplace and we fail to realize the significance of them. I know when anybody talks about the administration of justice, you think he is going to utter some commonplace statements, a few generalities, and it will wind up with nothing definite being accomplished. That is the motive of the Association or Society which has resulted in a careful and detailed study of the various branches of practice and procedure, the subjects that have a direct or a close bearing upon that subject, for instance, the subject of the tenure of judges, the subject of the method of selecting judges, the subject of the organization of courts, the subject of checking, as it were, the judicial system of a state or of the Federal Government, the subject of restoring to the courts an inherent power which for some reason or other, has been usurped by the Legislature until it has become a rather assumed prerogative power, viz., the power to regulate the practice in the courts and the purpose of that discussion, as you know, is to restore to the courts that power to prescribe rules and regulations for the government of themselves and the procedure in their courts so that they who are charged with the responsibility of having an efficient administration of justice, may control the steps and proceedings and requirements that go to accomplish that end. Also the subject of integrated Bar, meaning by that a compulsory bar, a bar association that is organized by Legislative Act and in which all lawyers of the state are members. Those are just a few of the subjects that have a direct bearing upon the matter of the efficient administration of justice in which this American Judicature Society has done pioneer work and upon which it has spoken, not offhand statements, but has given to the Bar Associations and those interested a careful analysis of the subjects by men who are skilled in the particular branch, writers upon the subject, learned authors who have through the journal of the American Judicature Society expressed their ideas and given to these organizations such as our North Dakota State Bar Association the facts upon which an intelligent opinion and a proper conclusion can be arrived at, so that a reform, when it is adopted, will not be a haphazard affair, but one which will be the result of thought and study and will mean real progress.

I believe that our own former Chief Justice Andrew A. Bruce, who is now a Dean of the Northwestern University Law School or a branch of that school, is active in the affairs of the American Judicature Society. I know that Dean Wigmore was Chairman of the Board of Directors and Chairman of the Executive Committee and did a lot of work on that subject. I think Elihu Root was President of the Society. I know that Charles Evans Hughes was president of the American Judicature Society until his elevation to Chief Justice of the Supreme Court of the United States during this present year at which time his resignation was required, and Newton Baker, former Secretary of War, also was elected President and is now the President of the Society.

The Society has a very efficient Executive Secretary, Mr. Herbert Harley. You men who have attended the sessions of the American Bar Association, especially the session called the delegates of the State Bar Associations, have met Mr. Harley and you must have been impressed with the earnestness and the power of the man.

The work that the Society is doing is given to the public in the form of its Journal which is published bi-monthly, and which I may say, is sent free to everyone who is interested and displays an interest in the subject and work of the Society and it is sent to laymen as well as lawyers.

The Society has enlarged its organization. In 1928 it increased its Board of Directors to include one or more lawyers from every state in the Union and the District of Columbia. The Society has a Board of Editors consisting of thirty outstanding men in this particular field of judicial practice and procedure who contribute to this Journal their stories, the result of their investigation. It also prints articles that are of interest to the Bar upon the subject and I am quite sure that the members of this Association would be interested in the work of the Society if they took and read that Journal and if I may offer the suggestion to you, just give your name to the Secretary of this Association and ask him to forward to Mr. Harley and put you on the mailing list. Take that magazine for a while; it will come to you free, no charge is made for it.

In some states, I am told, the Bar Associations have co-operated with the Society in publication of the Journal by contributing an amount which would cover the actual cost of distribution of the Journal to their members and the Journal has been sent to every member of the Association in those states by having a list furnished by the Secretary of the Association to the Secretary of the Society, and I think that the actual cost of that was 25c a member. That is the amount, I think, that was sent, but the purpose of my few remarks upon this subject, which I shall not dignify by calling it an address or talk, is simply to bring to your mind the fact that there is such an organization as the American Judicature Society; that it is purely cooperative; that it does not supersede or take the place of any other organization; that it does not conflict in any way with the American Law Institute which is engaged solely in the restatement of law, although it did, a couple of years ago, undertake, at the request of the Rockefeller or Carnegie Institute, the matter of drafting a code of criminal procedure.

This society is rather a clearing house for ideas, for plans and purposes that originate in the Bar Association or which are negotiated by the Society for the accomplishment of these subjects and the efficient administration of justice.

PRESIDENT KVELLO: The committee on Jurisprudence and Law Reform is next. Mr. Hanchett has made one recommendation. We would like to have you discuss that, Mr. Hanchett.

MR. HANCHETT: Mr. Chairman, Members of the Association: I prepared a report as Chairman of this Committee; you will find it printed in full in the August number of the Bar Briefs commencing on page 256.

The suggestion was made by the Chairman at the opening of our meeting that when these reports have been printed in full, that we do not take the time to submit the report in full. You may read the same and I will simply state the substance of the recommendation contained in the report so we can get to the matter quite briefly in that way.

I have made two recommendations. I might say we were unable to have any meeting of our committee, but after preparing a draft of this report, I mailed out copies to the other members of the committee requesting them to communicate with me any suggestions or changes which they might desire to have made and I had responses from all members of the committee but none of them suggested any particular change so this comes before you, not simply my report as Chairman of the committee, but comes before you as the report of the committee.

Now I have made two recommendations, one of which will be somewhat conflicting with the recommendation contained in the Legislative Committee's report that is to be submitted tomorrow, but of which I had no knowledge at the time I drafted this report, so I think instead of trying to state briefly the substance of this recommendation, I will just read that part of my report setting forth why I have made that recommendation. I will read it briefly, just the important paragraphs.

"The question of the finality of administrative decisions by our various boards and bureaus stressed by Mr. Dullam in his 1927 report, and taken up again by Judge Bagley in his 1928 report, continues to remain as it did without legislative action. (Quoting from bottom page 256 and top of page 257 August Bar Briefs.)

Now the other recommendation is with reference to North Dakota Air Commerce Act. I have devoted some time in the report to it. It is perhaps not worthy of such consideration as the automobile statute but it is a subject upon which there should be some legislation in this state. We should have in North Dakota an Air Commerce Act. The matter has been taken up by Congress dealing only, of course, with navigation of the air in so far as it relates to interstate and foreign commerce which would be the limit of the jurisdiction of Federal Government. Several acts were passed by Congress finally terminating in the Air Navigation Act of 1926 wherein and whereby the Secretary of Commerce was authorized to make regulations and rules which would have the force and effect of law with reference to navigation of the air and many such regulations have been made.

There has been one very interesting case recently decided in Massachusetts. I refer to it in my report, where the owner of a country state sought to enjoin through the courts of Massachusetts the operation of an air company adjoining his property claiming it was a trespass of these people to fly their planes over this property. I recommend any of you interested in the subject at all, that you get that decision—I refer to it here, and read it through. It presents some very interesting questions which may be live questions involved in the practice of law in this state before we know it almost.

The various states—Massachusetts, New York, California have Air Navigation Acts and while it is not perhaps a real pressing subject in North Dakota like the matter of the safety of the highway, still it is a subject worthy of serious consideration by this Bar and one of

my recommendations is that the Committee on Legislation be requested to prepare a suitable North Dakota Air Navigation Act and that it be submitted first, to the Executive Committee, and if approved by the Executive Committee, that a bill be drafted and presented to the next Legislative Assembly.

These are the two recommendations that I have in this lengthy report.

I notice the first recommendation with reference to enlarging the power of appeal to the District Court from decisions of the Workmen's Compensation Bureau is in direct conflict with the report which will be delivered here tomorrow by the Legislative Committee. I knew nothing about that report at the time I drafted this report. In that report you will notice they recommend that the power of review from decisions of all boards and bureaus be direct in the Supreme Court of this state upon all questions, so that in submitting this report and moving its adoption including recommendations, I will do so with the modification that the recommendation with reference to changing and enlarging the manner of appeal to the District Court from the Workmen's Compensation Bureau be made subject to whatever action this body may take tomorrow upon the recommendation of the Legislative Committee asking that all appeals be made from all decisions of the Boards and Bureaus direct to the Supreme Court. With that reservation, I submit the report and move its adoption.

REPORT OF COMMITTEE ON JURISPRUDENCE AND LAW REFORM

The fundamental principles of jurisprudence are practically the same now as in the days of Justinian. Yet law reform has been an important subject for discussion both by the profession and the people during the intervening years.

At times there has been a great popular clamor for a reform of some branch or phase of our law. Yet on the whole the important reforms in our jurisprudence have originated with our legal profession and have been sponsored and carried through by it.

It is true that on occasion it has taken a Shakespeare or a Dickens to lampoon the Bench and the Bar in order that needed reforms might be made and I think we will have to admit that two of the greatest reforms in recent years have originated and been carried through by the people without much assistance from our profession. I refer to the Child Labor Laws and the Workmen's Compensation Acts of the various states.

Still the general rule holds good that it is up to our profession to take note of changing conditions calling for new laws or changes in the old to properly meet such conditions.

In order to get some idea as to what should be covered by the report of this committee I read over the reports made by this committee at the Grand Forks meeting in 1927 by G. F. Dullum, Chairman, at the Minot meeting in 1928 by Judge Bagley, Chairman, and at the Valley City meeting in 1929 by Judge Wartner, Chairman.

There were many good recommendations in those reports and some of them have already borne fruit.

The question of what crimes involve moral turpitude within the meaning of our habitual criminal act touched upon by Mr. Dullum in his 1927 report has been clarified to some extent by a recent decision of our Supreme Court holding that a violation of our intoxicating liquor laws is such a crime, thereby making it possible for an offender under those laws to get a "life for a pint."

The question of the finality of administrative decisions by our various boards and bureaus stressed by Mr. Dullum in his 1927 report, and taken up again by Judge Bagley in his 1928 report, continues to remain as it did without legislative action.

As I recall several laws have been introduced in our legislative assembly purporting to give the courts full power of review both upon questions of law and of fact on appeal from decisions of these administrative boards but so far they have failed of passage. The prevailing opinion of our legislative assembly so far has been that such a law would increase the business of the courts to an alarming extent and would be unwise and that as long as these boards keep within the limits of their jurisdiction that their decisions should not be reviewed or disturbed by the courts except in accordance with existing law.

An appeal to the District Court has always been allowed both upon questions of law and fact under the Workmen's Compensation Act from the final decision of the Bureau, but as our Supreme Court has forcibly pointed out in one case, "an appeal can only be taken by the claimant when he is denied entirely the right to participate at all in the fund." If the Bureau allows him one dollar compensation for a claimed serious injury he has no right of appeal.

I refer to the case of Crandall vs. North Dakota Workmen's Compensation Bureau, 207 N. W. 551, decided by our Supreme Court in 1925. In that case the claimant, a deputy sheriff of Richland County, made a claim for a permanent injury. The Bureau denied his claim for permanent injury but did allow an item of $4.50 for medical expenses. The claimant appealed to the District Court where he recovered a judgment for $6,934.72 to be paid at the rate of $16.67 per week. On appeal to the Supreme Court by the Bureau our Supreme Court held that the decision of the Bureau having allowed the claimant to participate in the fund to the extent of $4.50 to cover medical expenses, he had no right of appeal and dismissed the action leaving the claimant without further recourse. (See Wenzel address.)

No criticism can be made of the decision of our Supreme Court as the language of the statute governing an appeal from the Bureau was very clear and as Judge Christianson pointed out in his opinion in that case the right of appeal is granted only when the final action of the board denies the right of the claimant to participate at all in the fund. Our Supreme Court simply followed the plain language of the statute in that case.

It is apparent that the Workmen's Compensation Bureau, if it should choose to do so, could defeat any just claim for a permanent

injury by allowing the claimant a nominal sum for medical expenses or otherwise and the claimant would have no right of appeal and no redress.

As I have stated before, this decision was rendered in 1925. There have been two sessions of our legislative assembly since that time and at each session some amendments to our Workmen's Compensation law have been introduced and passed, but I find no amendment to this provision of our statute regulating appeals and it would seem to me that it was high time that some action be taken by this association upon the subject. As a part of this report your committee recommends that the Legislative Committee prepare and present to the next legislative assembly an appropriate amendment allowing a claimant in all cases who feels aggrieved by the decision of the Bureau either upon a denial of his claim or upon the matter of the amount allowed to him by its final decision, should have a right of appeal to the District Court.

Mr. Wartner in his 1929 report stressed the urgent need of a new revision of our code resulting in the appointment of a special committee whose report will be submitted at this meeting, and will no doubt receive appropriate action by this association at the proper time.

One of the most important questions which should have attention without further delay is a code of laws of this state with reference to aeronautics, or the navigation of the air. Many of the eastern states have such statutes at this time but so far as I have been able to find, we have no statutes in this state upon the subject.

It has also been the subject of legislation by Congress for a number of years in so far as same relates to the matter of interstate and foreign commerce finally culminating in the Air Commerce Act of 1926.

These various acts do not attempt to establish air commerce either interstate or intrastate but recognize the fact that such a thing exists and that there should be proper regulations concerning the same both by the Congress of the United States under its power to regulate interstate and foreign commerce and by the legislatures of the various states under the police power of the state.

In the July number of our American Bar Association Journal there is an interesting article on the matter of transportation by air written by William M. Allen of the Seattle Bar in which he discusses principally that phase of the matter relating to accidents and injuries to pilots and passengers on the aircraft or to people upon the surface who may be injured by a falling plane and considers the question of whether the doctrine of *res ipsa loquitur* should or should not apply. I trust many of the members of this Association have read the article.

It can readily be seen that many legal questions may arise and undoubtedly will arise in this state as well as in other states within the next few years concerning this important subject of the navigation of the air and that we should have statutory provisions regulative of this new method of transportation.

What right does an aviator have to fly over his neighbor's farm? Is he a trespasser if he does so without the consent of the owner of the land? Is the noise created by the propeller of his machine a nuisance subject to be suppressed or enjoined by the courts upon the complaint of adjoining residents?

Some of us, when we went to the law school and studied our Blackstones, were taught that the ownership of land covered not only the surface but extended to the center of the earth and to the "top of the sky." And that the doctrine of ancient rights, recognized in England at one time, was never recognized in the United States, and that the right to look across another's land could not be acquired by prescription.

Can the right to fly across it without the consent of the owner of the land be acquired by prescription or by the statutes of the state or of the United States?

The recent case of Smith vs. New England Aircraft Company, 170 N. E. 387, decided by the Supreme Court of Massachusetts on March 4, 1930, is most interesting and illustrative upon this subject and any person at all interested should get and read the decision in that case.

It was an action brought by the owner of a country estate to obtain an injunction against various parties and corporations owning and operating an air field adjoining plaintiff's property from continuing to fly aircraft over the land and buildings of the plaintiff. The Supreme Court of Massachusetts states the plaintiff's contention as follows:

> "The plaintiffs assert that the defendants have no right to fly their aircraft through the air space above their premises, or any part thereof, at any height and especially to fly at low altitude;" and, again, as follows: "The plaintiffs rest mainly on this proposition: 'The air space which is now used, or which in the future may be used, in the development of the underlying land is the private property of the land owner to which he is entitled to the exclusive use and control'."

In that case it appeared from the evidence that planes taking off and landing from the defendant's air field passed over plaintiff's property between the heights of 100 and 1000 feet and it was claimed by the plaintiff that this was a trespass and also a nuisance and should be enjoined by a court of equity upon those grounds.

The court, however, held that the regulation by the Secretary of Commerce under the United States Air Commerce Act of 1926 and the provision of the statute of the State of Massachusetts fixing 500 feet as a minimum altitude of flight by aircraft and allowing a free flight above that altitude to be a proper regulation both by Congress under the interstate commerce clause and by the state legislature of Massachusetts under the police power, and that such acts were not unconstitutional as depriving the owner of the land of his property without due process of law either under the federal or state constitution.

The court further held that the flight of airplanes at lower altitude in order to reach or take off from the airport necessitating flight over the land of an adjoining property owner at altitudes of less than 500 feet and as low as 100 feet was a trespass upon the premises of the owner of such adjoining land but under the evidence in the case held not to be such a trespass as to warrant injunctional relief.

In view of the fact that there will be no further meeting of this Association until after the next session of our Legislature, your Committee recommends that this subject be given due consideration by our

Legislative Committee before the convening of the legislative session next winter, and that after such study and investigation as they may deem proper, that such Committee prepare a North Dakota Air Commerce Act and submit same to the Executive Committee of this Association; and that in case same shall be approved by the Executive Committee, that such proposed Act be submitted to the next legislative assembly for passage.

Respectfully submitted,
JOHN O. HANCHETT, Chairman.

MR. FLETCHER: Second the motion.

PRESIDENT KVELLO: On the first recommendation made by Mr. Hanchett, any discussion on the first question as to appeals from the Workmen's Compensation Bureau decision?

MR. WENZEL: In view of the fact that I am on the program tomorrow morning and expect to discuss a part of that question, I would suggest that it might be a good idea to leave this matter open until tomorrow morning.

PRESIDENT KVELLO: Would that be agreeable, Mr. Hanchett?

MR. HANCHETT: I intended to make provision for that. That was the understanding, whatever action we took on this report may be subject to whatever action may be taken tomorrow by the Legislative Committee dealing with the subject so the suggestion of the Secretary here is agreeable to me, and in moving the adoption of the report, we may, for the present, omit the recommendation with reference to appealing to the district court from the Workmen's Compensation Bureau.

PRESIDENT KVELLO: The question then will be upon the second recommendation in the report. Is there any discussion on that?

MR. ADAMS: Is it not a fact that the Committee on Uniform Laws of the American Bar Association is now working on a uniform Air Navigation Law? I have the impression it is and if such is the case, we should wait until that is done before we do anything in our individual capacity.

MR. HANCHETT: In reply to that, I want to state I am not sufficiently posted on that to know whether it is so or not. I presume it is, now that you suggest it. I did not, however, try in this report to set forth any particular form of navigation act, only to present the idea that the State of North Dakota should have a suitable Air Navigation Act. Now I see no reason, however, why we might not adopt that part of the report and undoubtedly there will be something received from the Committee on Uniform Laws before it is time and the Legislative Committee will have the opportunity of examining it and being guided by it in drafting the legislation.

MR. MCCURDY: In connection with this air legislation, we should take some action here to impress upon the Legislature, the necessity of comprehensive, reasonable regulation of aircraft in this state. If we can co-operate with national associations, that is all the better. The situation as it now stands is very bad. We have little legislation on it placing the power in the hands of the railroad commission. The

Railroad Commission, as I understand it, has adopted the regulations made by the United States War Department and that makes it so that it is almost impossible for the ordinary individual, with the means they have in the State of North Dakota, to have a plane permit to fly. As I understand it now, only three or four planes in the state attempt to comply with the legislation which causes a great deal of hardship, and I think we should start some action now to get our legislators interested. A great many planes are unable to get off the ground as they are forbidden to fly by our regulations as they now stand. It seems to us looking at it casually that the federal regulations require such an expenditure in the way of type of plane and everything of that kind, it is impossible for practical purposes in this state. On the other hand, the danger of cracking up, as they call it, is not so great, if planes are properly equipped and made safe for flying. There is a tremendous necessity for getting some satisfactory legislation on this subject. I really believe this body should go on record as urging upon our state legislature the necessity of some sane legislation permitting reasonable flying and yet forbidding unreasonable risks. For that reason I think we ought to take some action. I don't care so much what action is taken as long as it will bring it to the attention of the Legislature and impress upon that body the importance and necessity of legislation of this character.

MR. ADAMS: The danger as I see it in the states attempting to define or control something like air navigation is that we cannot pass anything which will affect the driver of a plane coming into this state or going out. It seems to me to be foolish as a state to attempt to enact any legislation along that line. Eventually, I am almost certain, it is going to be done by the United States Congress just as our other evils have been corrected by some act of the United States rather than individual states. I am opposed to asking our Legislature to enact any legislation with reference to air navigation.

PRESIDENT KVELLO: Are you ready for the question? All those in favor of Mr. Hanchett's motion on passing that recommendation in his report, please signify it by saying aye. Contrary minded same sign. The motion is carried.

Next we have the report of the Law Enforcement Committee, Mr. L. T. Brouillard of Ellendale, Chairman. He is not here but I believe Mr. Ego, one of the members of the committee, is here, although he does not appear to be present right now.

There is one recommendation which I know they are anxious to get an opinion upon; that is on page 250 of the August Bar Briefs, as follows:

"The Committee would further suggest that the present law surrounding the State's Attorney's Contingent Fund be entirely revamped. As the law now stands it has been construed by some of the Judges to mean that the State's Attorney is compelled, in making expenditures in the investigation of crime, to act blindly and virtually spend his own funds with the hope that when he submits a statement of expenditures to the Court, the Court will approve it. The State's Attorney holds an important and responsible office and a contingent fund, reasonable in

amount, should be at his disposal in cases of emergency and he should have the power under the statute to use it in proper cases, without delay or red tape."

I presume a motion to adopt that recommendation would be in order so we can get this before you this afternoon.

MR. TRAYNOR: Is there an organization of State's Attorneys and Attorney General in the State?

PRESIDENT KVELLO: I think there is.

MR. TRAYNOR: Why is that not a subject for their consideration rather than ours? I never was State's Attorney and a lot of us never were. I don't know enough about it to know whether we should adopt that recommendation or not. I therefore move that the matter be submitted to the Association of State's Attorneys and Attorney General.

MR. ELLSWORTH: Second the motion.

PRESIDENT KVELLO: It has been moved and seconded that the matter be referred to the Association of State's Attorneys. Is there any discussion?

MR. CUPLER: It seems to me that is evading the question. We have as Chairman of that Committee Tom Brouillard of Ellendale who is State's Attorney in that county. He is a member of their association. He and his committee have looked into this matter; they have come to some conclusion; they have given us the facts and reasons and their conclusions and they say, "What do you think about it?" It seems to me we should say one thing or the other. I appreciate, of course, that all this discussion is more or less superfluous on these subjects. We are not legislative. We may go through lots of moves and get ourselves all worked up over something we are vitally interested in and yet it means nothing. It does not pass any law; that is for the legislature, but it is our inherent right just the same, as it is the right of any other organization, to come to some definite conclusion and state it for the benefit of those who are entrusted with the passage of law and that is all we can do. I assume, too, that the contingent fund of the State's Attorneys is limited as to amount. I do not know. If I thought you were going to authorize the State's Attorney to go out and spend money lavishly, I might be opposed to it, but if the contingent fund is limited, and I would say it is—he says it is and he knows as he is state's attorney—it seems to me that we should either adopt or reject the recommendations of that committee. As a substitute motion, I would move that the report of the committee on law enforcement be received and filed and that the recommendation of the committee be adopted and approved by this association at this meeting.

REPORT OF COMMITTEE ON LAW ENFORCEMENT

Your committee was fortunately made up of attorneys from adjoining counties, and as a result were able to meet at a central point and give the matter of law enforcement some serious consideration. The committee will make just two recommendations.

Paragraph XLV of the Magna Charta reads: "We will not make any justices, constables, sheriffs, or bailiffs, unless they are such as know the law of the realm and mean duly to observe it."

On considering the subject of law enforcement, this pledge of King John to the English Barons is pertinent.

Primarily, law enforcement is in the hands of the Sheriff of each county, and those acting under him, viz, deputies, constables and bailiffs. The public should be educated to the need of intelligence and a fair understanding "of the law of the realm," in those whom it selects to the office of Sheriff.

The first step in securing a higher intelligence and better understanding of the law with a resulting better service is to now urge forcefully and persistently the repeal of the present provisions of the statute which limit a Sheriff to four years in office.

It should be obvious to a mere casual observer that even a dull Sheriff will absorb some knowledge of his duties and acquire some added ability to perform those duties by experience. Making it possible to pursue indefinitely the business of Sheriff and the possibility of long service in that office, will attract to it men of intelligence and outstanding ability.

Police experience is needed in the apprehension of criminals and our Sheriffs are logically and by law charged with that work. That work cannot be done effectively under the present plan of electing these officers. The office of Sheriff requires more than candidates of outstanding ability in the art of campaigning and handshaking. What the office needs is experience and ability.

In remoulding our criminal procedure it should be realized that our greatest difficulty is in the apprehension of criminals, and it is evident that men of experience and ability are needed in the office of Sheriff, and men of that type cannot be attracted to offices of limited tenure.

The committee would further suggest that the present law surrounding the State's Attorney's Contingent Fund be entirely revamped. As the law now stands it has been construed by some of the Judges to mean that the State's Attorney is compelled, in making expenditures in the investigation of crime, to act blindly and virtually spend his own funds with the hope that when he submits a statement of expenditures to the Court, the Court will approve it.

The State's Attorney holds an important and responsible office, and a contingent fund, reasonable in amount, should be at his disposal in cases of emergency and he should have the power under the statute to use it in proper cases, without delay or red tape.

T. L. BROUILLARD, Chairman.

MR. STOCKSTAD: Second the motion.

MR. ELLSWORTH: It seems to me that this association should not approve something that it does not fully understand. It has not been fully discussed before or considered by it and it is without any value whatever. Now when a matter comes up, as it does come, when no

member of the committee that recommends the approval of certain subjects is present, and I do not know anything more about it than I do about this, in fact I don't understand this at all, it does not seem to me that the Association should put its seal of approval on it; if there is anyone here who can elucidate the matter and tell us what it is all about, I might change my mind. Just now I don't feel like approving it.

PRESIDENT KVELLO: Any further discussion? If not, those in favor of the substitute motion, will they please signify by saying aye? Contrary minded the same sign. The ayes have it.

There is one other recommendation in this report at the top of the page, urging the repeal of the present provision of the statute which limits a sheriff to four years in office.

Mr. Brouillard has since written me that this will have to be in the form of a constitutional amendment but the question of whether or not you want to express an opinion on that proposition by adopting that suggestion in this report is before the house. If there is none, that part of the report will be passed.

There is one committee which did not report this morning, which I think is ready to report now, "The American Law Institute." I think we have time before the adjournment, we have twenty-five minutes. I will ask Professor Vieselman, State College of Law, to make that report as the other members of the committee are not here.

MR. VIESELMAN: Mr. Chairman, Members of the Bar Association: It is rather unfortunate that Dean Cooley and Professor Thormodsgard are both unable to be here. They had planned on being here today but owing to unforeseen events, they were unable to be present. I suppose as a member of the law faculty I can substitute and make the report. The report Mr. Thormodsgard handed to me last evening is very brief and I will read it to you.

REPORT OF COMMITTEE ON AMERICAN LAW INSTITUTE

The Eighth Annual Meeting of The American Law Institute was held in Washington, D. C., in May, 1930. The Code of Criminal Procedure, Restatements of the Law of Contracts, Conflicts of Law, Agency, Property, and Trusts were taken up for consideration. Progress in the restatement of the common law has been so promising that the Institute has considered the problem of publishing them in permanent form. The Restatements will be of greater value to the members of the bench and bar provided they are annotated in reference to the judicial decision and statutes of their local state.

At the 1929 Conference of Co-operating Committees held in Chicago this problem was fully considered and the following resolution was adopted:

Resolved, that it be the sense of this meeting:

1. That the project of preparation of local annotations to the Restatement of The American Law Institute should be so organized in each state that the material comprising each annotation be ready for publication at the time of the completion of the official draft of the respective Subjects.

2. That the work should be carried forward in each state by co-operating among bar associations, Judges' association, if any, and the law school or law schools in each state.

3. That the American Law Institute is requested to arrange for printing and publication of the drafts of the Restatements with annotations, and to co-operate with those in charge of such project in the various states.

Many State Bar Associations have made favorable arrangements for their local annotations. The so-called Cornell plan is to let the law school annotate the Restatement and submit it to a co-operative of the state bar association. Another method would be to appoint several committees within the State Bar Association and give each committee a subject for local annotations. Usually the busy lawyer and judges are too much occupied with their professional duties, which prevents them from contributing more of their time to the annotations. The Cornell plan is the more suitable.

Resolved, that it is the sense of this meeting:

1. That the faculty of the University of North Dakota Law School be officially recognized as the representative body of the North Dakota Bar Association to annotate the Restatements to the North Dakota laws.

2. That the North Dakota Bar Association and its representative body, the Law School, co-operate with the South Dakota Bar Association and the University of South Dakota Law School in annotating the Restatements to the Dakota Laws.

O. H. THORMODSGARD.

Now just a word of explanation before that is considered. Most of you know the American Law Institute is not trying to frame a code of statutory law, but merely trying to re-state the common law as generally accepted throughout the United States. They have practically completed the re-statement of the law on contracts and want to have final draft ready in the fall of 1931. Each of these drafts, the tentative draft or the proposed draft has been considered each year by the conference of the American Law Institute held each spring in Washington, D. C., by judges, lawyers and other persons interested in the formulation of the common law. Now each of these goes through practically three years consideration being sent out to American Law Schools and others for the purpose of criticism and comment in an attempt to get down to the basic principle of the common law in each of the states. As the matter now stands the work on conflicts of laws and on contracts will be ready for final publication in the fall of 1931.

At the conference of cooperating state committees, feeling it is desirable to have annotations from each of the 48 states ready at that time, suggested that the bar simply take action this year to appoint their own committees or authorized members of the faculty in each state in the Union to prepare annotations for that particular state. Dean Goodrich, who is president of the Law Institute, suggested that the Association would prefer to have the annotations from North Dakota and South Dakota published as one pamphlet rather than separate. The American Law Institute, you know, is financed by endowment

partly from the Rockefeller and Carnegie foundations and certain other sources will pay the expense of publication involving no appropriation, on behalf of the Bar Association.

They do not care to have law schools or others, without some kind of official recognition or official authorization from the State Bar Association, proceed with the annotation of the North Dakota law. Some of the sections on contracts have been annotated.

The American Law Institute has requested that all law schools assist to do this annotation work and cooperate with them in the other work of annotating every subject. At this time, there are only two subjects now ready, they are contracts and conflicts of law. As one of your speakers has mentioned, they have drafted a tentative code of criminal procedure attempting to pick out what they consider the best in the various courts, and proceedings.

As you probably know the restatement does not contain the citation of any authority. Those who have prepared the restatement have used only material which stands on its own merits and own strength as a result of the opinion of judges and others who have worked upon the same.

The question always comes before the lawyer in Minnesota or the Dakotas or any other state, "Is this the rule in Minnesota?" The only way to answer that is to have the annotation to his particular state. He will either have to do it himself, use the re-statement, or have some one to do it for him. Recognizing this, the American Law Institute at the meeting last May passed a resolution they would publish without expense to the Bar Associations of the respective states pocket sized pamphlets in which are to be inserted the annotations to each of these branches of substitute law in the state, and the purpose of these two resolutions. The first is to have the faculty of the University Law School recognized as the body to do the work, to take up this matter of annotating these subjects as they are ready for annotation. The regular committee of this association cooperating with the Law Institute will review the work submitted for criticism or correction and discussion and merely get the work under way at this time. The purpose of the second resolution is to authorize our law school to adopt the first resolution to cooperate with the law school of the University of South Dakota in preparing annotations under the law of both North and South Dakota on these various subjects. I move the adoption of the two resolutions on behalf of the committee.

MR. KVELLO: You have heard the resolution and motion.

MR. C. J. MURPHY: Second the motion.

MR. CUPLER: I would like to ask a question to enlighten me on this subject, that combining the annotations of South Dakota with those of North Dakota, is it the plan to have the annotations of South Dakota and North Dakota combined in one pamphlet, and if so, in what manner are they to be separately stated?

MR. VIESELMAN: I do not believe details have been worked out. The idea in publishing the pocket supplement, they propose to issue bound volumes with the entire annotations therein—pocket supplements

such as you have in the United States Court. The pocket supplement will be kept up to date by the American Law Institute referring to specific sections. They suggest some states have so few decisions, for example, on conflict of law or various other things, they would prefer in certain instances to combine states rather than have each state separate; rather than to publish 48 supplements, like North and South Dakota, combining the two. These are merely suggestions of Dean Goodrich, however.

MR. CUPLER: The reason I asked that question was because it is sometimes confusing in construing a statute to read the decisions of South Dakota in construing North Dakota statute on any principle of common law that has any relation or is affected by statutory law because South Dakota laws have been changed, many of them, since the states were divided and there would be a mass of material, too, it seems to me, from South Dakota courts, that would have no bearing upon the question they intend to cover and it would seem to me that the annotation of the text should be separate so far as North Dakota is concerned and that the work of the North Dakota Law School should be independent of the South Dakota Law School, not meaning that the two need not exchange ideas and might not get assistance from each other, but when it comes to final results, I think the much better and easier record would result if the North Dakota decisions were kept separate from South Dakota. You take your compiled statutes and take the annotations, you will find South Dakota decisions and North Dakota decisions and you will read dozens of decisions that have no application whatever perhaps.

Another question I would like to ask, I understand this plan simply calls for official approval of this association to this action by the university and is in effect, you might say, the plan of the American Law Institute to have its work sanctioned and proven by the Board as it comes along so when it is finally gotten out, it will be taken with some degree of authority by the courts and bar.

PRESIDENT KVELLO: I think that is correct.

MR. CUPLER: It doesn't involve any expense to the Bar?

MR. VIESELMAN: No expense to the State Association. This same plan has been followed in New York where they first worked out this plan. It is now being carried on in Illinois and Michigan and a number of other states. There is no expense involved to the Association whatever.

MR. CUPLER: Would there be any advantage in having the Supreme Court of North Dakota added to the faculty of the Law School in an advisory way, at least?

MR. VIESELMAN: The idea was to start in with the work of annotating the law of contracts. We just want the authority from this association that we would be authorized to go ahead with their representative.

A MEMBER: Would there be any objection to adding to the resolution you have prepared that it is the wish of this association that the Committee on the American Law Institute be selected from this association and also the Supreme Court of the State of North Dakota be added to it?

PRESIDENT KVELLO: With this addition to the motion, is there any further discussion?

MR. VIESELMAN: If there is objection to the second resolution, I am willing to withdraw the second resolution with reference to the South Dakota Association and merely have the first resolution voted on. It was merely a suggestion in a personal letter from Dean Goodrich and if there is objection, I will withdraw the second resolution with the consent of my second and move the adoption of the first resolution.

PRESIDENT KVELLO: Are you ready for the question?

MR. BURKE: I was just wondering if making the members of the Supreme Court an Advisory Committee, it might not embarrass them sometimes on some question concerning their advice which may come before them.

PRESIDENT KVELLO: Isn't it all right to embarrass the Supreme Court?

MR. BURKE: They are embarrassed enough now.

MR. CUPLER: The Supreme Court could refuse to act on the committee and that would settle the situation.

MR. BURKE: Yes, they could do that.

MR. VIESELMAN: Answering Judge Burke's question in making out the annotation, would merely mean they satisfy the law of contracts. I believe there are something like 170 sections on this subject. In decisions where the annotations would appear, we would merely say, for example, on the rule of whether a beneficiary can sue on a contract, North Dakota decisions either favor or oppose the restatement and would cite North Dakota decisions on those questions, while the Advisory Committee would merely be subsidiary to the faculty of the law school. If there was any place, then, where the committee felt they were unable to say whether the rule was definite or indefinite, we assume that could be qualified.

PRESIDENT KVELLO: Are you ready for the question? All those in favor of the motion, please signify by saying aye. Contrary minded the same. It is carried.

MR. VIESELMAN: I withdraw the second recommendation.

MR. ADAMS: I would move that we adopt the second resolution. We are working with them on the digest and if it is going to save them some expense, I would move the adoption of the second recommendation.

MR. KNAUF: Second the motion.

PRESIDENT KVELLO: Any discussion? If not, please signify by saying aye, all those who are in favor of this recommendation. Contrary minded the same sign. Carried.

PRESIDENT KVELLO: We will stand adjourned until tomorrow morning at nine o'clock.

H. A. BERGMAN, K. C.
President Manitoba Bar Association
Winnipeg, Canada

"A BRIEF OUTLINE OF SOME OF THE PRINCIPAL DIFFERENCES BETWEEN THE CANADIAN AND AMERICAN SYSTEMS OF THE ADMINISTRATION OF JUSTICE"

H. A. BERGMAN, K. C., Winnipeg

President Manitoba Bar Association

In any comparison between the system of the administration of justice that prevails in Canada and that which prevails in the United States the first question that naturally arises relates to the manner of selection of judges. The short answer to that question is that in Canada the election of judges by popular vote is absolutely unknown. In Canada every judge, from the judges of the Supreme Court of Canada down to the humble justice of the peace, is appointed. We have in Canada two courts created under Dominion, or, as it would be called here, Federal, authority, namely, the Supreme Court of Canada and the Exchequer Court. The other courts are created by provincial, or, as it would be called here, state, authority. In each province we have a provincial court of appeal for that particular province, corresponding to your State Supreme Court. We also have in each province a superior trial court, which corresponds to your District Court. It is variously designated in the different provinces. In Manitoba it goes by the name of the Court of King's Bench during the reign of a king and Court of Queen's Bench during the reign of a queen. In addition to this we have in each province an inferior trial court, which in some of the provinces is designated the county court and in others the district court. Its jurisdiction is limited both territorially and as to amount. In Manitoba the County Court has jurisdiction in cases involving amounts up to $800.00, In some of the other provinces the jurisdiction extends as high as $1,500.00. So far as I know you have no court in North Dakota corresponding to our county courts. The nearest approach is your county court with increased jurisdiction.

The judges of all these courts that I have mentioned, that is to say, the Supreme Court of Canada, the Exchequer Court of Canada, the provincial courts of appeal, the Court of King's Bench and County Court are all appointed by the Dominion, or Federal, government, and are appointed for life. There is one marked difference between the manner of appointment of these judges by the Dominion government and the appointment of your Federal judges, and that is, that in the United States judicial appointments are subject to confirmation by the Senate. In Canada no such confirmation is necessary. The appointment of a judge is formally made by the passage of an order-in-council by the Dominion government, or, as you would designate it, the Cabinet, and that is the end of it. Neither the House of Commons nor the Senate has anything to say about it.

It may also be of interest to you to know that the salaries of all these judges that are appointed by the Dominion government are paid by the Dominion government and not by the provinces. If you had the same system in your State you would, therefore, not only have the Federal government at Washington appointing the judges of your State Supreme Court, your district courts and your county courts of increased jurisdiction, but also paying their salaries.

The judges of the surrogate or probate courts are, for some reason which has never been satisfactorily explained to me, not included in the list of judges to be appointed by the Dominion government under the British North America Act. They are, therefore, appointed by the provincial governments and hold office only during pleasure. In practice the provinces have appointed as their surrogate or probate court judges the county or district court judge for that district, and the appointment is, therefore, to all intents and purposes an appointment for life. Their salaries as surrogate court judges are paid by the provincial government by which they are appointed.

Police magistrates and justices of the peace are appointed by the provincial governments. Their salaries are paid by the provincial governments and they hold office during pleasure.

In the matter of salaries our judges are treated generously as compared with the judges of the State courts in the United States. In the Supreme Court of Canada the chief justice receives an annual salary of $15,000.00 and the associate or puisne judges receive $12,000.00 each. In the Exchequer Court the president receives an annual salary of $10,000.00 and the associate judge receives $9,000.00. In the provincial superior courts, that is to say, both in the Court of Appeal and Court of King's Bench (corresponding to your State Supreme Court and District Court) the chief justice receives an annual salary of $10,000.00 and the associate or puisne judges receive $9,000.00 each. The judges of the county court receive a salary of $5,000.00 a year. In addition to this they receive from the province their salary as surrogate court or probate court judges. In Manitoba this is $1,500.00 a year for the judges outside the Winnipeg district and $2,500.00 for the judges of the Winnipeg district, which brings their annual salary up to $6,500.00 and $7,500.00 respectively. I may add that our judges feel that they are underpaid, and a strong agitation for salary increases has now been going on for years with the backing of the Canadian Bar Association, and I fully expect that in the very near future a substantial increase in salary will be granted to all our judges.

We also have a fairly liberal provision for pensions or retiring allowances and I understand that this provision was made even more generous at the last session of the Dominion Parliament. I have, however, not been able to definitely verify this, as the statutes passed at the last session have not yet been printed.

In my humble opinion our system of appointing judges for life—the system that prevails in the case of your Federal courts—is superior to the system of electing judges by popular vote for a short term. It, of course, has its drawbacks. I am free to confess that the record of both our leading Canadian political parties in the matter of judicial appointments has been rather discreditable. In the main they have been made as rewards for party service. The question is not approached in a non-partisan spirit and no serious attempt is made to find the best available man. So far as my personal knowledge goes there is only one case on record—there may, of course, be others that I know nothing about—of a Canadian government appointing to the Bench a man of a different political faith. That was when the Liberal government headed by Sir Wilfred Laurier in 1903 appointed Mr. Wallace Nesbitt, a Conservative, to the Supreme Court of Canada, because of his eminence at the Bar. Mr. Nesbitt unfortunately remained on the Bench for

only about two years because his official salary (then only $7,000.00) was so much less than he was making in private practice that the financial sacrifice was greater than he could afford to make and he resigned, and the Bench thereby lost one of the ablest lawyers Canada has ever produced. This may, however, have served the useful purpose of focussing attention on the ridiculously low judicial salaries that were then being paid, for, as a matter of fact, all our real progress in the matter of judicial salaries is subsequent to that date.

In spite of the fact that in Canada the appointments to the Bench have been dictated very largely by political considerations and that, with isolated exceptions, the leaders of the Bar have not been drafted for service on the Bench, the result produced has been fairly satisfactory. The security of tenure and the knowledge that the work they were taking up would be their line of work for the rest of their lives, has made these men apply themselves whole-heartedly to their work and made them independent of all considerations other than their oaths of office. Our judiciary has been singularly free from any suggestion of party subserviency or corruption or outside influence or control in any shape or form.

I do not for one moment suggest that our Bench is in any respect superior to your own. I freely confess that our system has produced judges that we would have given almost anything to get rid of, and that our Canadian politicians have not shown any greater discrimination in their appointment of judges than have your people in the selection of their judges by popular vote. I also frankly acknowledge that in recognizing that the only proper method of selecting judges is on a non-partisan basis and in giving effect to that view by providing a non-partisan judicial ballot you are not only a step in advance of your Canadian brethren but have actually reached an advanced position that we may never attain in Canada under our appointive system. But I do think that appointing judges for life tends to produce a more independent judiciary and a more experienced judiciary than is possible under the system of frequent changes that result from election by popular vote for a short term. And I certainly think that it is a fairer system. Anyone who goes on the Bench, who is worthy of the position, gives up a practice usually worth more than his official salary and burns all his bridges behind him. If, after a term or two on the Bench, he fails to be re-elected, he finds his clients scattered and his practice gone and finds it necessary to start all over again—perhaps in a new location—and build from the ground up. That is a sacrifice that no man should be asked to make. I feel that a man who goes on the Bench should be free from financial worries and free to devote his entire and undivided energies to his judicial work, secure in the knowledge that his tenure of office can be imperilled only by his own misconduct, and that when old age overtakes him and he can no longer work he will be properly provided for by an adequate pension. The only system that can offer this is the system of tenure for life—either by appointment or election for life—with an adequate salary during the period of service and an adequate retiring allowance or pension when through old age or failing health a judge is no longer able to work.

Where, as under your system, there is neither security of tenure nor provision for old age, it should be self-evident that, as a matter of elemental justice, the salaries paid to the judges should be paid on

a more liberal scale than under a system of appointments for life. But the very reverse is the case. If I may say so, without offense, your judicial salaries strike me as being unreasonably low. You pay only about one-half of what we pay in Canada and only about one-fifth of what similar judges are paid in England. I happen to know personally several of the members of your judiciary and the general calibre of the men you have on the Bench in this State, and it strikes me that, measured by the judicial salaries you pay, you are in this State getting a much higher quality of service on the Bench than you either pay for or deserve. When the time comes that you feel that a revision of judicial salaries should be made, your organization is the only one that can supply the strong leadership necessary to bring it about.

I hope you will pardon this slight digression.

I shall now proceed to discuss the actual administration of justice, and I shall discuss it under the two main divisions into which it naturally falls, that is to say, civil and criminal.

All the provinces in Canada, with the single exception of Quebec, are common law provinces and have by statute introduced as part of their jurisprudence not only the substantive law of England, both common and statutory, but also English rules of evidence, practice and procedure as they stood on the date specified by the statute and in so far as the same can be made applicable. This date varies in the case of the different provinces. In the case of Manitoba, Saskatchewan and Alberta—the three so-called Prairie Provinces—the date is July 15th, 1870.

Our civil procedure is governed almost entirely by rules of practice and procedure framed by the judges themselves and providing much greater flexibility than in the case of a statutory code of procedure. Under these rules very wide discretionary powers are conferred on the judges in order to prevent the rules from being used to defeat justice. As a matter of fact our Canadian judges are given such wide discretionary powers in the matter of the control of the procedure in their courts as to be almost startling to an American lawyer. In practice, however, it works out very well, and there is no thought of curtailing these powers in any respect.

Our trials of civil cases are conducted along very much the same general lines as in your courts, with this important difference that most of our civil cases are tried by a judge without a jury. This results in the less rigid application of the technical rules of evidence. The conduct of the trial is stripped of a good many of the technical safeguards that are deemed necessary in the case of jury trials. The outcome of a case under this system is, therefore, a good deal less of a gamble than in the case of a jury trial and, on the whole, I believe the results are more satisfactory. The system, however, has its drawbacks. Your system undoubtedly produces both lawyers and judges whose knowledge of the technical rules of evidence and procedure and their proper application is superior to ours. Your system also provides greater scope for the display of real advocacy, and I believe that the leaders of your Bar are, therefore, better trial lawyers and more skilful advocates than the leaders of our Bar.

Under our system jury trials are a matter of right in certain classes of cases, and a judge can order a jury trial in any case. Where we have jury trials, they are conducted similarly to your jury trials, except

that we spend much less time in the selection of the jury. The manner in which you conduct your jury trials and the manner in which we conduct ours is, therefore, not the matter of difference, but the real difference between the two systems lies in the fact that most of our civil cases are tried as non-jury cases and that most of your civil cases are tried as jury cases.

In at least three important respects our procedure at the trial differs from yours.

Under our system the cross-examination of a witness is not limited to matters touched on in the examination in chief. A witness once in is in for all purposes and can be cross-examined on all matters relevant to the case. In short, when a witness has been called by one side, although it may be to prove only one point, such as the signature to a document, the cross-examining counsel is not limited to that one point but is entitled to pump the witness dry. Under your system, as I understand it, the cross-examination would be limited to the point covered by the examination in chief; and, if the opposite party wishes to have the evidence of the witness on some other point, he must call him as his own witness for that purpose. Here again your system furnishes greater scope for the skill of the lawyer at the trial, but the real question is, which system better tends to promote the interests of justice. A good deal can, no doubt, be said for and against both systems.

A second important difference is in the course to be followed when the defendant believes that the plaintiff at the close of his case in chief has failed to make out a case. Under your system, as I understand it, he may under the statute move for a dismissal at the close of the plaintiff's case in chief, when the plaintiff abandons or fails to substantiate or establish his claim or cause of action, but the order granting the motion, if it is granted, is not under the statute a final determination of the action and the plaintiff may sue again. If the motion is not granted the defendant may stand upon his motion, or he may introduce evidence proving any defense which he may have and at the close of all the testimony he may renew his motion, and if he is entitled to a judgment of dismissal upon all the evidence then in the case, the motion should be granted. If the motion is denied he may appeal, and if granted the plaintiff may appeal. Either party to an action may at the close of the testimony move the court to direct a verdict in his favor, and if the adverse party objects thereto, such motion shall be denied and the court shall submit to the jury such issue or issues, within the pleadings on which any evidence has been taken, as either or any party to the action shall request, but upon a subsequent motion, by such moving party after verdict rendered in such action, that judgment may be entered notwithstanding the verdict, the court shall grant the same if, upon the evidence as it stood at the time such motion to direct a verdict was made, that is at the close of the testimony, the moving party was entitled to such directed verdict. The ruling of the court upon the motion for a directed verdict is a final determination of the action, subject to the right of appeal by the party against whom it is adversely entered. Under our system, on a similar state of facts, the defendant at the close of the plaintiff's case in chief moves for a nonsuit. If that motion is denied, he must then decide whether he will stand on his motion or call evidence. If he calls evidence, he in effect abandons

his motion; and, if at the end of the whole case the plaintiff is entitled to succeed, judgment is given in his favor. Here again your system furnishes greater scope for the skill of the lawyer at the trial.

A third difference between our procedure and yours is in the matter of granting new trials. Under our system new trials can be granted only by the Court of Appeal, and the trial Court has no power to grant a new trial under any circumstances. The net result is that under our system a new trial is both more difficult and more expensive to get than it is under yours, and applications for new trials are not as frequent as under your system, and once the case gets into the Court of Appeal a very clear case has to be made out for a new trial, especially in non-jury cases, or a new trial will be refused. I am inclined to believe that you have the superior system. Under what circumstances a new trial should be granted is a matter of policy or principle which I do not propose to discuss, but I do feel that where the prescribed grounds actually exist the speediest and least expensive method of obtaining it is the best. I can see no logic in putting a litigant to the delay and expense of an appeal in the first instance, and I think that your system has the advantage of being both more expeditious and less expensive than ours and at the same time being just as efficient.

I shall now pass to the field of criminal law, which will probably interest you more.

First let me point out that our provinces have no right to legislate in the field of criminal law. The subject of criminal law is by the British North America Act assigned exclusively to the Dominion Parliament. We, therefore, have in Canada no provincial criminal law in the strict sense. The criminial law is, therefore, the same throughout Canada, being in the form of a criminal code passed by the Dominion Parliament. We have in Canada no question of extradition as between the different provinces as you have between your different states. If a criminal commits a crime in one province and then escapes into a neighboring province the procedure for getting him back is simplicity itself. A warrant for his arrest is issued in the jurisdiction where the crime was committed. It is then sent to a justice of the peace or a police magistrate in the province where the criminal then is, and the justice of the peace or police magistrate to whom the warrant is sent then makes an endorsement on the warrant authorizing it to be executed in that province and that is sufficient authority for making the arrest. This is commonly referred to as backing the warrant. The accused is then arrested and brought back without further ceremony.

In the case of all the more serious offences the accused can demand a jury trial as a matter of right, but, strange to say, the number of jury trials in criminal cases is somewhat rapidly decreasing. We have in all the larger centres of population police magistrates with an extended jurisdiction who can try a large variety of offences on the consent of the accused, and when the accused elects to be so tried, it is spoken of as a summary trial. In Winnipeg, for example, a relatively large percentage of all criminal cases is summarily tried and disposed of by our police magistrates on the election of the accused. Where the accused elects to be tried by a jury, the police magistrate merely conducts the usual preliminary hearing and, if a sufficiently strong case is made out, the accused is committed for trial at the next assizes, that is to say, the next sittings of the Court of King's Bench for the trial of criminal

cases. After the accused has been so committed for trial he can either wait and be tried by a jury at the next assizes or he can elect to have what is designated as a speedy trial, which is a trial before a County Court or King's Bench judge without a jury. This right of election to have a speedy trial is absolute, except that where the offence charged is punishable with imprisonment for a period exceeding five years the Attorney General of the province can insist that there be a jury trial, and the Criminal Code expressly requires that certain of the most serious offences, such as treason, piracy, rape and murder, shall be tried by a jury.

In Manitoba the number of speedy trials as compared with jury trials in criminal cases is rapidly growing, so much so that we are fast approaching the point, if we have not actually reached it, where a jury trial in a criminal case is, relatively speaking, as uncommon as a jury trial in a civil case.

A jury trial in a criminal case under our system is very similar to a jury trial under yours, except that very little time is spent in selecting the jury. We have a somewhat more flexible procedure and the hands of our judges are less tied by statutory rules and provisions. Our judges are also at liberty to comment on the evidence so long as they fairly leave questions of fact to the jury and make it clear to the jury that it is the sole judge of the facts and not bound in any way by the judge's view of the facts. It is the duty of the judge to see to it that the rights of the prisoner are safeguarded in every way and that no improper evidence is admitted whether objected to or not.

It will probably strike you as startling when I point out that under our system the right of appeal in criminal cases is more restricted than in civil cases. Our courts aim to give the accused a fair trial, but not necessarily a trial that is flawless in the sense of being without technical defects. Our appellate courts do not grant new trials in criminal cases unless they are satisfied from a perusal of the entire record that the error complained of is such that it has resulted in a substantial, as distinguished from a purely technical, wrong to the accused. This rule is prescribed by the Criminal Code. Until 1923 this statutory provision was worded as follows:

> "1019. No conviction shall be set aside nor any new trial directed, although it appears that some evidence was improperly admitted or rejected, or that something not according to law was done at the trial or some misdirection given, unless, in the opinion of the court of appeal, some substantial wrong or miscarriage was thereby occasioned on the trial: Provided that if the court of appeal is of opinion that any challenge for the defense was improperly disallowed, a new trial shall be granted."

In 1923 the procedure in criminal appeals was considerably changed and a somewhat more extended right of appeal given in criminal cases, including the giving of the right to both the accused and the Crown to appeal in the matter of sentence. This was done to bring our procedure more in line with that introduced in England on the creation of the English Court of Criminal Appeals. The new statutory provision, however, retains the former safeguard that, before setting aside a conviction the court of appeal must be satisfied that the

accused has as a result of the error complained of suffered a substantial wrong. The material portion of this new section (R. S. C. 1927, ch. 36, sec. 1014) reads as follows:

> "1014. On the hearing of any such appeal against conviction the court of appeal shall allow the appeal if it is of opinion
>
> (a) That the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence; or
>
> (b) That the judgment of the trial court should be set aside on the ground of a wrong decision of any question of law; or
>
> (c) That on any ground there was a miscarriage of justice; and
>
> (d) In any other case shall dismiss the appeal.
>
> (2) The court may also dismiss the appeal if, notwithstanding that it is of opinion that on any of the grounds above mentioned the appeal might be decided in favour of the appellant, it is also of opinion that no substantial wrong or miscarriage of justice has actually occurred."

I believe that I can safely say that the manner in which our appellate courts have construed and applied this provision, and their general attitude towards purely technical objections, are largely responsible for the reputation which our courts deservedly enjoy in the matter of the administration of the criminal law. It is also my opinion that our appellate courts have felt more free to adopt that attitude because our trial Judges as a rule impose only moderate sentences.

That brings up a question that may startle you. It is this: Are you aware of the fact that the sentences which your courts impose on a person convicted of a crime are very much more severe than any court in Canada would dream of imposing?

Since coming to Canada I have often wondered whether the severity of the sentences imposed was not really a weakness—perhaps the great weakness—in the American administration of criminal law. I have wondered whether these severe sentences did not really defeat their own purpose. I am not surprised that under that system public opinion should demand that adequate safeguard, both technical and otherwise, should be thrown around a person accused of crime. I am not surprised that under that system appellate courts insist that the technical and other rights of the accused be strictly observed before he is deprived of his liberty for 15 or 20 or 30 years. I would be all in favor of that myself, and I would be opposed to the removal of any of these safeguards so long as these severe sentences prevailed. And yet I like to think of myself as a reasonably law-abiding citizen.

In Canada the sentences are very moderate compared with those that prevail in the United States. A sentence to a term of three to five years is regarded in Canada as a very severe sentence. In the case of first offenders only a very light sentence or a suspended sentence is imposed. It is only the hardened criminal, whose past record shows that

he has deliberately embarked on a life of crime as a means of livelihood and who is charged with the commission of a serious offense who ever gets a severe sentence; and, as already pointed out, what is regarded as a severe sentence in Canada would be regarded as a comparatively light one in the United States.

If you turn to England, which has a record for the successful administration of criminal law, surpassing both the United States and Canada, you will find that the sentences imposed are considerably lighter than those imposed in Canada.

I draw your attention to these facts as facts and leave it to you to draw your own conclusions. I do not pose as a criminologist and I realize that my own conclusions are not of any value. I, therefore, merely wish to leave with you this question: Is it not more likely to create a feeling of greater respect for the criminal law and its administration when it is known that a guilty person brought to trial is reasonably sure (1) of being convicted; (2) of receiving a punishment that even he must recognize is nothing more than what is fair under all the circumstances, and (3) of staying convicted and of actually serving the moderate sentence that is imposed, than it is to have a system of imposing sentences that are so severe as to lead (1) to the imposition of statutory safeguards of a highly technical and inflexible nature to guard against the possibility of an improper conviction; (2) that makes juries hesitate to convict except in a copper riveted case, and (3) that makes appellate courts hesitate to uphold convictions when the purely technical rights of the accused have been infringed and thus leads to the severe, and what some may regard as the excessive, punishment of the few and the escape of the many.

The system of prosecuting criminal cases in Canada is entirely different from that which prevails, say in North Dakota. We have an Attorney-General for the province and he has charge of all criminal prosecutions in the entire province with the exception of the comparatively few cases that are undertaken as private prosecutions. In Manitoba the Attorney-General has his own staff to look after prosecutions in the Winnipeg district. In the outside judicial districts he appoints local lawyers as crown prosecutors. They are responsible directly to him and hold office during pleasure. This system has the advantage of centralizing the control and centralizing the responsibility in the matter of criminal prosecutions. It is also supposed to produce more impartial prosecutors by removing the temptation to which an elected prosecutor is supposed to be exposed of seeking to secure conviction at any cost in order to make a record for himself and thus increase his chances of re-election. In the main the system has worked satisfactorily in Canada and is likely to be maintained there. Whether it, however, works any better or more satisfactorily than your own system is a matter about which I am not qualified to express any opinion.

Our system of appellate courts is very different from your own. We have in each province a court of appeal for that particular province which corresponds to your State Supreme Court. Our provincial courts of appeal are, however, not courts of last resort for the province in the sense in which your State Supreme Courts are for the state. There are two higher courts of appellate jurisdiction.

The Supreme Court of Canada is not like the Supreme Court of the United States, a purely Dominion or Federal court, but is a court of general appellate jurisdiction to which an appeal lies from the provincial courts of appeal in all cases, subject only to certain statutory restrictions as to the amount that must be involved or to leave to appeal being obtained where, though the amount involved is small, an important principle is at stake. Quite recently the Manitoba Court of Appeal in the case of R. M. of Assiniboia v. Montgomery, 38 Man. 527; (1930) 1 W. W. R. 500, granted leave to appeal to the Supreme Court of Canada because an important principle was involved although the judgment from which the appeal was being taken was only for the sum of $11.00 without costs.

The Supreme Court of Canada is, however, not the final court of appeal for Canada. That distinction belongs to the Judicial Committee of the Privy Council, which sits in London, England. The right to appeal to the Privy Council is quite circumscribed and the tendency is to restrict these appeals more and more. At present, however, an appeal can in a proper case be taken to the Privy Council either from the Supreme Court of Canada or directly from the provincial court of appeal and skipping the Supreme Court entirely.

Under our system any question that is settled by a decision either of the Supreme Court of Canada or the Privy Council is settled, not merely so far as the particular province from which the appeal is taken is concerned, but also so far as the whole of Canada is concerned. This system naturally produces a uniformity as between the different provinces that is not possible as between the different states under your system. That uniformity is even more necessary and desirable with us than it is with you, for we have so many subjects that the Dominion Parliament has the exclusive right to legislate on, and in which the legislation is, therefore, the same throughout Canada and it is consequently desirable that the interpretation of that legislation should be uniform. I have already mentioned that we have a Dominion criminal law. Similarly we have a Dominion divorce law, a Dominion bankruptcy law, a Dominion law on banking and a Dominion law on bills of exchange and promissory notes, to mention only a few. We would, therefore, soon have a chaotic condition if there was not some court possessing the jurisdiction to authoritatively settle the proper interpretation of that law throughout Canada. On the other hand there is the perfectly obvious objection to our system that it tends to prolong litigation and to render it more expensive and that appeals to the Supreme Court of Canada and the Privy Council are quite beyond the means of the average litigant.

I should add that we have no provision in any of our appellate courts for the filing of a petition for a rehearing. If they make a mistake, the only method provided for correcting it is by a further appeal. I regard this as a distinct weakness in our system, and I should like very much to see your system introduced in Canada.

In the matter of taxable costs allowed to the successful litigant there is a radical difference between your system and ours. Under your system, practically speaking, each litigant bears his own burden except for the matter of witness fees and some other minor disbursements. Under the Canadian system an award of costs of suit means something approximating the full reimbursement of the successful

party for all costs necessarily and properly incurred by him in connection with his conduct of the litigation, including, of course, a reasonable allowance for lawyers' fees. Manitoba has a modified form of this, the taxable costs at the trial, exclusive of disbursements, being limited to the sum of $300.00, and in the Court of Appeal being limited to the sum of $100.00. Our statute, however, allows the trial judge and the judges on appeal to remove this statutory bar in certain cases and to allow full taxable costs.

Whatever may be the theoretical advantages of one system over the other and whatever may be said for or against them as a matter of abstract justice, I will say this, that after twenty-five years spent in Canada and after a not inconsiderable experience in the way the Canadian system actually works out in practice, I am thoroughly convinced that you have the superior system. Under the full indemnity system the total ultimate costs of litigation are so uncertain and so high that it discourages litigation, and where litigation is actually undertaken they may be absolutely ruinous. Submitting disputes to the courts for adjudication then becomes, not a simple and reasonably inexpensive method of obtaining justice open to all classes, but a gamble in the matter of costs that only the well to do can afford to make and the doors of the courts are in effect closed to the average citizen. Under our system no one embarking on a lawsuit knows where it is going to land him if he loses out. Under your system a prospective litigant can sit down with his lawyer and figure out in advance with reasonable certainty exactly what his situation will be in either event of his suit. Our system, on the other hand, instead of merely furnishing fair reimbursement to the successful litigant, which is all that it theoretically aims to do, holds out a direct temptation to the unscrupulous lawyer to gouge exorbitant fees from the adverse litigant and thereby bring discredit both on the legal profession and the administration of justice as well as financial ruin on the unsuccessful litigant who is his unwilling but helpless victim. I, therefore, feel that, both from the standpoint of the reputable practising lawyer and also that of the litigant, you approach this question from the right angle and have the fairer and better system.

The Manitoba system is perhaps the worst of them all, not because a statutory limitation as to the amount taxable is inherently bad—personally I believe that the principle is sound—but because of the attitude of our King's Bench judges towards it. Two of our King's Bench judges trained in the old school are frankly opposed to the principle of any limitation and carry their prejudices so far as to remove the statutory bar on the slightest pretext and in effect nullify the law. The remaining four King's Bench judges observe the spirit of the law and very seldom remove the statutory bar. The result is that we never know where we are at, as we never know in advance who the trial Judge is going to be, and we consequently are unable to advise a client with any degree of certainty as to what proposition he is up against in the matter of costs if he fails in his action.

I shall conclude by referring briefly to the formalities that attend the holding of our courts. In all our superior courts the judges and lawyers are specially robed, that is, they wear gowns, black coats, white shirts and bands. In England they wear, in addition, wigs, but these have been done away with in Canada. On chamber motions we never wear gowns, and in the county court we do not wear gowns ex-

cept in jury cases and criminal cases. In all our courts the rule prevails that where a witness is being examined both the witness and examining counsel stand. A female witness or an infirm witness is usually allowed to be seated while being examined, but examining counsel is always required to stand. When a judge enters or leaves the court room every one in the court room rises and remains standing until the judge has either taken his seat or left the room. The gown worn by a lawyer with the rank of King's Counsel is made of silk, while the gown of an ordinary barrister is made of cheaper material. For that reason, when a barrister is made a King's Counsel, he is said to have taken silk—an expression which you have all no doubt come across. I know that it is unnecessary to point out to this gathering of lawyers that when you find the initials "K. C." after the name of a Canadian lawyer they stand for "King's Counsel" and not "Knight of Columbus," although I find that this is a surprisingly common fallacy among laymen.

In appearing before the Privy Council Canadian lawyers are required to follow the English custom of wearing wigs. Strangely enough, however, the members of the Privy Council themselves wear neither wigs nor gowns, but are dressed merely in their ordinary street clothes. The reason for that apparently is that the members of the Judicial Committee, as the Privy Council is called, do not look upon themselves as sitting as a court. Theoretically an appeal to the Privy Council is an appeal direct to the King because of the inability of the litigant to get justice in the courts, and the members of the Judicial Committee are called in, not as a court to decide the case, but merely to tender advice to the King as to what disposition he shall make of it. For that reason also there is never more than one opinion written or made public no matter what difference of opinion there may be between the different members of the Judicial Committee who sit on the appeal. The reason for that is self-evident, because, as already pointed out, the opinion takes the form of advice to the King, and it would put the King in a most embarrassing position if the members of that body undertook to tender their advice individually instead of collectively and put the King to the necessity of choosing which particular advice to follow. All dissent is, therefore, carefully suppressed and only the majority judgment ever sees the light of day, and this concludes, not as an ordinary judgment, but with the stereotyped phrase: "Their Lordships will therefore humbly advise His Majesty that the appeal should be dismissed," or that the appeal should be allowed, as the case may be.

The Privy Council, so far as I know, is the only appellate court in the British Empire, whose members do not wear any court garb and where the inflexible rule prevails that the members are not permitted to write and make public their individual opinions.

I am reminded in this connection of a witticism that I heard on the London stage last month. Between acts the manager appeared on the stage and in the course of his remarks he made this explanation. He said: "As you all know, we have at the present time in England only two *English* schools of serious dramatic thought. One is *Irish* and the other is *Russian.*"

To make myself guilty of a similar deliberate bull, I might say that some of the ablest *English* judges have been Scotch, some have been Irish, and some have been Jews. Even the Privy Council, which

is always thought and spoken of as a purely English court, is not ordinarily composed of a majority of English judges. On the first occasion that I appeared before the Judicial Committee the Board of five that sat on my case consisted of one Englishman, one Irishman, two Scotchmen and one Scotch-Canadian. The Board of five that sat on my case last month consisted of one Englishman, two Scotchmen, one Irishman and one Irish-Canadian. So, when you are considering the courts in England and the administration of justice in that country you must always bear in mind that you are dealing not merely with Englishmen, but with the best legal talent of Great Britain.

I can illustrate my point perhaps a little more clearly by telling you a little story. An old Scotchman had all his life entertained an ambition to see London. For various reasons he was not able to gratify that desire until quite late in life, when he had occasion to go to London on a business trip. He spent some time there, and on his return a friend asked him what he thought of the English. He replied that he had not come in contact with them. His friend said: "How was that, weren't you in London?" To which the old Scotchman replied: "Yes, but my business was entirely with heads of departments and they were all Scotch."

To come back to the matter of court dress, I must confess that first after I came to Canada and for a considerable time thereafter my democratic training in the United States made me rather rebel against these useless trappings as I then regarded them. I have since somewhat modified my opinion. There is undoubtedly such a thing as atmosphere in the court room just as there is in a church, and anything which tends to make the administration of justice more solemn and more impressive and tends to make the proceedings in the court room more dignified and the general atmosphere more respectful cannot properly be said to be without value. I feel that formal court dress, such as we have in Canada, does contribute to create such an atmosphere. I mention this, not for the purpose of suggesting that you should take up our custom in this respect, but merely as a matter of general information related to my topic and in the hope that, when you pass judgment on us in this matter of court dress, you will realize that its retention is not due entirely to an antiquated and outworn conservatism, but partly at least because it is still felt, in the light of experience, that it serves a definite and useful purpose in the due administration of justice.

Although it is not strictly relevant to my subject I feel that it may be of interest to you to have me say a few words as to the position of the lawyer himself under the Canadian system.

We have in each province of Canada an incorporated Law Society, which is the body that prescribes the qualifications for admission to the Bar and sets the examinations. The governing body of the Law Society—really the board of directors—is known as the Benchers, and they are elected by ballot by the members of the Law Society. When a lawyer is admitted to practice he automatically becomes a member of the Law Society and thereafter pays an annual fee to the Law Society to maintain his standing. In Manitoba the whole machinery is in the hands of the lawyers themselves, including not merely the power of admission, but also the power to discipline and to disbar and to reinstate, subject to an appeal to the Court of Appeal. In some of the

other provinces the power to disbar is vested not in the Benchers of the Law Society, but in the Court of King's Bench, but in general it is left to the lawyers themselves to keep their house in order.

In Manitoba the annual fee to the Law Society is $20.00, and no one is allowed to continued to practice unless he pays his annual fee. The money received by the Law Society in the form of admission fees, annual fees, etc., is expended in providing legal libraries at the various judicial centres and otherwise for the benefit of the profession.

The system works in a very satisfactory manner. It results in a high standard being required for admission to the Bar and it results in the requirement of a high standard of conduct for the practising lawyer, for the Benchers are able to maintain a much closer and stricter system of supervision and discipline over the members of the Law Society than is possible by the Courts, which seldom are called on to deal with the case of a transgressing lawyer until his misconduct has gone so far as to result in the laying of a criminal charge.

In addition to the Law Societies we have in each province a provincial bar association corresponding to your state bar associations, and we also have a Canadian Bar Asssociation corresponding to your American Bar Association. They are purely voluntary associations, and membership in them is optional. Our experience with them is, however, the same as your own. It is the live wires of the legal profession who make up the membership, and it is these bar associations which are wrestling with the practical problems of the lawyer and which are responsible for most of the reform and progress that the legal profession makes. They also serve to bring the lawyers together in a social way and promote a better understanding between them and a better realization of the interests they have in common. We find that we need them and that they serve to fill a place that can never be taken by the various Law Societies. There is absolutely no feeling of rivalry between the bar associations and the Law Societies. On the contrary the friendliest feeling prevails between them. They operate in separate spheres and are a complement to each other, so there is no clash of interest.

In Canada, following the English system, the legal profession is divided into two branches, namely, solicitors and barristers. In England these are two separate and entirely distinct professions and the same man cannot be both a solicitor and a barrister. In Canada, however, the rule is different, and the same man can be, and usually is, both a solicitor and a barrister. The technical distinction between the two professions is, however, scrupulously observed, and, practically speaking, a lawyer does all his work other than that of an advocate in court in his capacity of solicitor, while he appears in court as a barrister. Where the same man is both a solicitor and a barrister he, of course, has the right to do all classes of legal work. Under our system it is, however, possible for a man to be a solicitor without being a barrister or a barrister without being a solicitor, and in that case he must, of course, confine his activities within his own proper field.

In Canada both a solicitor and a barrister are entitled to sue for their fees. In England a solicitor is entitled to sue for his fees, but a barrister is not permitted to do so. In practice the English barrister

gets around this by insisting on having his fees paid in advance. I have often wished that we could all do that. It would make the practice of law so much more satisfactory and so much more lucrative.

I have in these remarks not attempted to make out any case for the Canadian system of administration of justice and I have made no attempt to lead up to any climax. I have confined myself to a mere narration of facts, with here and there a comment thereon indicating my personal view, more for the purpose of bringing out more clearly the real point of difference between the two systems I was discussing than because I thought that my own viewpoint was of any particular value. I have felt that you would want me to speak with the utmost frankness and I have done so, but I hope that I have said nothing that has given offence. No one realizes better than I do how utterly inadequate these remarks of mine are to give you any proper conception of the subject on which I have spoken. I trust, however, that I have succeeded in conveying to you some information and have given you some food for thought. I feel that there are matters connected with the Canadian administration of justice that it is worth your while to familiarize yourselves with and possibly worthy of adoption. On the other hand there are others that are no doubt unsuitable to the temperament of your people and in your highly democratic country. There are still others where I have frankly acknowledged my opinion that your system is superior to the Canadian. On one point I think we can all agree and that is that both systems are open to improvement, and that it should be our aim as lawyers to improve them. I feel that anyone who attempts to dispose of this question by indulging in glittering generalities and by proclaiming the general superiority of the one system over the other is merely advertising himself as a person who is both prejudiced and poorly informed. England, for example, is frequently pointed to as the nearest approach to perfection in the matter of the administration of justice. England undoubtedly has an exceptionally strong judiciary, although Lloyd George has been accused of lowering the standard by the introduction of the spoils system in his appointments to the Bench. I do not know how much of the success of the English administration of justice is due to the strength of its Bench and its simplified procedure and how much is due to the temperament of the English people nor how much that temperament is affected by the low altitude of the country and by climate. England does not have to deal with a mixed population such as we have in Canada and the United States and which naturally presents a variety of problems not to be found in England. The English people have a background of centuries of discipline and are a thoroughly disciplined people. They even drink their intoxicants in moderation—something neither the Canadians nor Americans seem to be able to do. They are naturally law abiding and submit readily to authority. They are of a phlegmatic temperament, and this in turn may be due in part to the low altitude at which they live and to the climate of the country. I do know that on the two occasions that I have been in London—the last occasion being only last month—the climate and the low altitude had the effect on me of making me listless and lazy and deprived me of the energy and ambition to commit any major crime. I feel very much friskier in the higher altitudes and more bracing climate of the Northwest. England's problem is, therefore, a vastly simpler problem than the one that faces both Canada and the United States. All these considerations must be borne in mind when contemplating the wisdom of transplanting the

English system in Canada or the United States. I also strongly suspect—although I cannot speak with authority on that point—that it will be found that the English system with its division of lawyers into solicitors and barristers, with its system of junior and senior counsel, with its high scale of costs and the theory of making the unsuccessful litigant pay to the successful litigant costs in the nature of a full indemnity, is perhaps the most expensive system of litigation on the face of the earth. Any just criticism of your system, or the Canadian system or the English system, therefore, has to take into consideration all the factors I have mentioned. I trust that these rambling remarks of mine may serve to stimulate interest in the general subject of the reform in practice and procedure and the improvement of our judicial system, for that is one of the biggest problems that faces our Bench and Bar at the present time.

Saturday, August 16, 1930

MORNING SESSION

PRESIDENT KVELLO: Please come to order. We will all kindly rise while we listen to the invocation by Rev. Father Loomis.

Invocation by Rev. Father Loomis.

I will now appoint the committee on resolutions, Chairman Judge Hutchinson, Col. Johnson of Towner and Mr. Hanchett of Valley City. If they will meet between now and three this afternoon they can report this evening.

There were two committees appointed yesterday afternoon, one of which Mr. Lewis of Minot was Chairman, instructing them to draft a tentative amendment to the by-laws as to the method of selecting nominees for the Bar Board. Mr. Lewis, are you ready to report?

MR. LEWIS: Your committee recommend an amendment to the by-laws as follows:

The Executive Committee shall select twice as many names as there are nominees for the Bar Board to be submitted to the Supreme Court. Attorneys may make additional nominations by a petition signed by ten men, and filed with the Secretary. Reasonable notice shall be given in Bar Briefs of the time when such petition must be filed. The Secretary shall then prepare the ballot, which shall contain the statement "nominated by petition" after all names so nominated . The ballot shall be mailed to each member of the association thirty days before the day when it must be returned, of which date notice shall be given by the secretary when sending out the ballot. The President shall appoint a canvassing committee to canvass the ballots. Those receiving the highest number of votes, up to the number of nominees to be chosen, shall be presented to the Supreme Court as nominees of this Association for members of the Bar Board.

I move the passage of such amendment.

MR. TRAYNOR: I second the motion.

PRESIDENT KVELLO: Any discussion on the motion? If you are ready for the question, all those in favor, please signify by saying aye. Contrary minded the same sign. The motion is carried.

Now the committee appointed to report upon the invitation of the South Dakota State Bar for a possible joint meeting next year, Mr. Fred Traynor:

MR. TRAYNOR: The committee in charge of the consideration of that matter wishes first to extend to President Clark our sincere appreciation and thanks for that very fine kindly invitation. We hope that something may be worked out along the lines suggested although the committee is of the opinion that it will be necessary to hold an independent meeting of our own Association in North Dakota and that any arrangement that may be made with South Dakota for the joint meeting will be in the nature of the entertainment end of the meeting which would follow the regular business session of our own Association. However, it is the recommendation of the committee that the matter be referred to the Executive Committee of the new administration for their consideration with the suggestion that plans may be worked out as best they may be for some sort of joint meeting such as suggested by the South Dakota Bar.

PRESIDENT KVELLO: You have heard the report of this committee. What action do you wish to take on it?

MR. LEWIS: I move its adoption.

MR. HANCHETT: Second the motion.

PRESIDENT KVELLO: Any remarks? If not, those in favor of same please signify by saying aye. Contrary minded the same sign. Motion is carried.

Referring again to the resolution made yesterday as to the appointment of the Executive Committee, is the mover of that resolution here this morning? I was wondering whether or not he wanted to press the matter or have it postponed further. In his absence, we will pass the matter.

The first committee to report this morning is that on Legal Education and Admission to the Bar. In the absence of Mr. Cooley, Chairman, Mr. S. D. Adams will make the report of the Committee.

MR. ADAMS: I am sorry Mr. Cooley is not able to be here. He asked me to present this report as I am one of the members of the committee. Most of you know that North Dakota is in the black. We are one of the states of the Union that require no education whatsoever for admission to the Bar, no statutory educational qualification is required. Of course, if there happen to be three members of the Bar Board who might be disposed to see to it that a fellow who has no education was not admitted to the bar, all well and good, but the committee feels that North Dakota should come out of the black. We went on record with a great many other states of the Union requiring some educational qualification for admission to the bar.

The American Bar Association in 1921 adopted a resolution requiring at least two years of college education before admission to the Bar. The State Bar of North Dakota in 1927 and 1928 passed a resolution to the same effect and which you will find on page 238 of the July Bar Briefs. We have twice gone on record by resolution and the Commit-

tee feels now it is time we did something more; that we put our resolutions into effect by going to the Legislature and beseeching them to pass the requisite statute, and so the recommendation of this committee is as follows:

(Reading from top of page 239 of July Bar Briefs.)

I move the adoption of this recommendation.

PRESIDENT KVELLO: Is there a second to this motion?

MR. ELLSWORTH: Second the motion.

MR. KNAUF: Second the motion. In connection with that, may I say that I am sure we should hear from Professor Vieselman, who has some interesting figures taken from our own Bar Examinations which may interest you, so that you may know what has been done in the State of North Dakota.

MR. VIESELMAN: Dean Cooley handed me these figures which are compiled from the records of the Bar Examinations of 1925 to 1929 inclusive. This is a survey of these figures. 155 candidates for admission to the bar. From examination of this number, 137 passed; 18 failed. In other words, 12% failed. Now taking both those who attended law school and those who studied in law offices, there were 46 had no college work whatsoever; ten of them had from one to four years of college work. Comparing those two classes, those who had from one to four years college work, 95% passed the State Bar examination, 5% failed. Those who had no college work at all, 70% passed, 30% failed, a difference there of approximately 25%. That includes both those trained in law offices and those who had been in law school. Those who had a law school degree, there were 107 in this group that received a degree from a law school, some night law schools and some day law schools, of that group 95% passed, 5% failed. Those who had studied in law offices 77% passed, 23% failed. Now of this first group with a law school degree, there were 15% had no college work at all, that is they entered law school directly from high school without having any preparatory work at all. Of that group of 15%, 78% passed, 22% failed. Of the 94 students who had attended law school either had taken a degree or had based as a major portion of their training in law schools and had college work, that is law school degree plus college work, 99% passed the State Bar examination.

Taking up the group educated in law offices, 30 had their training wholly in law offices out of 155. Of that group 77% passed, 23% failed. Taking this group on the basis of whether they had college training or not, not in law, but in general arts and sciences, those who based their legal education on their education in law offices, who had college work from one to four years, 85% passed, 15% failed. Those who had no academic education, 78% passed, 22% failed, so that these figures would seem to indicate that men who were trained in offices profited by their general college education.

It is rather striking in going over these figures that making a further sub-division, that of those who had at least two years of college work or less than four years, did not take a college degree, 99% passed, 1% failed, and the same ratio also of those who had taken a college degree, 99% passed, 1% failed, indicating that there is an advantage,

and figures which have been prepared by the Carnegie Foundation on Education and several other authorities seem to bear out substantially these same figures.

The secretary has a copy of these figures if you wish to refer to them.

QUESTIONNAIRE

RELATING TO ADMISSION OF CANDIDATES TO THE BAR

These statistics cover the period from 1925 to 1929 inclusive:

1.	Total examined			155
	Passed	137	88 per cent	
	Failed	18	12 per cent	
2.	Total number without high school education			13
	Passed	9	69 per cent	
	Failed	4	31 per cent	
3.	Total number having only high school education			33
	Passed	23	70 per cent	
	Failed	10	30 per cent	
4.	Total number with one year college education			5
	Passed	5	100 per cent	
	Failed	0		
5.	Total number with two years or less than four years College education			57
	Passed	55	96 per cent	
	Failed	2	4 per cent	
6.	Total number with Academic Degree (B. S.) or (B. A.)			45
	Passed	41	91 per cent	
	Failed	4	9 per cent	
7.	Total number with LL. B. or J. D. degree			107
	Passed	101	95 per cent	
	Failed	6	5 per cent	
8.				
9.	Total number having no high school education but with LL. B. degree			4
	Passed	3	75 per cent	
	Failed	1	25 per cent	
10.	Total number having high school only and LL. B. degree			11
	Passed	9	82 per cent	
	Failed	2	18 per cent	
11.	Total number with one year college and LL. B. degree			4
	Passed	4	100 per cent	
12.	Total number with at least two but less than four years college and LL. B. degree			50
	Passed	49	99 per cent	
	Failed	1	1 per cent	

13.	Total number with Academic degree and LL. B. degree			40
	Passed	39 or	99 per cent	
	Failed	1 or	1 per cent	
14.	Total number law office students examined			30
	Passed	23 or	77 per cent	
	Failed	7 or	23 per cent	
15.	Total number without high school education and law office student			8
	Passed	5 or	62 per cent	
	Failed	3 or	38 per cent	
16.	Total number having only high school education and law office student			12
	Passed	10 or	83 per cent	
	Failed	2 or	17 per cent	
17.	Total number with one year college education and law office student			1
	Passed	1 or	100 per cent	
	Failed	0		
18.	Total number with two years or less than four years and law office student			6
	Passed	5 or	83 per cent	
	Failed	1 or	17 per cent	
19.	Total number with Academic degree and law office student			3
	Passed	2 or	66 2-3 per cent	
	Failed	1 or	33 1-3 per cent	

MR. C. J. MURPHY: I wonder if I might add just a few words. We find that in many instances, the applicant for admission to the bar, who has not the pre-college or pre-school education for studying law, will pass the examination for admission to the Bar by just getting in under the rope and does not make so creditable an examination as the student who has had the pre-law education. In other words, the pre-law student, pre-education law student will invariably show a more splendid attitude toward the reasoning power which must be had in connection with this study and this examination and afterward in connection with the practice of law. I think every member of the Bar Board is fully convinced that a law student coming to us from law offices and just barely getting through, gets through because of the fact that he has imbibed the knowledge of law and has often imbibed the manner of the practice of law to such an extent that without using the great reasoning power which is generally necessary, he gets by on the examination. The examination does not bear the requirements which perhaps it ought to bear and lets students through at a whole lot lower figure than perhaps ought to be the case, but nevertheless, we cannot change that rule. The Bar Board has found in its examination that the reasoning power of the student without pre-law education is so far below that student with college education, that he ought to recommend the entire four years course unless the student has taken what is generally known as the pre-law college course which can be nicely carried through in two years of college work.

Then in addition to that the student who comes to us from the law school ought really to have not less than one year of actual training in some law office within the State of North Dakota before taking the examination.

We have passed a resolution which has not been approved by the Supreme Court nor by the Legislature asking that they take at least six months of law office training commencing with the classes after June 1931. We believe that at our next meeting, we will probably increase that up to a request for one year, at least. I feel that the Supreme Court in making the officers of its court, have a right, if they wish, to exercise their inherent power to fix the qualifications as that additional requirement and we believe that it should be carried through.

We would like the expression from some of the members of the Bar.

MR. KVELLO: Any further remarks? If not, those in favor of the Report of the Committee will please signify by saying aye. Contrary minded the same sign. Carried.

MR. ADAMS: There is still part of the report to be acted on. If you will refer to page 239 of the July Bar Briefs, you will find at the end of our report, some suggestions with reference to what is called a Probation Bar or Junior Bar submitted in the recommendation by the Carnegie Foundation. Reading our last paragraph, you will note that is not a recommendation and therefore I can't move its adoption, but we might discuss the matter. I can't speak for the President—you know what he thinks about it. I am speaking for the partnership of which I am a member. I know this partnership is for this suggestion, that it at least be tried out. I wish we might discuss the question a little bit.

Mr. Murphy of the committee is not in favor of it. I trust he is here so he can speak. I think the other members of the committee are in favor of something of that kind. Some think it should be explained a little more in detail. I think possibly the president yesterday in his address explained it. The idea is to properly test the man that wants to be admitted to the Bar. The Bar Board after his examination shall admit him on probation for a period of three or five years. If at the end of three or five years, he is still in practice and has acted as he should as a lawyer, nothing against him, then we will grant to him the full admission to the Bar, and if you men know something about that probation system, whether it is workable or not the same way in the Bar Association, I don't know. Our Bar Board has had occasion just recently to file complaints against a young fellow within the five year period. Some of you are familiar with a certain case which arose at Grafton and had to do with a young man who was there and at Grand Forks later, if we had had something of that kind, that fellow would never have practiced law, there never would have been any need for disbarment proceedings, because when the five year period was up, his temperament and disposition would have been discovered and he would not have been granted a license to practice. I think it is worthy of consideration and worthy of discussion. We should have something of this kind to deal in some way with the character of the young men who are asking for admission to practice law in this jurisdiction.

PRESIDENT KVELLO: We will be glad to hear from anyone else upon this suggestion of the Legal Education Committee.

MR. ELLSWORTH: I assume that the plan is something like this—that the young man after examination, after it is determined that he has the necessary educational qualifications to practice, he would be registered as a probationer; that no license would be issued to him, no general license to practice but during this five year period he would be still known as a probationer, although he would have all the rights of other attorneys, other licensees. At the end of that time, if he had proven himself, the probationary certificate would be replaced by the full license of admission to the Bar. I would ask Mr. Adams if that is something of the plan, or if there is any limitation on his rights during the five years.

MR. ADAMS: No limitation at all. I do not think the intention is that he should be known as a probationer. Outside of the lawyers, he is known as a practicing lawyer. Maybe that is not quite fair to the public. That is the way we start them out now. The idea is he goes out practicing as a lawyer for three or five years and at the end of the five years, he would be either given a full license or put on another probationary period. It would not be fair to him if it were generally known. I think he goes out just as any other fellow does now.

MR. ELLSWORTH: He don't go out with a license?

MR. ADAMS: Yes, he goes out with a limited license, in a sense, but he has got to prove himself in five years. We can call it a probationary certificate. The details have not been worked out. It is a new suggestion.

MR. TRAYNOR: I think we have a sufficient task on our hands if we can get the Legislation that is suggested in the report of the committee and which has been approved by this association. I was on the Legislative Committee, was chairman one year. I know something of how difficult it is to get legislation sponsored by the Bar Association passed. We should limit ourselves on the recommendations from the Association to just two or three things. The passage now of the extension of terms of the Supreme and District Court Judges is the result of work done by this Association. That is about the only legislation that we have accomplished that we have recommended in recent years.

I do not believe we are ready to recommend anything along the probationary line at this time. If we can get legislation, such as we have approved now, such as regarding the educational qualifications for admission to the Bar, I think it will be plenty of time then after that is obtained to discuss and to decide upon this probationary matter.

Concerning this disbarment proceedings Mr. Adams has spoken of at Grafton, I do not think in that case it was a question of one or five years; it was a question of drink. He might have acquired that drink habit ten years afterwards. I know there has been some disbarments in this state where a man has been practicing twenty-five or thirty years caused by drinking. I do not think we can set any probationary period that will be just. I think we better leave it alone at the present. That is my view of the case.

MR. LEWIS: There is something in what Mr. Traynor has said about the difficulty of getting legislation passed, especially when there are too many things. However, the association does not have to pass that. At anytime we feel it is time to take up a subject, I believe we

might take it up here and without necessarily pressing it before the legislature. If the time has not come for that and perhaps we do not feel the time has come, we need not press it. I disagree with the remark that it would be unfair to the man to have it known to the public that he had only a limited license. I think it would be really fair to the man as well as to the public, that they should realize he was a lawyer just coming to practice and not of large experience. However, as a matter of practice under our strong democratic ideas, I do not suppose that would be advisable. I would not recommend it, although in theory I think it highly commendable and worthy of consideration. It seems to me this proposition would help in one of the greatest difficulties we have encountered. The Bar Board has told us that an investigation should be made as to a man's fitness which should be determined before admission to the Bar in order that they may not have as many cases where he has to be disciplined afterwards. They are trying to find out now but they can't find it out nearly as easily with the man not having had any experience as they can after he has been practicing three or five years and it seems to me a good suggestion.

MR. BURKE: Every practicing lawyer knows that any young man who is admitted to the practice starts out with a great many handicaps, and it seems to me that he starts out with enough without adopting this provision that has been advocated here, and that if it were generally known that he was only a probationer, it seems to me that he would have a great deal of difficulty in getting business and that he would become discouraged and that chances are most of them would not be practicing at the end of five years. On the other hand, it may not be, as Mr. Adams says, fair to the public if it was kept secret or was not generally known to the public that this man was only a probationer. Those are changes, of course, that are new, that are just coming up and I know from experience and so does every other lawyer, that every lawyer under the most favorable circumstances, passes through a period when it is difficult to get business, and it seems to me that if it is generally known that the lawyer is only permitted to practice on probation, and that was generally known, the public would think there must be something wrong with this man. I would not take my business to him. I would take it to some fellow that is not practicing as a probationer. I think it is a good plan to only make recommendations on those things we are sure of. Let these things be tried out somewhere else before we try them out here.

PRESIDENT KVELLO: Unless there is a motion on the matter, I will rule any further discussion on the matter is out of order. It would simply be a discussion of an academic subject unless we have a direct motion on it. The matter is of a great deal of importance and will require a great deal of study.

REPORT OF THE COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR

Your Committee on Legal Education and Admission to the Bar submits the following report with recommendations:

At a meeting of the American Bar Association September 1, 1921, that Association passed a resolution declaring, in substance, that every candidate for admission to the bar should have at least two years study in college before entering upon the study of law. This recommendation of the American Bar Association was subsequently approved by the

National Conference of Bar Associations at a special meeting held in Washington, February 23, 24, 1922. The recommendation was approved by the Bar Association of the State of North Dakota at its 1927 meeting and also at the meeting held in Minot September 5 and 6, 1928. At the meeting the following recommendation was approved by the Association:

> "That after the year 1931, no persons shall be admitted to the Bar in this State who, in addition to present requirements, as to citizenship and good character, and a three-year term of study in a law office or accredited law school, is not twenty-one years of age, and has not had at least two full years of study in an accredited college, normal school or university, beyond the high school grades, which course of study shall include courses in English Literature, American and English History, Economics and Civil Government."

Your Committee would also call attention to the fact that several states have already passed statutes requiring candidates for admission to the bar to have a preliminary education of at least two years study in college. These states are: Colorado, Idaho, Illinois, Kansas, Michigan, Minnesota, Montana, New York, Ohio, West Virginia, and Wisconsin, and also Philippine Islands and Porto Rico.

In view of the unqualified indorsement which has been given to this requirement by the Bar Association of this state at two successive meetings, and in view of the further fact the other states of the union are adopting the requirement suggested by the American Bar Association, your committee recommends that the Legislative Committee of the Bar Association of the State of North Dakota be instructed to prepare a bill embodying the substance of the recommendation indorsed at the Minot meeting of this Association, submit the same to the Legislature at its forthcoming session in January, 1931, and urge its passage.

For several years the Bar Association and Board of Bar Examiners of several states have been discussing the question of character tests for candidates for admission to the bar. Many of the suggestions that have been brought forward as a result of these discussions have dealt with the problem in very much the same way as it is now being dealt with. At present in most states—as in North Dakota—the only evidence that is required as to character of the applicant consists of more or less perfunctory affidavits of attorneys and others who claim acquaintance with the candidate and swear that he is of good moral character. The suggestions that have resulted from the agitation of the question are, in effect, merely suggestions for additional or perhaps more definite affidavits. At best they call for merely cumulative evidence. Your committee believes that the usual affidavits of character are practically worthless as evidence and do not in any way indicate whether the candidate will, when admitted to the bar, observe the ethical standards of the profession.

It is the belief of the committee that the only practical suggestion that has resulted from the discussion of this question—the only one, in fact, which will to any degree serve the purpose—is the suggestion of Mr. Alfred Z. Reed, who is in charge of the Research in Legal Education for the Carnegie Foundation. Mr. Reed's suggestion is in effect that the candidate for admission to the bar, if he passes the examination, shall be granted only a temporary license—for a probationary

period of not less than five years. At the end of that period a permanent license will be granted him if, on investigation, it appears that he has conformed to the code of ethics established for the profession. If any doubt on that question arises from his conduct during such period—he may be kept on probation for another period of five years or if the facts justify such action dropped from the roll of attorneys.

While the committee refrains from making a definite recommendation at this time, it does believe that the suggestion as to a temporary license should receive careful consideration by the Association, at this meeting.

ROGER W. COOLEY, Chairman,
S. D. ADAMS,
C. J. MURPHY, (Except that I am not in favor of the probation plan.)
Committee on Legal Education, and Admission to the Bar.

MR. SPROUL: I move that the President appoint a committee to give this matter special consideration and report at the Bar Meeting next year. I think the matter is worthy of consideration from the expressions that have been made here this morning.

PRESIDENT KVELLO: Is there a second?

MACK TRAYNOR: We do not need to appoint a special committee for that. Why can't the committee on Bar Ethics act on that?

PRESIDENT KVELLO: Unless there is a second to the motion, we will pass to the next order of the meeting. The next order of business is the report of the Legislative Committee. In view of the fact they have made a recommendation regarding the Workmen's Compensation Bureau and others, I will ask the Secretary, Mr. Wenzel, to make his address now on the Workmen's Compensation Insurance matter and after that we will take up the Legislative Committee matter so we can have Mr. Wenzel's argument as the basis of any action we might take.

MR. WENZEL: Mr. President, Members of the Bar Association: It may surprise some of you to have me make a statement which I shall make at this time. About the only thing that has ever been suggested by the Bar Association with reference to the Workmen's Compensation Bureau is the matter of a change of the law to permit the right of appeal on questions of fact. Four years prior to the time the matter was first broached in the Bar Association, I, myself, after a three year study of Workmen's Compensation as a whole, and before I became a member of the Bureau, had taken the matter up with the then Governor, Hon. R. A. Nestos. Some of you have felt, probably, by reason of the fact that I have never gotten up in a Bar Association meeting before and discussed the Workmen's Compensation law, that you were embarrassing me because these suggestions came. I think if you will recall when our genial "Bill" McIntyre was president, he made mention of the fact that the discussion might be embarrassing when he requested me to read the report of a committee. It has never been embarrassing to me at all. I am going to confine myself to the manuscript, if I can, because if I should talk orally, a field as broad as Workmen's Compensation will carry me considerably over the time that ought to be allowed today. However, I hope at different parts to do a little digressing.

WORKMEN'S COMPENSATION IN NORTH DAKOTA

R. E. WENZEL, Commissioner

I do not know just how far one should go, in discussing the topic of Workmen's Compensation in North Dakota before this association of lawyers, but I am going to assume that my audience today desires light generally more than it does a purely legal presentation of the subject.

Hence, I shall deal primarily with the business and administrative side of the Bureau's activities. It would require too much time, of course, to do this in complete detail, but enough points can be touched to bring you a more clear and comprehensive picture of what the Work-Men's Compensation Fund is, what it was, and whither it is going.

Of necessity, this will require dealing with the subject in more or less of a personal way; but, as no one has ever prefaced any remarks concerning the Bureau, before this body or elsewhere, with an apology, I shall take the liberty of following suit—subject, however, to the usual penalties for a revoke or for trumping some one's ace.

My connection with the Bureau dates back to September, 1923. At that time I found a condition, which I had previously criticised severely, but which is touched upon at this time by way of information merely, not by way of criticism. Thus you may obtain a glimpse of some of the difficulties that have confronted the Bureau, and are still making faces at it.

In the starting of this Fund in 1919, a nationally-known actuary, a man of nation-wide experience and reputation, was employed to aid in the establishment of the premium rates and to work out the designation of the various classifications to which these rates were to apply. The mere fact that his personal views on general principles of compensation might have been a little too humanistic—or too socialistic, if you will—does not change the other fact that he was fully qualified to deal with the actuarial problems presented. His purpose, without question, was to establish the Fund upon a sound and solvent basis; in other words, to specify classifications according to hazards, and to fix premium rates that were adequate to provide for the payment of the benefits set forth in the law, the legitimate administration expenses, and a reasonable reserve, and his efforts were directed to that end.

It will be recognized, aside from the particular authorization in the law, that the maintenance of solvency is only second to the payment of all just claims in its importance as an administrative duty of the Bureau. It was not to be expected, however, that any outsider, no matter how competent technically, could be sufficiently familiar with North Dakota conditions to complete the task in such a way as to require no future adjustments. The work might have been more accurate, but that it was not is probably due to the fact that those upon whom the actuary had to rely for North Dakota facts were quite uninformed as to the underlying principles of such legislation, and, also, as to some of the facts. In other words, errors were to be expected, and errors were made; but it was reasonable to suppose that proper adjustment would come with the progress of time and the development of North Dakota experience.

Up to the time that I became a member of the Bureau, such adjustment, however, had not come. The record, at that time, indicated that very little effort had been made along that line; in fact, it presented a rather discouraging situation. The fact was known to me before I assumed the official duties as a Commissioner. For example, it was at my instance, and based upon an outline prepared by me, that a report was obtained in 1922. The details of this report were analyzed, and the analysis presented to the then Governor, Hon. R. A. Nestos, and to the Legislature. The discussions aroused by that analysis gave sufficient warning of future opposition, which actually developed when, as a Commissioner, I endeavored to do what I deemed necessary from a scientific, systematic, business standpoint. My efforts along that line were not only misunderstood and misinterpreted, but, in some instances, were rather gleefully characterized as punishment of my friends.

Once assumed, however, the duties could not be avoided; the responsibility therefor could not be evaded; at least not if one wished to retain a healthy, vigorous conscience, and avoid blushing while applying the morning Gillette. Hence, in real, street-corner vernacular, "I took the bull by the tail and began to twist"—not the bull, but the tail.

It would probably burden you too much to present, in detail, a complete specification of errors that existed at this particular time (1923). A few particulars will be sufficient to apprise you of the fact. For example, (and I shall here use the 1929 designation of classifications—numbering 162, instead of the 245 then existing—which, by the way, operates towards minimizing such bad conditions as had developed), I found that *increases* of the original rates of premium had been made in nine classifications, which, at the time of the increases, had developed degrees of *surplus* varying from slightly above normal to extraordinarily large; that *reductions* in rates of premium had been made in 79 classifications, in 59 of which the developed experience was so inadequate, or so close to the border-line between cost and income, that it indicated *nothing more unjustifiable* than a *decrease;* and the other 20 of which were actually "IN THE RED," some of them nearly $50,000. At the same time, an unwarranted general dividend had been promulgated, under which, among others showing *deficits,* the following glaring examples received *dividends*:

Manual	Description	Deficit	Dividend
1001	Coal Mining, Underground	$ 48,000	$ 5,800
5204	Concrete Work	15,000	540
5402	Carpentry	15,500	1,943
5437	Carpentry, Interior	10,000	1,737
6042	Street and Road Making	45,400	2,239
7600	Operation Telephone and Telegraph Co.	29,000	579
8010	Hardware Stores	24,200	353
8747	Traveling Men, Auditors, etc.	17,200	557
		$204,000	$13,748

At the very same time the classification of Manual 8304, Grain Elevators, with *a surplus* of $60,955, received a dividend of $1,374.

In other words, the classification which, by its *experience,* showed the largest *deficit* in the whole Fund, not only received *a dividend,* but received four times as much as the classification which, by its *experience,*

showed the largest *surplus* in the whole Fund. The general situation was that a *wrong* conclusion had been reached in 54% of the total number of classifications covered with regard to rates of premium; and this percentage, it should be remembered, would show much higher if the actual number of classifications then designated (245) were considered.

On the claims side, the awards entered presented a problem, also, by reason of their inadequacy. This is indicated by the following table showing the subsequent increase of those awards which fair dealing prompted:

Year	Original Awards	Later Increase
1919-20	100%	44%
1920-21	100%	70%
1921-22	100%	45%
1922-23	100%	76%

In dollars and cents the original awards totalled, for these first four years, approximately $635,000. The increases later made totalled $472,000, which represents approximately 74% of the original awards.

The first step, of course, was to endeavor to make a gradual readjustment that would place the situation upon a more scientific basis. That readjustment, on the premium side, was attempted: First, through increases of rates in the *deficit* classifications; and, Secondly, through a *group dividend plan* for the excess surplus classifications. The readjustment, on the claims side, could come only with rather drastic changes in policy, which changes were not accomplished for some years, and are but recently completed. Your own good judgment will, doubtless, suggest what might have happened if something of that nature had not been started in 1924.

The subsequent experience, even with this new premium policy invoked, found such a counterbalance in the equitable increase of previous awards, that other and more fundamental difficulties came to the fore. In the effort to deal with these, I felt called upon to insist, notwithstanding the objection of the other Commissioners, that legislative action was needed, and that this action should take the form of a rather drastic reduction in the schedules of benefits provided by the law. The reason, as I endeavored to point out, was: That only thus could the following eventualities be prevented, to-wit: (1) Rate increases to the point of confiscation; or (2) Insolvency of the Fund. The Legislature of 1927 followed those suggestions, almost as made.

With the possible exception of one or two classifications, those of (a) Coal Mining, Underground, and (b) Blasting, the situation is clarifying itself, and it now seems probable that further rate increases —except very slight ones—may prove unnecessary on the basis of the present schedules of benefits. That statement, however, is predicated upon a continuance of the North Dakota experience, which shows the ratio of death losses to total accidents to be about 39% *below* the figures of the American Accident Table. Sould that ratio change to the extent of approximating the American Accident Table figures, there would have to be further increases in premium rates, or further reductions in the schedule of benefits. Should the ratio actually go above .00762 (the American Accident Table ratio), a critical situation might be created immediately.

Just after the first draft of the last paragraph was written, I left on an investigation trip that kept me away for three weeks. Upon my return, the accident figures for July were available. These brought the astounding information that our July death losses were 200% above the average for the preceding six months, 30% above our ten-year monthly average, and exactly equal to the 12-months total for the third year (1921-1922). *Further analysis disclosed that our monthly average of total accidents for the first 7 months of 1930 was 20 above the average for the first 7 months of 1929**—which was our previous high mark. And when this was followed by the still more serious disclosure that the number of deaths reported for the first week of August was nearly double the record for the whole of July, and this, again, was analyzed and compared with the current statistics from the State of Ohio (which showed rate increases there as high as 30%, a 15% increase in accidents, and only 7% increase in payroll exposure), it convinced me that I would be excused for making reference to warnings issued by me as far back as 1926, and that repetition of the following statement was pertinent and timely, to-wit: That no lawyer who hears or reads this presentation will be justified, hereafter, in appealing to any court with the argument that there is a huge "slush fund," into which any one may dip freely without hurting anybody, or in requesting or obtaining summary allowances of attorney fees running to upward of $500 in claims involving about $200 compensation. (One record shows a total judgment on appeal of $1,032.00, a medical bill of $210.00, compensation slightly more, and an attorney's lien for $882.99.) A continuance of that attitude, or even a failure to recognize the reasonable demands of the actual situation, may not only injure the Fund, but would, without doubt, soon seriously jeopardize the rights of thousands of claimants and their dependents for whom awards, payable in future, have already been made.

Permit me to add to this the further statement, predicated upon my ability to make proper proof when the occasion demands and time permits, that a change from a so-called state-fund system to a competitive system of insurance, at any time within the next five years, while theoretically proper and seemingly feasible, would prove economically unsound, practically unwise, and politically, would be suicidal to any group or organization that would put the change into effect within that period. And, to my mind, there is one thing that no one has the right to request, namely: A change, no matter how right in principle, which would jeopardize the pension awards now running to more than 170 widows and their children and to several thousand workmen who have been granted awards for permanent disabilities sustained. That statement, of course, is also predicated upon my ability to make proper detailed proof when the occasion demands and the time permits. And please remember that the person who is making this statement is the same person who wrote, and advocated before the legislative committees, the competitive insurance amendments of 1921 and 1923. Correct theories must, occasionally, give way before unfavorable facts; but facts should never be "juggled" or avoided to meet our theories.

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*Total deaths for 8 months of 1930 now equal to record for two years, 1921 to 1923.

**Monthly average for 8 months now 27 above monthly average for 1929.

Let us pass on now to a consideration of some of the details of policy and procedure, coupling with that a brief discussion of the effect of certain court decisions.

Change in policy has been extremely slow in its development, and while things may be said to move more freely, progress is not complete. It may be said, however, that the present administration takes the position, now fortified by the recent decision of the Supreme Court of Ohio (Industrial Commission vs. Rogers, 171 N. E. 35), that the Bureau does not enter awards as a favor to a claimant; that the Bureau is a fact-finding body, and out of its findings of fact the existence or non-existence of the right to receive compensation arises as a matter of law.

Upon that theory the present administration endeavors, and will continue to endeavor, to find the true facts in every claim, and to fix the compensation, whether the disability be temporary or permanent, by applying the law to those facts. In this effort, the Bureau acknowledges its finite frailty, and claims no infallibility; but it does contend that such a policy, even when applied by human beings, will no longer permit the payment of $16.00 per week to one injured person, while another, in the same occupation, injured the same week, drawing the same wages, exposed to the same hazards, will find his award, for the same disability, providing compensation at $6.00 per week; nor will it, after personal investigation of a case, with the attending physician and a special examiner presenting the only medical reports and disclosing the existence of a permanent disability, permit the entry of a final award within three days thereafter that pays no attention to the permanent disability. In other words, we believe that a definite policy, based upon fundamental principles, must and will, within the limits of administration by humans, result in a more or less fair adjustment; that the decisions must and will be reasonable, representing reasonable conclusions by reasoning men, based upon fair analysis of the facts.

As suggested, however, that policy can not and will not prevent all error. And so, although it is the further policy of the present administration to give consideration to any proof presented, at any time, by any claimant or employer (notwithstanding the entry of a decision that may be labelled "final"), these statements do not imply that they obviate the propriety of a change of the law with respect to the finality of decisions on questions of fact. Of course, every lawyer realizes that our juries, and our courts of equity, have quite as much to say on questions of fact that come before them; and their percentage of "correct" decisions is probably no greater than that of the Bureau. (The Bureau claims, for the past three years, a percentage equalling 98.3%.)

The North Dakota Supreme Court has pointed out that the members of the Bureau, are, or ought to be, experts. Hence, their decisions should carry weight. Personally, however, I can see no reason for making the decision final. There should be an opportunity for a review. You will observe, however, that I use the term "review" rather than "appeal." I do this because I believe that the Commissioners are, or should be, entitled to a rating as experts; and, also, because the court or other body which is to pass upon the matters involved should pass upon the same record.

An appeal is now permitted on questions of law, and on such other questions as deal with the claimant's right to participate in the Fund. On such appeal, however, no trial court has ever yet passed upon a state of facts even closely resembling those presented to the Bureau, and, in several instances, it may be justifiably stated, the facts were changed to correspond to the discovered law on the subject involved. Then, again, the continuing jurisdiction provided by Section 18 of the Act, if properly utilized, may prove to be of far more importance, even, than the right of appeal or review.

That is illustrated by the Crandall case (207 N. W. 551). From a political standpoint, of course, it might be well to leave the general impression as it appears to exist; but that isn't fair, even to a political enemy. The Crandall case was in Supreme Court when I became a member of the Bureau. Reopening was denied, and it was permitted to go through court, partly, as I was informed, because it would determine the Bureau's powers with respect to the finality of its decisions on questions of fact. The trial court entered judgment in claimant's favor—and it is not les majeste, I hope, to say that the *amount* of that judgment was not in accordance with the law or the facts. The Supreme Court sustained the "finality" provision, and dismissed the claim, on the ground that a payment of medical expense had been made.

By the time the case was decided, I had become a member of the Bureau. Because of the determined discussion, and the record made in the trial court, and because of my views on the authority conferred by Section 18, I moved to re-investigate the case (after the final dismissal). In fairness to the other Commissioners it should be said that they not only agreed, but requested that I, as a disinterested party, so to speak, make the investigation. Following that investigation, which disclosed the facts approximately as they were presented in the trial court, the claim was reopened, and an award was entered, in pursuance of which award more than $3,000 has now been paid out.

The mention of this case by the Bar Committee on Jurisprudence and Law Reform (Aug. 1930 Bar Briefs, Page 257), brought to me the thought that, possibly, neither the general public nor I, myself, had a complete picture of the case. I, therefore, searched out the original record before the Bureau, and I now quote the facts there found, because they may prove as startling to the members of this Association as they did to me. Here they are:

> Original attending physician's report: "Recovery complete, without loss of time."
>
> Special Examiner's Report: "Party 63 years old, sallow skin, poorly nourished, old empyema with sinus, 2-3 left lung collapsed—hard for me to believe his present physical condition due to injury of Feb. 6, 1922. There is 50% disability of the leg." (Injury sustained by slipping on sidewalk.)
>
> Another Special Examiner's Report: "I am amazed. Are all the lame and lopsided to come under your protective care? Then the Lord help the State. Dr. . . . . was honest in his remarks only not enough. My opinion is that his ailment comes from chronic affection and this is secondary to his systemic condition, viz: chronic thoracic fistulas, which have been there 15 years."

> Further Reports: "Same leg hurt in auto accident two years before. Claimant insured in casualty company, which he sued for $29,000 (after last injury). Six weeks after injury signed statement of willingness to accept one week total and four weeks partial compensation from insurance company. Settled suit for $325.00."

Though the policy with respect to Section 18 (continuing jurisdiction) has not been consistent, it may be said that the aim of the Bureau is to get at the actual facts in all cases, and the judgment of the Commissioners is held in abeyance until all of the evidence is in. It is also the definite policy of the Bureau, now, to make Section 18 serve its useful purpose in all cases.

Recognizing that it is a fact-finding body, the Bureau, of course, declines to adopt the attitude of umpire, and to pass only upon those facts which interested parties desire to disclose. In the oral examination of witnesses, therefore, it may sometimes appear, as if the Commissioners were antagonistic. Such, however, is not the case. The Commissioners do, and must, adopt the "cross-examining" attitude towards all witnesses; and that attitude is adopted just as freely towards the employer or towards some "disinterested person" with a loose tongue. As attorneys never make any contact except as representatives of claimants, and then only in less than one-fourth of one per cent of all the claims considered, a more reasonable interpretation than that of bias would seem to be justified.

For the correct information of certain "busybodies" it might be stated, at this point, that, during the past three years, the claims dismissed on the merits have run from one and one-half to two per cent of all claims filed.

The Bureau, as you know, is not bound by common law rules of evidence. (See Section 4, Par. E.) It has a right to, and does, accept hearsay, self-serving declarations, formal and informal testimony, privileged communications, etc., giving, or endeavoring to give, to each class such weight as the completed record seems to indicate or warrant. Having made the record, with due regard to the completeness of statement that will lead to the truth, it makes its findings and determination of the particular issue.

On appeal, in such cases as appeal is now permitted, that record does not get into court, and the Bureau is not only made a defendant, but is frequently prevented from getting into the court record (except, possibly, through attempted cross-examination) items of evidence that were properly before the Bureau for its consideration and decision.

From all of this it appears rather clear to me that *review* rather than *appeal* should be the remedy against possible erroneous decisions.

And while we are on that subject, permit me to suggest that if the right of review is granted through legislative amendment of the law, why should that right of review be limited to the claimant? The employer, who pays the bills, (at least, in the first instance), whose rates, both generally, as published in the Manual, and specifically, as modified by merit rating, are affected by every award, should not be deprived of *his* remedy in case *he* feels that an *unwarranted* charge has been made against *his* particular classification and against *his own concern* by what he may deem a *wrongful allowance* of a claim.

May I be permitted to suggest, also, that regular court procedure appears rather tardy for the handling of compensation matters? It would be well, therefore, to consider some speedier method of handling review cases (and also suits for premium, for that matter) in the event of legislative amendment in that respect. A special reviewer, with authority to go to the point nearest the location of the witnesses, (in case it should be necessary to present additional testimony), and with powers closely approaching those of a district judge, would offer one solution. Another would involve semi-divorcing of the Compensation Fund from the Commission, the operation of the Fund by a manager, who would pass upon all claims originally, the Bureau sitting as a Reviewing Board in case of dissatisfaction. In any event, informality of procedure, with the right to bring matters on for review on short notice, certainly should be included in any change that may be brought about.

A prompt, speedy remedy was one of the original purposes of these compensation acts. As soon as men came to agreement that there should be substituted for the right to *damages upon proof of fault* on the part of the emloyer, *compensation as a matter of right* upon mere *proof of injury in the course of employment*—which simply meant that industry, rather than the individual workman, was to be charged with the cost of industrial accidents; that group responsibility was to replace individual responsibility; that compensation was to replace damages—attention was immediately directed to the necessity for more speedy action and procedure.

One of the main faults of the North Dakota law is that it does not provide a very speedy remedy in those cases where men are working for uninsured employers. *Bordson vs. Bureau,* 49 *N. D.* 534, 191 *N. W.* 839, has, of course, clarified the situation where an employer has once been insured, but it has not eliminated all of the difficulties.

In that case the Bureau had passed the following general rule, upon which it acted. "Failure of any employer to have his premium payment in the hands of the Bureau within sixty days after expiration date, shall automatically cancel his insurance, whereupon such employer shall be declared in default."

The employer's premium (Bordson case), amounting to about $6,000, had not been paid. The account was certified to the attorney general. Actual default occurred on September 4th. On September 9th a workman was injured, and he died as the result of the injury. Premium was received by the Bureau on September 13th. The Bureau, as then constituted, dismissed the claim on the theory that there was no insurance between September 4th and September 13th. The Supreme Court's decision, directing that an award be entered, must be recognized as representing the reasonable interpretation of the law to those facts. Regrettable as it may seem, however, it has just come to light that there were one or two other cases of the same character at that time, in which the necessary correction was never made, following the Supreme Court decision.

The Bordson case did not solve all of the difficulties relating to coverage. For example, when default actually occurs, through financial inability to pay, or through wilful intent to avoid payment, just when does or should the coverage cease (remembering that the Act is supposed to be compulsory)?

Section 8 of the Act now provides:

> "The payment of any judgment rendered in any such action, or the voluntary payment of the amount of premium, penalties and costs prior to judgment, shall entitle the employer, and the employees of such employer, to the benefits of the Act from the date of such pay-in-order. If the judgment cannot be paid in full, the Bureau shall determine the date upon which the right of the employees to participate in the Fund shall cease."

Assume, now, that the employer in the Bordson case had not paid the premium; that suit was started by the attorney general immediately on certification to him; that judgment was recovered; and that no part of that judgment was collected. There are those who argue that our Court's declaration (dicta), with respect to the continuance of the insurance and the duty of the Bureau to collect, places liability upon the Fund so long as the plant continues to operate. That, however, does not look like a reasonable interpretation, even without the amendment of Section 8 just quoted.

Ohio has a unique way of handling claims against uninsured employers—and they still have uninsured employers after 18 years of operation of their Fund. Whenever proof is presented to the Ohio Commission that an award against an uninsured employer can not be collected, the amount thereof is payable to the claimant out of the Compensation Fund. That provision of the Ohio law may be questioned on the ground of unconstitutionality, but even if deemed invulnerable to legal assault, it is certainly questionable from the standpoint of economic equity and public policy. The result must certainly be that law-abiding, premium-paying, responsible employers, who have complied with the law, are held for the losses of the wrong-doers, the good-for-nothings and the fly-by-nights, who have probably been cutting into the formers' business by unfair underbidding. However, if we concede that one of the important purposes of such legislation is to protect the workman and to make the group, rather than the individual, responsible for industrial accidents, the violation of insurance principles may prove to be necessary, upon occasion, in order to carry out the purpose. Of course, there is a logical answer to that, again, in this: If society wants to establish something different from a mutual insurance company run by state officials, it ought to collect its moneys for such special purposes in the form of taxes and be directly responsible for the expenditures; in other words, it should either run an insurance business on something approximating insurance principles, or it should levy taxes and pay doles.

The administration of the Act by the Bureau is very simple. On the claim side, all claims must be presented, under oath, within 60 days after injury. If there is delay beyond that date, there must be a *reasonable* explanation for the delay. If such explanation is forthcoming, the Bureau may consider claims made within one year.

In that connection, the Bureau just had before it a most interesting question of interpretation. An original claim for injury was presented one year and six months after injury. It was dismissed. No appeal was taken. The injured workman subsequently died, and the widow,

on the 365th day following death, presented her claim, alleging death to be the result of the original injury. Investigation, which had to be carried all the way to the Twin Cities, adequately established the original injury as the cause of a carcinoma which brought on death, and the claim was approved. The Bureau's holding, in that case, was that the claim of the workman for his injury was entirely independent of the claim of the dependents for the death caused by the injury. (Award Aug. 12, 1930.)

The allegations of the injured person are supplemented by the reports of the employer and the attending physician, BOTH OF WHICH SHOULD BE INDEPENDENTLY PREPARED AND FILED. These three reports, therefore, the claimant's, the emloyer's, and the physician's, constitute the record in the ordinary claim, upon which the Bureau makes its findings. If the proof is clear on the question of "injury in the course of employment," then the only matters for consideration are the character and extent of the disability, and the amount of medical and hospital bills. Personal investigation is made only in cases where there is a failure of proof, or contradictory evidence, and in claims involving large sums of money.

The present administration construes Section 18 of the Act to mean just what it says. Hence, the burden of proving extended temporary disability, or greater permanent disability, is *placed upon the claimant* —after a so-called final order—in those cases *only* in which the proof was clear and specific. Wherever the record now discloses a state of facts not clear and specific, it is construed to be the duty of the Bureau, with or without application, to make a follow-up inquiry at the expense of the Bureau, and particularly with respect to existing permanent disability.

Then, of course, no matter whether an award is labelled final or not, it is now subject to review by the Bureau at any time, upon application of either employer or employee, and it is the earnest endeavor of the Commissioners to apply Section 18 by giving full and fair consideration to any new or additional evidence that may be presented. It should be borne in mind, however, that the whole record must govern the decision; and, may I respectfully suggest, that conclusions are not evidence, neither are letters; therefore, claimants and employers will render themselves and the Bureau a great service, and receive much more prompt treatment, if they will just remember to present the facts, in any simple form, properly verified by oath as to their truth. That applies, with equal pertinence, to many who represent claimants.

The passing of time makes it necessary to hurry to a conclusion, without dealing with some matters of considerable importance, and I do so by confining myself to a very brief consideration of the Pfeiffer case, and some additional constructive suggestions.

Pfeiffer vs. Bureau, 221 *N. W.* 894, deals with the matter of pre-existing disease. The facts, in brief, were: Claimant had a sarcoma at the point where the eye nerves cross. At time of injury it had reduced the sight of one eye by 50%, and of the other by 16%. A slight

injury, disclosing no mark, abrasion or discoloration within a few hours thereafter, accelerated the action of the sarcoma so that the workman became totally blind within a few months. Blindness would have resulted in any event, without injury. The Fund was held responsible for the full result, total disability.

This represents one of two lines of decisions in pre-existing disease cases, both of which appear legally sound. They are, however, questionable from an economic standpoint. It is argued, of course, by those decisions which uphold the full-liability theory, that industry takes men as it finds them—super men, normal men, and diseased men. In those states where the full liability theory is accepted, however, employers have felt compelled to adopt the plan of physical examination before employment. (The Federal Liability Law, it is said, even provides for it.)

Now, that policy, if generally adopted, will eventually result in the creation of a human junk-heap, the members of which, with their dependents, are likely to become a charge upon gratuities handed out by society. That, certainly, is a situation much to be avoided. And so, any equitable solution that might prevent the formation of the junk-heap and the granting of doles or the payment of alms, is entitled to serious consideration, I believe.

Since the Pfeiffer decision, Missouri has applied the full-liability theory to a case of long-standing hernia. The hernia was not repaired by operation (the only recognized cure), a truss being worn. The truss slipped while working, followed by strangulation of hernia and death. Another case, also very recent, applied the theory to a case of dormant syphilis, which, in view of the fact that syphilis re-occurs after a generation, without traumatic impulse, leaves the impression that the theory is very, very flexible.

On both grounds, economic equity and public policy, a middle course offers a better solution. That is to hold industry responsible for that portion of the resulting disability that is attributable to the accident or injury. True, this would raise difficult questions for determination in many of the cases, but the difficulty of making the decision should not prevent the application of right principles. Reliable medical opinion *is* available, and a much more fair and equitable solution can thus be reached. Furthermore, the growing tendency to require physical examination before employment, and the application of the so-called protective measure of "firing" those who have been injured, ought to be sufficient to encourage thoughtful consideration of any amendment that gives promise of more satisfactory procedure in dealing with pre-existing disease cases, and, at the same time, suggests the retarding, and possible prevention, of practices that are not in promotion of a sound public policy.

The attempt to combine various paragraphs from competitive insurance statutes with paragraphs from so-called state-fund statutes has created much confusion in the law as a whole. The best plan, therefore, would seem to involve a complete study of the situation by a competent commission, followed by a general revision of the Act. In the meantime, the following constructive suggestions for improvement might be worthy of consideration—in addition, of course, to the suggestions hereinbefore made, namely:

(1) Modification and clarification of the provisions relating to the time, manner and effectiveness of premium payments; (2) Elimination of ex-officio members on the Bureau, in view of the technical nature of the business and the inability of men to be in two places at the same time; (3) Allowance of separate maintenance for the Bureau and the Attorney General's department, making the Bureau attorney directly responsible to the Bureau, with offices at the headquarters of the Bureau; (4) Granting authority to the Bureau to divide the compensation field in North Dakota into three or four groups, and permitting it to base solvency upon the groups until such time as the experience for separate classifications is extensive enough to enable compliance with the present provisions of Section 7 of the Act; (5) Appropriation of a sum from the general funds of the State for the purpose of enabling the Bureau to take care, promptly, of the investigation of claims against uninsured employers, together with the necessary follow-up when awards are entered; (6) Establishment of a Safety Education Department, within or outside of the Bureau, and a general fund appropriation sufficient to permit it to function; (7) Elimination of the idea of contest between the Bureau and claimants in case of review—for example, making the employer the defendant and placing the burden of defending the award upon him, unless the manager plan of operation of the Fund should be adopted; (8) Definite exclusion, on review or appeal, of the application of Section 7923, C. L., to workmen's compensation cases, as medical testimony is necessary in nearly every case to determine the question of "in the course of employment"; (9) Addition of a provision something like this: In event an award for permanent disability has not been fully paid at the time of the death of the injured, and the death is not attributable to an injury within the terms of the compensation law, and, further, the injured workman leaves a widow, minor child or children, or a dependent mother, the remainder of such award shall be payable to such widow, minor child or children, or such dependent mother, as the case may be; (10) Limitation of contingent fee arrangements in compensation cases, in view of the liberality of the law and the courts in fixing attorney fees; (11) Allowance of a salary to the Commissioners that more closely approximates fair compensation for the duties imposed upon them.

PRESIDENT KVELLO: We will now hear the report of the Legislative Committee, Mr. Lloyd Stevens, chairman. That report has been filed. I would suggest that you take the first suggestion and state it in substance and then we will talk upon the suggestion one by one.

REPORT OF THE LEGISLATIVE COMMITTEE

We had great difficulty getting together to consider the matters that might be referred to this Committee, but finally your Chairman and Mr. Butterwick met, Mr. King being absent. The report was submited to Mr. King, and he approved it. The Committee considered the recommendations made by the Association at its last annual meeting, and makes the following recommendations:

1. That the Association continue to urge legislation raising the salaries of the Judges of the Supreme Court to $8,000.00 per annum, the Judges of the District Courts to $6,000.00 per annum, and to raise

the salary of the Attorney General to $5,000.00 per annum, as has already been approved by the Association. If the Committee in charge of legislation at the next session of our legislature deem it inadvisable to introduce such legislation at that time, then that the matter be kept alive and proposed at each succeeding legislature until such legislation has been accomplished.

In view of the fact that the assistant Attorney Generals are charged with great responsibility and in order to insure such officers with good ability, we recommend that legislation be proposed at a suitable time raising the salary of the first Assistant Attorney General to $4,000.00 per annum, and other assistant Attorney Generals to $3,600.00.

2. Legislation providing for the right of review by the Supreme Court of this State from all decisions or judgments involving substantial rights as to person or property rendered by any Board or Bureau. It will be noticed that we suggest direct review by the Supreme Court. This matter was discussed by us at length and we believe that matters of sufficient importance to be appealed to all would end in Supreme Court in any event, and that it would bring about quicker and cheaper justice by direct appeal to the Supreme Court from these Boards or Bureaus.

3. We believe that steps ought to be taken toward legislation requiring proposed Findings of Fact and Conclusions of Law to be served upon the opposing counsel not less than five days before such findings and conclusions are signed by District Courts.

4. We recommend that legislation be proposed empowering the Executive Committee of the State Bar Association to disbar, suspend, reprove or discipline the members of this Association, such legislation to be based upon the State Bar Act of California. In order to give those members not familiar with the California Act some idea of their procedure we give the following, copied from that Act:

"Section 26. Disbarment, Etc. The Board of Governors shall have power, after a hearing, for any of the causes set forth in the laws of the State of California warranting disbarment or suspension, to disbar members or to discipline them by reproval, public or private, or by suspension from practice, and the Board shall have power to pass upon all petitions for reinstatement. The Board of Governors shall keep a transcript of evidence and proceedings in all matters involving disbarment or suspension and whenever ordered by said Board, but not otherwise, shall make findings of fact. In either case the said Board shall render a written decision on said proceedings. Upon the making of any decision resulting in disbarment or suspension from practice, said Board shall immediately file a certified copy of said decision, together with said transcript and findings, whenever findings have been ordered as aforesaid, with the Clerk of the Supreme Court. Any person so disbarred or suspended, may, within sixty days after the filing of said certified copy of said decision, petition said Supreme Court to review said decision or to reverse or modify the same, and upon such review the burden shall be upon the petitioner to show wherein such decision is erroneous or unlawful. When sixty days shall have elapsed after the filing of said certified copy, if no petition for review shall have been filed, the Supreme Court shall make its order

striking the name of such person from the roll of attorneys or suspending him for the period mentioned in said decision. If, upon review, the decision of said Board of Governors be affirmed, then said court shall forthwith make said order striking said name from the rolls or of suspension. The Board shall have power to appoint one or more committees to take evidence and make findings on behalf of the Board, or to take evidence on behalf of the Board and forward the same to the Board with a recommendation for action by the Board. Nothing in this act contained shall be construed as limiting or altering the powers of the courts of this State to disbar or discipline members of the bar as this power at present exists."

The Act also provides for the proceedings upon disbarment, but that is a matter which we do not deem it necessary to set out here, as those rules as to hearing, and the rights of the person charged, are similar to those which we now have in our own State.

It is the recommendation of this Committee that the executive Committee be given this power only and that such power shall not be delegated.

5. We recommend that Section 8074 of the Compiled Laws of North Dakota for 1913 be re-enacted and amended as follows:

Sec. 8074. When Proceeding Enjoined.

Sec. 1. When a mortgagee or his assignee has served notice of intention for the foreclosure of a mortgage and within the thirty day period provided by such notice it shall be made to appear by the affidavit of the mortgagor, his agent or attorney, to the satisfaction of a Judge of the District Court of the County where the mortgaged property is located that the mortgagor has a legal counter-claim or any other valid defense against the collection of the whole or any part of the amount claimed to be due on such mortgage, which proof must be made by affidavit stating the facts and shall not be on information and belief, such Judge may by an order to that effect enjoin the mortgagee or his assignee from foreclosing such mortgage by advertisement and direct that all further proceedings for the foreclosure be had in the District Court properly having jurisdiction of the subject matter and for the purpose of carrying out the provisions of this section service may be made upon the attorney or agent of the mortgagee or assignee, or upon the Sheriff of the County where the sale under such foreclosure is to be had.

Sec. 2. Provided further that after the expiration of said thirty day period provided for in said notice of intention to foreclose an application for an order enjoining the foreclosure by advertisement shall be made only on motion; which motion, together with the affidavits used in support thereof, shall be served upon the attorneys or agents of the mortgagee or assignee on eight days notice in the same manner as service of other motions; the affidavits in support of said motion shall state the facts upon which the said application is made and shall not be on information and belief and shall disclose a legal counter-claim or other valid defense against the collection of the whole or any part

of the amount claimed to be due on such mortgage, and upon a hearing upon said motion the Judge may likewise enjoin the foreclosure of the mortgage by advertisement in the same manner as if the application had been made ex parte within the thirty day period of the notice of intention to foreclose. All acts or parts of acts in conflict with the above and foregoing provisions are hereby expressly repealed.

LLOYD STEVENS, Chairman.

MR. STEVENS: The first part of this report is really a re-statement of some of the recommendations adopted at the last meeting. Paragraph one simply covers the raising of salaries of the Judges of the Supreme and District Courts, the Attorney General and Assistant Attorney Generals. These recommendations were adopted at our last meeting and we suggest in this report that legislation be introduced at the next legislature looking toward adopting those salaries.

PRESIDENT KVELLO: No action will be necessary on that recommendation in view of the fact that it has already been passed upon by the Association.

MR. STEVENS: I think that is correct as to the first part of the first paragraph, but the last part wherein we recommend raising the salaries of the assistant attorney generals, we should have some action on that at this time.

PRESIDENT KVELLO: Will you move the adoption of that paragraph?

MR. STEVENS: I move the adoption of the second paragraph of Section One.

MR. TRAYNOR: Second the motion.

PRESIDENT KVELLO: Are there any remarks?

MR. ELLSWORTH: I am not clear as to just what is before the session.

PRESIDENT KVELLO: The second part of the first paragraph with reference to raising the salary of the assistant attorney generals from the present salary, which is what?

MR. ELLSWORTH: I do not know but I understand it is considerably lower than the Attorney General.

MR. WENZEL: Wasn't that whole salary proposition covered by an initiated measure this year which was adopted?

PRESIDENT KVELLO: Does anyone know that the salary schedules were up this year and defined?

MR. STEVENS: They were not included.

MR. TRAYNOR: Is it proposed to increase the salary of the assistant attorney generals above the salary of the attorney general?

MR. STEVENS: We have recommended that the attorney general's salary be raised to $5000 which has already been adopted by the Association. Now we recommend the first assistant Attorney General be raised to $4000 and the others to $3600.

PRESIDENT KVELLO: Any further remarks? If not, all those in favor of the motion, please signify by saying aye. Contrary minded the same sign. Carried.

MR. STEVENS: The second section of this report recommends: (Reading second section.)

I move the adoption of that report.

MR. STORMEN: Second the motion.

MR. HANCHETT: Wasn't there a part of the report by one of the committees yesterday that had a conflicting recommendation?

MR. BURKE: That had a recommendation providing for an appeal from the Workmen's Compensation Bureau.

MR. HALVORSON: Do I understand that this recommendation is for review direct to the Supreme Court without any action on the part of the District Court?

MR. STEVENS: Yes.

MR. HALVORSON: It seems to me that is placing too much of a burden on the Supreme Court. I think the Constitution provides that the Supreme Court shall have only appellate jurisdiction except in only certain specified cases. I do not know what Judge Burke may think as to assuming primary jurisdiction.

MR. BURKE: I wouldn't want to take any position one way or the other at the present time, but it would seem to me that a great many of these appeals could be settled right in the District Court and an appeal would not be necessary. A great many of these appeals would be settled in the District Court, but if it is the sense of this body that it come direct to the Supreme Court, all right, but a great many of them would be settled right in the District Court.

MR. LEWIS: I move an amendment, that a provision be made for an appeal to the courts, and let the details be worked out later.

MR. EGO: Second the motion.

PRESIDENT KVELLO: Any discussion on the amendment? If not, those in favor, please signify by saying aye. Contrary the same sign.

MR. HALVORSON: I want to suggest that I believe that is entirely too broad. We have hundreds of boards in the state that pass upon matters that come before them, and when you state "bureau or board" I believe that is too broad. I am afraid that language, if it is recorded would be too broad, just offhand, the use of the word "board and bureau," you are covering a multitude of sins in North Dakota.

MR. STEVENS: We did not work out the details in the recommendation. It would simply confuse the matter and we realized the details would have to be carried out later. Mr. Halvorson's suggestion is all right but the recommendation calls for the question involving substantial rights and I imagine that probably details could be worked out later after the adoption of the report is made, and it would not involve any hardship on anybody or get us in bad.

MR. WENZEL: May I suggest that the term be modified to this extent, to use the words "Board or Bureau having state-wide jurisdiction?"

MR, STEVENS: We would have no objection to that.

PRESIDENT KVELLO: Would that amendment, if made, be satisfactory to you, Mr. Lewis?

MR. HALVORSON: I move that the amendment be made.

MR. LEWIS: I will accept that. I had not stopped to think it over.

MR. EGO: Second the motion.

PRESIDENT KVELLO: All in favor of the motion, please signify by saying aye. Contrary the same sign. Carried.

Now the original motion as amended, all those in favor of the original motion as made, please signify by saying aye. Contrary minded the same sign. Carried.

MR. STEVENS: Section Three provides: (Reading section three.) I do not believe that needs any discussion. It may be possible that that subject may be covered by ruling of the Supreme Court. I move the adoption of Section three.

MR. KVELLO: Is there a second?

MR. HANCHETT: Second the motion.

MR. LEWIS: I am opposed to that simply for this reason, I do not want to see any more legislation tampering with our court rules. I think the Supreme Court should do that and we should not constantly be putting a lot of handles on our machinery in handling court proceedings.

MR. EGO: Personally I am opposed to that rule for the reason that there are any number of situations where the prevailing party would be at a disadvantage if required to wait five days before the entry of judgment. I have seen it in my own practice where if the other fellow knew we had to wait five days before the entry of judgment, that we would be at a disadvantage when the judgment was finally entered.

MR. ELLSWORTH: I do not know what is before the Association now. Is it merely a suggestion of the committee on legislation, or is it a motion to approve some bill to be submitted?

PRESIDENT KVELLO: It is a motion to approve a bill to be submitted to the Legislature for making that rule and requiring proposed findings of fact and conclusions of law be served upon the opposing counsel not less than five days before judgment is entered.

MR. STEVENS: Served at least five days before they are signed?

A MEMBER: It seems to me that such a rule as that ought not to be attempted. The laws are already burdened with statutes on matters of practice governing matters such as that and it seems to me that an attempt to have this law passed is merely superfluous.

MR. WARTNER: It seems to me on this particular question, we are quibbling over something that is absolutely not necessary at this time. I find it in my practice that whenever I request the Judge of the District Court, who has decided a case, that the opposing party serve upon me findings of fact and conclusions of law, there is always an order entered that that be done. I have never made a request of any district judge in this state that didn't make that order that the opposing counsel serve upon me certain findings of fact and conclusions of law in cases where I required it so I do not see any necessity of this rule at this time.

MR. LACY: I move that the recommendation be laid on the table.

MR. WARTNER: Second the motion.

PRESIDENT KVELLO: All those in favor of the motion, please signify by saying aye. Contrary minded the same sign. Carried and so ordered.

MR. STEVENS: The next section has to deal with disciplinary proceedings. (Section read.)

I move the adoption of Section four of the report.

MR. ADAMS: I second the motion.

MR. KNAUF: I would like to move an amendment to Section four so that immediately after the word "to" in the second line, there be inserted "admit persons to practice law and to disbar" so that the Association would be given control over admission of men or persons to practice law as well as the matter of discipline, disbarment, etc.

PRESIDENT KVELLO: Is there a second to that amendment?

MR. WARTNER: I second the motion.

PRESIDENT KVELLO: The motion to adopt the report as amended is still before you for discussion.

MR. BRADFORD: What is the matter with the present method of disbarment and is it intended by this method to get away from an appeal to the Supreme Court or hearing in other courts?

MR. STEVENS: As I understand the California procedure, the investigation and recommendation and order is made by the Board of Governors or Executive Committee. The report or ruling or order of the governor is then filed with the Clerk of the Supreme Court and if no appeal is made within sixty days from that recommendation of the Board of Governors, then the Supreme Court makes the order, the final say is always with the Supreme Court.

MR. BRADFORD: Then the difference between that matter and our method is nil.

MR. STEVENS: The difference is that the power delegated to the Bar Board at the present time passes to the Bar Association so we would have local self government.

MR. ADAMS: I know it is wholly with the Supreme Court and then comes back to the Bar Board. In this manner it would be initiated in the Bar Association itself and possibly never get to the Supreme Court.

A MEMBER: Does this practically do away with the Bar Board under our present law?

MR. STEVENS: It would absolutely.

MR. ELLSWORTH: As I understand the matter before the Association now is on the original motion of the chairman of the Committee on Legislation.

MR. KVELLO: And including the amendment made by Mr. Knauf to make the admission as well as disbarment within this statute.

MR. ELLSWORTH: Then the motion is upon the amendment?

MR. KVELLO: Yes.

MR. ELLSWORTH: Then the merits of the original motion are not under discussion properly now.

PRESIDENT KVELLO: Are you ready for the question on the amendment? All those in favor of the same, please signify by saying aye. Contrary minded the same. It is carried.

The original motion with this added amendment feature is before you for discussion.

MR. ELLSWORTH: It seems to me that the Association should not adopt this recommendation without very serious consideration. We have been working for a number of years in this Association along this matter of disbarment of the members of the Bar and at the present time we have worked out a system that is more satisfactory than any other that has ever been known in the State. This proposition is revolutionary inasmuch as it seems to undo very much what we have already accomplished in the last ten years and to try out something that, even though it may have been adopted or tried out in California, has not proved itself on the merits to such a degree in this state as to give us great confidence in it. Now we have a system here in these matters of disbarment that I think is in advance of that of any other state. Our Bar Board was adopted in 1919, eleven years ago. During that time its operation has been very satisfactory. It was compelled in the beginning to pioneer its way very largely but now we have adopted several rules of procedure and the work is going on very smoothly and very satisfactorily. Now to adopt a statute such as has been proposed here would mean to go back to the pioneer period again such as the Bar Board had to go through to begin with. And to bring the matter back into the Association, that is all matters preceding the presentation of charges to the Supreme Court, as I understand it, if we are to go further than that, and try to vest jurisdiction to members of the Bar, to the State Bar Association, we go against the Constitution, or rather against the holding of the Supreme Court that that function is vested, and cannot be transferred to the State Bar Association so that all that can be, at most, transferred to the Association, would be preliminary matters such as at the present time are discharged by the Bar Board. Now if any member of this Association knows of any good reason for

making such a change, I would like to hear of it. I am opposed to such a revolutionary procedure as that and I can't see that it amounts to anything whatever in the way of improvement over what we have at the present time.

MR. BRADFORD: I am not opposed to revolutions and am not opposed to making changes if there is any possible benefit to be derived therefrom, but it strikes me the Supreme Court of this state, and I think in most states, although maybe not a very populous state, is a body that is a proper body that should receive the first intimation of some serious condition as to require disbarment or serious discipline. The younger members of the Bar of the state undoubtedly look upon the Supreme Court of the State with at least the respect that they accord their elders; the confidence in and age of the members of the Supreme Court are looked upon with the respect due an older brother. When any occasion arises for the discipline of any member of our society, it seems to me that it is most essential that the first board or tribunal that should pass upon the adequacy of the charges should be the Supreme Court; they should be the first ones to have the charges for more than one reason. I do not care anything about the constitutional situation or any other situation but I do care about having the charges made and presented to the parents, to the older brothers, to the people who can, if possible by anybody, bring them back into line because most of us are decent, inherently constituted, most of us are all right and maybe the helping hand given at the right time before the publicity, before the harm has been done with respect to that may bring the erring brother right back straight into line and make unnecessary any further procedure. Certainly that is the end to be desired, if it can possibly be reached. The Supreme Court is the one tribunal that is in the strongest position in that regard. I have been in the past few years in very close relation with a condition of this kind and I feel if there had been an opportunity in the world to save the erring member of our profession, to bring him back into line, that the confidence, the friendship, the honest regard by the members of the Supreme Court for that man would have been the one method of saving him. I think our law at the present time is thoroughly satisfactory in this respect and I thoroughly accord with Judge Ellsworth in his conclusion.

PRESIDENT KVELLO: Are there any other remarks?

MR. STEVENS: I might suggest that Judge Ellsworth evidently has not read the report. There is nothing revolutionary about it. It is simply a method whereby the Executive Committee are given power to recommend to the Supreme Court that such proceedings take place. Disbarment under this method would be accomplished practically as it is at the present time. Before possibly any recommendation ought to be made, I think the members ought to read the recommendation and understand it before they really take any action on it.

MR. WENZEL: Let me read it. (Fourth section of report read.)

MR. LANIER: I want to register my disapproval on any method suggested so far that will change the present procedure. It occurs to me that you are putting upon the Executive Committee of the State Bar Association not only one kind of work but it is putting upon that committee a duty that it is not especially intended to assume. This Bar

Board we have here in the State of North Dakota has been taking care of it in a way that it should be taken care of. The fact there has been considerably delay, I think, is not a cause for criticism but it is a cause probably for commendation. These matters come up and certainly should be given due consideration before action is taken and I believe in proper cases they have taken action as quickly as the conditions have warranted, and I will ask any one to put his finger upon a single case of a serious character that has been neglected. I want to register my approval of the present method of procedure with that of Judge Ellsworth and Mr. Bradford.

MR. ADAMS: The members of the Bar Board appreciate what has been said, but I think if Mr. Lanier and some of the other members knew of matters that were before the Board, he would not perhaps say just what he did. Now I think there has been undue delay in a great many matters, not due to the action of the Bar Board, Supreme Court, or anybody else, but due to the practice to which a man must go through to effect a disbarment. Personally I am very much in favor of the new method even though I might lose a job. I think we ought to clean up our own back yard and I do not believe there is any reason why we should bother the Supreme Court unless the person himself wants to bother with it. I think we ought to do the job ourselves. This matter has been held constitutional in the State of California in two cases and we have the same constitution in our own state and I feel that we are going to get ahead and do justice to the fellow who is complained of if we proceed properly through our own Association. As a matter of fact the Secretary's report showed he acted for the Committee on Grievances, acted on twenty or thirty cases or more, which are complaints against the integrity of the lawyers; only a few of them perhaps come to the Bar Board and only come there because a complaint has been sworn to. As the organization exists now, you act upon a great number of cases. I don't know why you couldn't act upon all of them so long as the party has a right of appeal or review. Personally I have been in favor of the new method. I do not think we are in position today to act. I think it ought to go over another year and determine whether we are competent enough ourselves to act upon our own members. Mr. Johnston tells me they do it in Canada—clean up their own mess among themselves. They do it among the doctors, dentists and other professions—why not the lawyers?

MR. KNAUF: I am a member of the Board, but I want to just add this for the benefit of those who may not already know. The delay is as stated largely because of the method and rules of practice under which we are governed at the present time. We are delayed very frequently because when charges come to the Board and prosecutors are named and the referees to take the testimony, they name as referee in nearly all instances a judge of the district court and get them just at the time when the terms begin and when the district judges are as busy as they can be for several months, and then we find the rules do not give the quick action which either the judges, the Board or the Courts would like them to. They send the charges first to the Supreme Court; the Supreme Court then is required to refer the matter to the Bar Board; then the Bar Board investigates the matter and then bring it back with recommendations to the Supreme Court, which takes the matter before the Supreme Court twice before a referee is appointed and then the referee must take the testimony and file it with the Su-

preme Court together with findings and then briefs are prepared which makes it the third time before the Supreme Court. In the proposed new rules, the matter would come to the Supreme Court in a sort of appeal the same as all other cases come before them or nearly all other cases come before the Supreme Court, and in a way which we believe the matter should come before the Supreme Court. I think this is also the sentiment of Mr. Young, who is also a member of the Bar Board. I join with Mr. Adams in asking that the Association do take such steps as will give to this Bar Association, not only the suggestion and recommendation for admission of members to practice, but also for the method of discipline of attorneys. I think it ought to come before the Bar Association, whether the Executive Committee or some other committee which might be named by the Bar Association. I feel that the Bar Association ought to have the power of discipline and the power of admission to the bar, in the first instance, at least, so far as the recommendations are concerned, which should be presented to the Supreme Court.

PRESIDENT KVELLO: Are you ready for the question? Those in favor of the motion kindly signify by saying aye.

MR. LEWIS: I made a resolution last night that today I would keep my mouth shut and I have violated that resolution every minute. It seems to me Mr. Adams has hit the nail on the head in saying it is an important proposition and it ought to be passed on. I feel this way about the proposition that in a sense there is not very much difference in the present method. We select the men from our membership for appointment to the Bar Board, and they are appointed by the Supreme Court. However, this would be a direct method of the Association cleaning up their own mess. I am rather inclined to think that ultimately it is more logical and desirable, but of course it means a change. We are not finding any particular fault with the present method, and I think we need time to discuss and consider the proposition. Just for fear it will be rushed through, I am going to move that this be put off until next year.

MR. BRADFORD: Second the motion.

MR. WENZEL: May I talk on that point? I do not want to discuss the merits of this proposition at all, only to direct attention to this thought, that the experience of these association meetings has been quite frequently to delay matters too much. Your minds are frequently made up on a point and you hesitate about taking action. I call your attention to this fact, that if you delay this until next year, you are delaying it for two years, at least.

MR. LEWIS: That is just about right. In two years we ought to pass on it one way or the other.

MR. KVELLO: All those in favor of the motion, please signify by saying aye. Contrary minded the same sign. Carried. The motion has been made and carried that this matter be laid over until next year.

MR. STEVENS: The last section of this report has to do with the proposition of issuing injunction ex parte in foreclosure of mortgage by advertising. (Reading proposed amendment.)

I move the adoption of that report.

MR. TRAYNOR: I second the motion.

PRESIDENT KVELLO: Any discussion? Are you ready for the question? All those in favor of the motion, please signify by saying aye. Contrary minded the same sign. Motion is carried.

Is the committee on Bench and Bar Ethics here? Mr. Garberg is chairman, or any other member of the committee. If not, that matter will be passed permanently, for this session.

The Committee on Public Utilities, Mr. L. J. Palda, the chairman, is in Europe. Any of the other gentlemen present? No report has been filled. If not, that will be passed permanently.

The Committee on Salaries, Terms, Powers of Judges, William Lemke, Chairman. There was a splendid committee report last year by Mr. Lemke. Is he here or any other member of the committee? No report has been filed. Some of these matters has been taken care of by the Legislative Committee Report and acted upon.

MR. BOTHNE: I believe I was put on the committee. There has been no meeting of the committee this year and no report. Weren't there some matters left over from last year on that report on which action was postponed one year?

PRESIDENT KVELLO: No, nothing on that one. That will be passed definitely.

Next, the Committee on Uniform State Laws. Is any member of the committee present? No report has been filed and that matter will then be passed.

This brings us up to our afternoon schedule and we will not break into that at this time. It is now seven minutes to twelve. We are going to begin, instead of at two, at 1:30 this afternoon. Mr. Bradford's address will be at 1:30 and the balance of the business and program immediately following that so if you will please remember and be here at 1:30 instead of two and please do not forget to go down and register and get your banquet ticket through courtesy to the local people and those who will serve us.

MR. HUTCHINSON: I would like to have a meeting of the Resolution Committee immediately following the adjournment.

PRESIDENT KVELLO: We will stand adjourned then until 1:30 this afternoon.

Saturday, August 16, 1930

AFTERNOON SESSION

PRESIDENT KVELLO: At this time, we will have a continuation of the program, an address by B. H. Bradford of Minot, on "Judicial Councils—Some Constructive Suggestions." I will be glad to introduce Mr. Bradford as he and I were classmates at the University of Minnesota.

JUDICIAL COUNCIL—CONSTRUCTIVE SUGGESTIONS

B. H. BRADFORD, Minot

Mr. President, Members of the Bar Association: I am here at the particular invitation and request of President Kvello. He seemed to be of the opinion that the subject would be of interest to the Bar Association and he was so kind as to express the opinion that I could say something of value to the Bar Association on the subject. I doubt whether the latter is true; however, it is possible that the Bar Association of the State of North Dakota has not thoroughly understood the purposes which form the basis for the act which established the Judicial Council and for that reason, it may be necessary and expedient to go into a little history of the situation in this state.

In common with other parts of the country, the lawyer in the State of North Dakota a good many years ago, was looked upon by the laity, the people at large, with suspicion. He was regarded as an unnecessary personage to society and especially was there a movement against his presence in legislative halls.

It was thought by the common people that if he could be replaced by a practical business man or a real dirt farmer, that there would great good come to the state through this change, and I think you will agree with me, that this change was thoroughly brought about. While in the early days of this state, the Legislature was composed largely of lawyers, it has arrived, and arrived several years ago, at a condition where there are not enough of the Bar present in the Legislative halls to even furnish membership in the more important committees, when we know and must realize that the condition should be that at least there be enough lawyers in the Legislative Halls so there would be one member of the Bar on every committee. This result was bound to react and it became quite plain to men in the Legislature who had experience and who were wise and who had the interest of the people at heart, that the condition was intolerable, and that the Legislature needed advice and needed counsel, especially with respect to the administration of the law, and laws with respect to procedure, etc.

Certain members of the Legislature discussed the matter with a member or members of the Supreme Court and asked for advice and counsel with respect to these matters. The members of the Supreme Court conceived the idea that it would be quite in keeping with our ideals and with the necessities of the state to establish a Board that could give this advice, that could furnish information upon legislation, and that could fill the place which had been made by the absence of lawyers from the Legislative Halls.

In several states there had at that time been established Judicial Councils. They were an experiment. I do not know that they were established for any such reason as was behind the establishment of the Judicial Council of this state, but in any event, the theory was that the Judicial Council was a good instrument to furnish the means of fulfilling the desires of those legislators who realized the wisdom of legal advice and therefore the act was drawn and was passed.

Of course, many of you are familiar with the personnel. For those who may not be, it consists of all of the members of the Supreme Court, all of the members of the District bench, one county judge selected, five

attorneys from the general practice of law of the state selected by the Executive Committee of the Bar Association and the Attorney General and Dean of the Law School. Now that should be a Board which is thoroughly qualified to function along the lines specified and should work together in functioning intelligently and efficiently.

Is the Board doing so? I think that the general impression is that the Judicial Council is not functioning either efficiently or well in regard to any of these matters. I do not think this impression is correct in some respects; in other respects I think it is so.

At this time I believe that it would be well to inquire into the reason or reasons for this failure, if there is any. The Legislative Act which established the Judicial Council provided that the membership of the council should make a continuous study of the administration of the law. It provided for the gathering of information, the sifting out of the information, and the making of reports to the Governor thereon and of the condition of the administration of the law in the State. Now I think that you will agree with me that the members of our Supreme Court have all the work that five men should be required to do in caring for the duties which are imposed upon them as Judges and not otherwise. I think that their time is fully occupied. I think that they are not in any position to make a continuous study of the administration of the law other than they do as judges. I think further that their time is so fully occupied that they are in no position to steal time from other duties to be used in the advice and counsel of the Legislature of the state.

What I have said with regard to the Supreme Court is certainly true to a great extent of the District Court with this addition, that the district court is not located at Bismarck as is the Supreme Court. The Judges are not in position to be available to the Legislature for advice or counsel. They are scattered widely apart and if their study of the administration of the law be continuous, it would still be not a collaboration.

The five members of the bar, I assume, are rather busily engaged in extracting a livelihood from their practice so we find as we go down the line, every man who is by law made a member of that council and is required by its terms to put in a large amount of time without any personal advantage to be gained, already has his time filled and he is required to do this without any compensation whatsoever.

Now I say to you that it is not human to expect that such a membership will disregard the duties and responsibilities for which they were primarily elected or which were primarily their duties and obligations and for which they receive remuneration, to do something for which they receive no remuneration and for which they were not primarily elected or appointed. Consequently I say that the matter with the Judicial Council consists of two things; first, lack of time; second, lack of funds. I say further that at every legislative session there should be a board, a committee, if you will, of the judicial council that is available every day and every hour of the day to the Legislature for advice and information. I say that if such a Board was so available, there would be few, if any, of the ridiculous situations that come up with respect to laws, which overlap, repeal, or change where they never were intended to affect in any manner, and I say if the Judicial Council,

or a board, had the time and opportunity to examine each law that is referred to the legislative council and to make such comment upon it with respect to administration of law as was proper and competent, that we would have very few of the ridiculous examples that we are familiar with; but as I have said we lack the time, we lack the funds.

Now then, is there any way in which we can get the time for this Board? It seems to me the Board is essential—can we get the time for the members so they can do this work without robbing the state of their services for which they were elected and appointed? In making my suggestion upon that point, I am conscious of making a revolutionary suggestion; that is what I meant this morning when Judge Ellsworth spoke of the matter being revolutionary. I said that I wasn't opposed to revolutions. I knew I had to be revolutionary this afternoon.

In what way can we give the members of the Supreme Court, or can they give themselves time within which to consider, time within which to fulfill the duties imposed upon them by the Judicial Council act? What part of their time, if any, is taken up in such a manner and by such duties that these duties can be dispensed with, without injuring the court, without making it function less efficiently? My theory is that an oral argument before the court is of little or no value, either to the court or to the parties interested. We are required by the rules of practice to present a brief. I doubt if there is any lawyer in this room who will not agree with me that he can say in writing more forcibly, more logically, more clearly, what he desires to say than he can say orally. He can bring out his points more logically. He can bring them out in proper sequence and the Supreme Court can follow them with greater clarity of memory than they can in oral argument, so I suggest that the Supreme Court eliminate oral argument entirely except in those cases where they believe that an oral argument would be enlightening or expedient in the decision of the case.

As I take it the Supreme Court spends from two to six hours a day in listening to oral argument. That is the best part of a day's work. If we could eliminate the necessity of this, it would leave the court free that number of hours for the work of the judicial council and I believe that it would be time very well spent under the circumstances.

I understand that I will not be without argument on the part of the bar, not be without condemnation on the part of the bar as to the value of oral argument, but when you consider that you go before that court at ten o'clock in the morning, you finish your argument at noon; the court listens to two more cases that day, I venture to say that the next morning afterwards, the court would have difficulty in remembering who appeared before them at the first case the day before, because they are human.

On the other hand, if the Supreme Court examined the briefs and the records and discussed them together and finding that there is a point that is very close, and thereafter advised counsel that they desired an oral argument on that point, it seems to me that the court would get much more value from the oral argument than they can possibly get out of any argument before a thorough consideration of the brief and record. I say that is one method of saving time for the work of the Judicial Council, and I believe that it is efficient in every regard;

whether regarding judicial council or otherwise, I believe it would give us more efficiency, and I say we are tied to it only by tradition and habit. Of course, it is pleasant for the members of the Bar to appear before the Supreme Court, especially the court we now have; it is pleasant, I hope, for the members of the Supreme Court to have members of the Bar appear before them. It is agreeable, but I say to you, I believe it is a tradition and habit that is not efficient in the administration of justice, and that, as lawyers, is what we desire.

The District Court also is cramped for time. In what way may we eliminate unnecessary effort, time-using action from the District Court without hurting their efficiency, destroying their efficiency in anyway? Our friend from Canada called our attention last night to something with which we are familiar, but he brought it to us very forcibly, and that is that a great deal of time is spent in the selection of juries in the United States. He also might have called our attention to the fact, which I believe is the case, that our judges' charge in the United States to the jury is immeasurably longer than a charge in like cases in Canada.

Now I have a suggestion in respect to the examination of jurors, which I think is prevalent in a good many jurisdictions, some of the jurisdictions of this state. I believe it has been recommended by the Judicial Council and possibly by the Bar Association. That is, that the trial judge should conduct the examination of jurors and that only those questions should be asked by counsel as are presented through the court. An observation of this manner of handling the examination of jurors, personal observation, results in the conclusion that it at least cuts the time to one-tenth of the time formerly employed, and I see no reasonable objection to it, unless we regard the trial of a lawsuit as a game. If we regard it as a game, by which counsel is required to make a personal impression upon the jury, if it is a game by which his dominant character may be made use of, in bending the will of the jury to his ideas and thoughts, then of course, we will concede that it is a mistake to proceed in that manner, but not otherwise. There can be no possible advantage in making examination of the jury by counsel except for that purpose. Counsel usually knows in an important case more about that jury before they sit down than is necessary for them to know for the fair trial of the case, and we all have had many experiences of such dominant characters in the trial of a lawsuit as our friends Tracy Bangs, E. R. Sinkler and the like, who have dominant personalities and who make an impression, even in the examination as to qualifications of jurors. They put that personality of theirs over and I say to you, in that respect, it is a game and the game part of it, it seems to me, should be eliminated. So much for that.

Now as to the instructions, the Court sits up there and he instructs the jury of twelve men in our court for a period of three months or four, sometimes five, solemnly tells them the meaning of the words "burden of proof"; tells them the meaning of the words "contributory negligence" and many, many other words, and he does it day after day and case after case, and several times a day, and yet all that the jury ever has required is that definition outlined to it once. As a matter of fact, it seems to me that the droning of those instructions day after day, session after session, in the same words, the same tone of voice, takes away all of the strength of the instruction as to the law of

the case, and I suggest therefore that on the first day of the term, the court convene the jury and instruct the members as to these various definitions; and why not deliver them a little pamphlet containing the full description and full definition of every one of these words, leave it with them, let them have it, and then forever after hold his peace. I venture to say it would save at least two hours a day on the average, when you consider that it is necessary that it all be taken down, all written down, all a part of the record, when as a matter of fact, it does not need to be in the slightest degree. Put the book in the record as to instructions on contributory negligence. Go a step further—let the Supreme Court write the book; let them define these things, give the jury the book and then dare anybody to go to the Supreme Court and get the definition set aside. I say that will save time for those members of the Board.

I do not know how we can save time for the Attorney General. I do not know how we can save time for the Dean of the Law School. I do not know how we can save time for the practicing lawyers, but I do know that the practicing lawers have become so thoroughly inured to spending their time and giving away their services that the habit has become tradition with them and they will go on doing it. I do say the members of the Supreme Court are important cogs in the wheel. If we can leave enough of their time available to the Legislature of the State; if we can save enough of their time to the people of the state so they can make, as they are directed to by this Judicial Council Act, a continuous study of the administration of the law, if we give them time so they can do that intelligently and efficiently, then we have placed the Judicial Council where it will no longer be subject to criticism for what it has failed to do, but on the other hand will be a real implement in the hands of those favored with the administration of justice. I thank you, gentlemen.

PRESIDENT KVELLO: That is what has already been referred to as constructive imagination. I am very appreciative, Mr. Bradford, for that fine address.

Mr. Libby did not arrive and for some reason or other the data for those who passed away since our last meeting was not sent here so that Chief Justice John Burke has not the advantage of having that data with him. This will be furnished a little later and will be incorporated in the record and report but Judge Burke today will give us a memorial statement of a general nature as to our departed brothers.

MR. BURKE: Mr. Chairman and gentlemen of the North Dakota Bar: Of course, I thought that Mr. Libby would be here with his resolutions and necessary data, but such is not the case, so I will confer with Mr. Libby and get all that information and prepare the resolutions such as has been done in the past concerning our departed brothers. I would not want to undertake here at this time without that information to say anything in reference to those who have departed, but I will get the information from Judge Libby and prepare it and turn it over to the Secretary for publication.

PRESIDENT KVELLO: If there are no other committees to report, and I believe there are none, except the Committee on Resolutions, and as has been the custom in the past and which will be observed here

today, the report of the committee will be received at the conclusion of the banquet this evening, so that when we adjourn after the election of officers, it will simply be a recess until 6:30 and the report of the Resolutions Committee will be a part of the evening program.

The next order of business is the election of officers. There are three officers to be elected, the President, Vice President and Secretary-Treasurer.

I am going to appoint as tellers, Mr. Stockstad of Forman and Judge Swenson of Devils Lake.

Before I call for nominations for the first office, I want to make this statement. Some of the members have suggested, and have come to me and suggested that I was entitled to a re-nomination in my own right as President of this Association. Now I have disagreed with that conclusion all through the year and I am firm in my resolution on that at this time. While the letter of the law may not have been observed, the spirit of the law has certainly been observed and I have had the honor of serving as your president for over eleven months and I have tried to repay the Association for that honor with the best service that I have been capable of. Whether I have done so or not is something I am not concerned with at the present. I am merely concerned with the fact that I have had the honor and whether I am entitled to any more honors, is neither here nor there, for as my great friend Coolidge said, "I do not choose to run." I wish therefore my friends who have been speaking to me about it would not consider the matter further, but would choose from the body of the Association. I have this to say that I wish every member of the Association could act as President of the Association for one year. I wish they could have the experience that I have had during the past year. I know that because of the contacts and the new things that I have learned that I am a far better lawyer and a far better member of the Association than I have ever been before. I have learned, as I could probably learn in no other way, what my duties to the Association mean. I know from now on that I will be a different member of the Association than I have ever been in the past. If a large majority of the members of the Association could have the privilege of serving as president, there would be no concern in the future as to the progress of the Association. I wish to thank you individuallly and collectively for the honor that has been mine and the pleasure I have had in serving you.

Nominations for President are now in order.

MR. BUTTZ: I have taken great pleasure in watching the work that has been done by President Kvello the past year. I had the pleasure of seconding his nomination at Valley City last year and I think that I said then that I had known him almost since he was in the cradle. Of course I didn't have anything on him in that respect because he had known me just about that long even though he doesn't look half as old. Through the death of our beloved Judge Bagley, he came into the office which he has so wonderfully well filled a year or nearly a year sooner than he really had expected. He has done a great honor to that position and, as one of the leading attorneys of this state said in my office across the hall just a few minutes ago, he believed it to be unquestioned that he had been the most wonderful president we had ever had in the way he had given attention and time to the work and

we have had some mighty good men at the head of the organization, as you all know. If the President was in a mood to accept a second year in the way of re-election, nothing would give me greater pleasure than to nominate him at this time. He has assured some of us personally that he did not care to consider anything of the sort and now has given assurance to the Association itself as to that. Therefore, I desire on behalf of the Bar of this region to present to you the name of a gentleman that you all know just about as well as I know him, and I have known him from almost the first days he came to Devils Lake to practice law in partnership with another gentleman of the bar of this county. I have watched his career with a great interest and I have been proud of his career and of his work. His characteristics are such that he could grace the head of any similar organization anywhere in this country and a man who has been a most faithful worker in the ranks of this Association. On behalf of the Bar of this region, I present to you for your consideration as the next President of this Association, Honorable Frederick J. Traynor of Devils Lake.

MR. PHIL BANGS: Mr. Chairman: Judge Buttz has "beat me to it," as the words go. I am up on my feet for two reasons; one is I want to make my maiden speech in this Association. I just arrived today. The other is no record has been complete of the Bar Association without Bangs appearing on the program, so I want to add my words to Judge Buttz' in favor of Fred Traynor as the next President of our Association. I have known Fred for a good many years. I have known him in a fraternal way. He belonged to the same college fraternity that I belonged to and I don't know of any man who could bring the credit to our Association as President that Fred Traynor and I wish to second his nomination.

MR. HANCHETT: On behalf of myself individually and on behalf of our Barnes County Association of which I have the honor to be President, I rise to second the nomination of Fred J. Traynor as the next President of this Association. I might say that it has been said that Germans have a capacity for hard work. We have an illustration of that, a concrete illustration, in the gentleman that sits before us as chairman this afternoon. If this election is made and made unanimously, as I believe it will be, we will have another illustration of that same principle another year.

MR. WARTNER: I always believe in putting over good things right off. Therefore, I move you that the rules be suspended and that Fred J. Traynor be elected unanimously as the President of the State Bar Association for the ensuing year.

MR. CUTHBERT: Second the motion.

PRESIDENT KVELLO: You have heard the motion. Are you ready for the question? All those in favor of the motion signify by saying aye. Contrary minded the same sign. Carried.

Mr. Traynor, please come forward.

MR. TRAYNOR: Mr. President and gentlemen: This is a great honor, indeed, coming to me in the manner in which it has come, I certainly do triply appreciate it. I could not let this opportunity go by without saying a word of commendation, as others have done, for the wonderful work that has been done in the past year by President Kvello.

Personally, I was in favor that he should be re-elected for the coming year because I thought he was entitled to it, but I have had his own expression from time to time as well as today, that he himself felt he had his year's service and he did not care to continue. There are many men in this association that are better fitted and better qualified for this very high position than I. Somebody has to serve and somebody has to work. I have always been willing to do my share of whatever work came to hand in whatever organization I have been in, and I presume in giving me this honor, you have done it largely because you believe I am willing to work in whatever capacity I am placed, whether it be in lowly or high position in this Association, or any other, and I do wish to thank you very sincerely from the bottom of my heart for this honor which you have done me today.

PRESIDENT KVELLO: Nominations for Vice President are next in order.

MR. CUTHBERT: I should like to add a word or two, as the former President of this Association and the former President of the Lake Region Bar Association, of comment on the wonderful work that you, Mr. President, have done during the past year. It is said that comparisons are odious, so I am not going to compare your work with any other President except with my own. I did the best I could, but having observed your work, Mr. President, I realize how insignificantly I fulfilled the office in comparison with the work you have done. There are a great many men in this Association that are qualified for the office of President, a great many men that are good lawyers, but we cannot consider that alone. We have to consider other things, men who are qualified to carry on the honors and duties of President, which means sacrifice of time and money, and in presenting to you a man that I am going to present, I have one other consideration which I think the Bar generally feel, and that is that the office should not be held exclusively by the larger towns; that we should recognize the men who are attending these associations, to have them here with us who are doing those things which we want to see done. They come from the small town; they are willing to make sacrifices and give their time and attention because it is an unwritten law in this association that the Vice Presidency succeeds to the Presidency. I do not recall that it has ever been violated, that rule. I want to present a man who lived in a larger town in his early career, graduated from the University, then practiced for a short time in North Dakota; then went to a small town; who has been in regular attendance; who has been active in other lines, I believe was one of the most active men in putting across that great memorial work down there where about 15,000 people sit to see a football game, but that doesn't interest me because I don't know whether the man who kicks or carries the ball makes the score. I want to put before the convention the name of one whom I believe will make a good President, that will succeed to the position with honor; one of the younger members of the profession; a man that I think all of you know, and those who know him, not only respect, but love the name of Arthur Netcher of Fessenden.

MR. WARTNER: I do not wish to say anything against any of the gentlemen that have been nominated to the office of Vice President. I realize the great work that you, Mr. President, have done during the past year and also realize the great work that is before our just elected

President of this Association, and I know that he needs the assistance and aid of a capable man to run by his side. The man that I am going to nominate I have known for more than thirty years. I have known him intimately. I believe every lawyer in this room has known this gentleman as a hard worker, as a good lawyer, as a man who will fill the position of Vice President of this association, and if he is elected later on, will fill the office of President of this Association with great honor. Mr. President, members of the State Bar Association, I take great pleasure in nominating my good friend, John O. Hanchett, as Vice President of this Association.

MR. ELLSWORTH: Mr. President, I wish to second the nomination of Mr. Hanchett.

MR. SPROUL: On behalf of myself personally and in behalf of the Barnes County and Valley City Bar, I want to second the nomination of Attorney John O. Hanchett. Although Mr. Hanchett has been in Valley City for a shorter period than he has been in his former residence, we have known him to be a very capable and competent attorney, and he is held in high esteem by the attorneys of Valley City and that vicinity.

MR. POLLOCK: I do not wish to inflict myself in these proceedings unnecessarily, but I have to rise on my feet at this time to place on record the only time I ever agreed with my friend Cuthbert, and I want that down in writing, and that is upon the nomination of my friend from Fessenden here for Vice President of this Association. I have known this man; we have grown up together; we have fought against each other on basketball and baseball teams. I have known him to be a good sport, a good fellow, and I want to add my voice to Cuthbert's and urge his election for Vice President at this time.

MR. EGO: I want to be permitted at this time to second the nomination of Mr. Hanchett. The reason I do that is because I have known him a number of years. He is a capable lawyer, a man of broad experience, a man who will use that experience in a manner that will give this Association very valuable service. I am not unmindful of the fact that a year ago at Valley City, the Bar Association having been entertained by the Bar of Valley City, Mr. Hanchett at the urgent solicitation of his friends, was a prospective candidate for the position of Vice President, and under the circumstances as they developed and that situation, he very generously and graciously withdrew from the candidacy for the position of President, but because of his ability, because of his ripe experience, and because of his unselfish and generous disposition which he showed at that time, he is deserving of the vote of the Association at this time.

MR. LANIER: Mr. President: Conceding the qualifications and the generosity of the gentlemen whose names have been placed in nomination, I rise to add to those already nominated the name of another. Now this gentleman I had met shortly after I came to North Dakota some years ago. I met him in the trial of a lawsuit and it took him about five minutes to convince me of his ability in that proceeding at that time. I have known this gentleman and grown to know him better year by year. I have met him in every bar meeting and I have attended every bar meeting since I have been in the state. He has served as a member of the Executive Committee here. I know he

stands well in the esteem of this body. He also comes from a town that is known as one of the smaller towns. I want to place in nomination the name of N. J. Bothne of New Rockford, North Dakota.

MR. PHIL BANGS: I seem to be doomed to making seconding speeches, but it gives me a great deal of pleasure at this time to second the nomination of Arthur L. Netcher for Vice President of the Association. I have known him for a number of years. I knew him when he was an attorney practicing in my father's office. I know he is well qualified to fill the position. I know that he is not only a capable lawyer, but he has executive ability which is necessary as President of the Association, which we hope the Vice President will become, and it gives me a great deal of pleasure at this time to add my voice to the others in seconding the nomination of Mr. Netcher as Vice President.

MR. RINKER: As a member of the Bar Association of New Rockford, it gives me great pleasure to second the nomination of N. J. Bothne for Vice President.

MR. THOMPSON: I second the nomination of Mr. Bothne as Vice President.

MR. MANLEY: Mr. President, I rise to second the nomination of my friend Mr. Bothne.

MR. FLETCHER: From Cavalier County, I desire to second the nomination of Mr. Hanchett. Mr. Hanchett came from a town in Minnesota in which I was raised and I have had nothing but great admiration for him ever since.

MR. WARTNER: I move that the nominations be closed.

MR. BANGS: May we have a five minute adjournment to just look around the hall?

PRESIDENT KVELLO: There will be no recess.

MR. CUTHBERT: I move that it be the sense of this meeting that the Bangs family have not lost their sense of humor. (Question called for.)

PRESIDENT KVELLO: It has been moved and seconded that the nominations be closed. All those in favor of this motion may signify by saying aye. Contrary minded the same sign. Carried.

MR. EGO: I move that the vote of the association be taken by ballot and that the member receiving a majority of the votes cast be declared elected. (Question called for.)

MR. CUTHBERT: I move you that as an amendment that the low man be eliminated and that the Vice President be elected from the other two.

PRESIDENT KVELLO: Do you accept that amendment as a portion of your motion?

MR. EGO: Yes.

PRESIDENT KVELLO: The motion will then be that the vote be taken by ballot and the low man eliminated. On consultation with the Board of Rules here, it will be the ruling of the chair that if a candi-

date receive the majority of all the votes cast on the first ballot, that candidate may be nominated for Vice President, but if no one receives a majority, then the low man is eliminated and the two others are on the next ballot.

MR. CUTHBERT: While they are collecting ballots, may I ask that all of those who have not bought their tickets for the banquet tonight will do so immediately after the close of the session this afternoon? It is somewhat embarrassing to know that not nearly all of the number that are here have bought tickets. We expected about a hundred and when I checked up about an hour ago, I think there was only about fifty and the ladies have prepared a very fine banquet of spring chicken and other things and they would like to have some idea of the number who will attend so if the gentlemen will kindly purchase their tickets at the Great Northern Hotel so we can get a check up it will be very much appreciated.

MR. WENZEL: The result of the ballot as reported by the tellers is as follows: Netcher 23; Hanchett 24; Bothne 7.

PRESIDENT KVELLO: Prepare ballots for the names of Hanchett and Netcher on the second ballot.

MR. FLETCHER: Mr. President, can't we nominate Dick Wenzel while we are waiting?

MR. CUTHBERT: I move that the ballot be declared closed and Dick Wenzel be unanimously elected to the same old job.

MR. FLETCHER: Second the motion.

PRESIDENT KVELLO: All those in favor of the motion signify by saying aye. Contrary the same. Carried unanimously. Will the Secretary cast the unanimous ballot for himself? "Dick" Wenzel is elected as Secretary again. Get up and make a speech, Dick; you are elected again.

MR. WENZEL: As part of my expression of appreciation upon this occasion, I now assign, set over, devise, or otherwise transfer unto one E. E. Fletcher all of my right, title and interest in and to those certain pallbearers that were so generously donated to my service yesterday by the members present. I am gratified to know that further reflection has convinced the members of this Association that I am to be considered among the living for another year. I hope to serve you and the new administration with zeal and pleasure.

MR. ELLSWORTH: I would like to ask for a little information concerning the place of the next meeting. Is that selection made by this meeting?

PRESIDENT KVELLO: The place of meeting is chosen by the Executive Committee.

MR. ELLSWORTH: Am I to understand, then, that invitations are received at this time?

PRESIDENT KVELLO: Invitations are received by the Executive Committee or at this meeting, if anyone wishes to make that offer right now.

MR. ELLSWORTH: Do I understand those invitations may be received at this time?

PRESIDENT KVELLO: Yes.

MR. ELLSWORTH: Then on behalf of the Bar of Jamestown and of the Commercial Club of the City, we invite the Association to meet at Jamestown next year. I am not going into any long preamble of the ample facilities that Jamestown affords for a meeting of this kind. I am sure all of the old members of the Association are familiar with this because many of you have been there at several meetings, but we promise the membership in case they should come there our very best treatment.

MR. WENZEL: The result of the second ballot is as follows: Hanchett 30; Netcher 26.

MR. CUTHBERT: Having nominated Mr. Netcher, I now desire to ask that the vote be made unanimous. I am sure we all appreciate the splendid qualities of Mr. Hanchett and in nominating Mr. Netcher, I feel sure that my friend John will not feel that I have any less respect for him as a lawyer or member, and I hope and trust and believe that he will make an excellent president, if elected, and I am sure we will be glad to vote for him for president.

MR. NETCHER: My friend Cuthbert took the words out of my mouth. I desire to heartily endorse and second the motion made by Cuthbert that the ballot be made unanimous for John Hanchett, and that a rising vote be taken.

MR. HANCHETT: I certainly feel it is a great honor that has been conferred upon me, especially in view of the fact that I have been in a contest between three of the best men in the Bar Association. It is especially gratifying to me that so many people who have known me for about thirty years could have the nerve to come in here and vote for me for Vice President of this Association in place of the other candidates who were mentioned and whose names were before the Association. I will have the privilege, I presume, and I trust it may be at Jamestown, of responding to an address of welcome—I think that is one of the privileges of the Vice President, next year, and if I am chosen as President of this Association at the following meeting, I will use my best efforts to follow, or try to follow, in the footsteps of some of our predecessors, especially Kvello, who has made such a wonderful record. I thank you.

MR. KVELLO: There being nothing further to come before the Association at this time, we will recess until 6:30 this evening at the Episcopal Guild Hall.

The evening banquet session was participated in by the members, their wives, friends and sweethearts. It being Saturday, however, more than the usual percentage started on their way home. That was their misfortune, for they missed one of the best banquet programs that ever featured the closing session of an annual meeting.

Governor Shafer, who graciously accepted the role of toastmaster, certainly made it a cheerful, happy occasion, and was ably supported by Messrs. Johnston of Winnipeg, Clark of South Dakota, and Dr. Graham of Devils Lake, also by musicians and the musically inclined.

The Canadian guests were made honorary members of the North Dakota Bar, and the following resolutions were presented and adopted:

REPORT OF COMMITTEE ON RESOLUTIONS

The committee on Resolutions beg leave to submit the following report:

BE IT RESOLVED, That the North Dakota Bar Association in annual meeting assembled, feeling a deep appreciation for the warm hospitality of the people of Devils Lake, desire to publicly express their sincere thanks for the courtesies extended, entertainment furnished, and for every facility to make our meeting enjoyable and profitable;

Further, we fully realize that the local Bar Association through their committees has spared nothing to make our stay in this city a time long to be remembered and to awaken our hope that sometime it may be our privilege to return here;

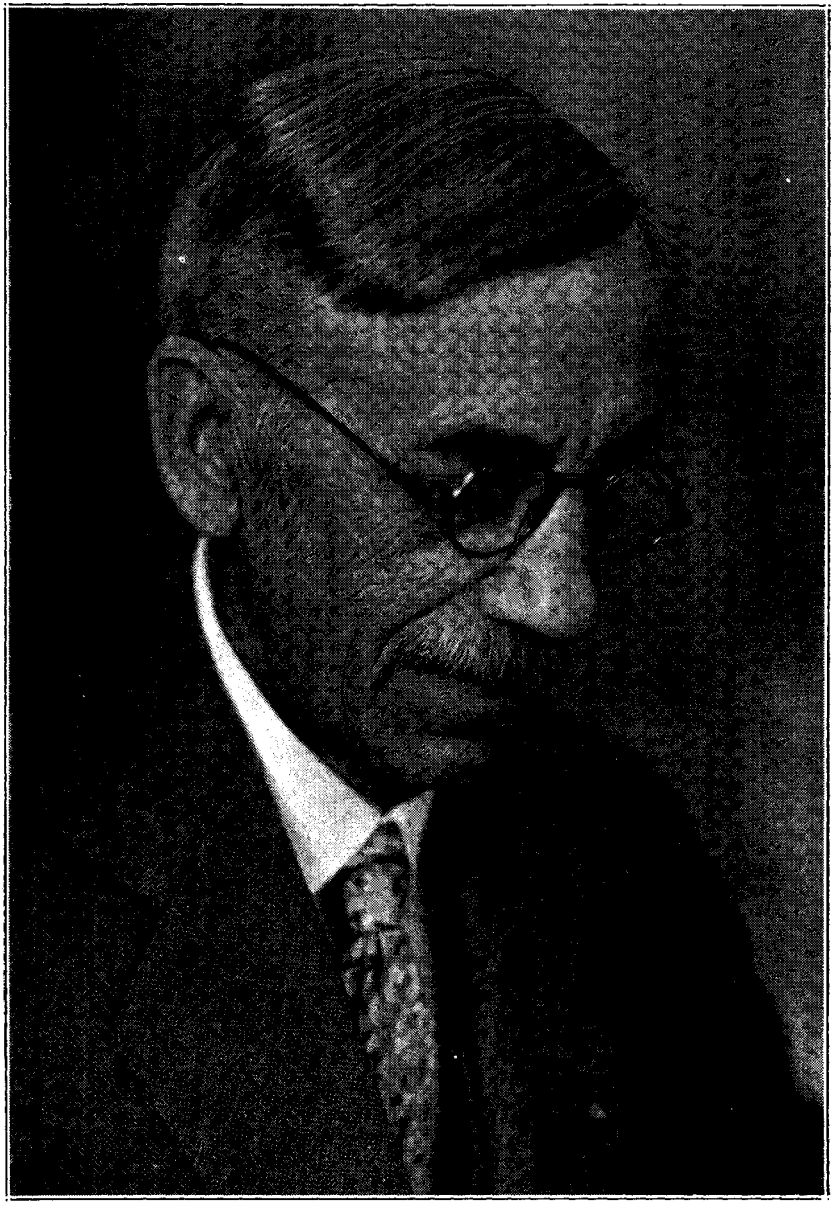
Further, that this Association has observed with gratitude and deep appreciation the sincere activity and hard work of President Kvello in the interests of that body, and hereby expresses its appreciation of same. and pledge ourselves to the high ideals emphasized by his year of service and as expressed in his annual address;

Further, that it has been a source of great pleasure to have with us Hon. H. A. Bergman, K. C., President of the Manitoba Bar Association, Hon. Arthur E. Johnston, K. C., of Winnipeg, and Hon. S. W. Clark, President of the South Dakota Bar Association, and W. C. Husband of Harlowtown, Mont.; that the addresses of and social contact with our Canadian brethren have been a great inspiration and pleasure and emphasize the fact that the underlying principles of their nation and our own are democracy and justice;

Further, That we appreciate and reciprocate to our South Dakota brethren for the message of good fellowship brought to us by President Clark, and that while there seem to be some technical objections under our by-laws to our accepting their invitation so cordially extended to meet with them at Rapid City at our annual meeting in 1931, that we trust we may find some way of accepting such invitation so as to at least meet with them for a social session at Rapid City next year.

Respectfully submitted,
W. H. HUTCHINSON,
JOHN O. HANCHETT,
NELS G. JOHNSON, Committee.

In Memoriam



HORACE BAGLEY

President Sept. 5, 1929 — Oct. 18, 1929

"The growing good of the world is partly dependent on unhistoric acts; and that things are not so ill with you and me as they might have been, is half owing to the number who lived faithfully a hidden life, and rest in unvisited tombs."