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Committee Reports

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COMMITTEE REPORTS

The reports of various committees received in time for publication in advance of the annual meeting are presented herewith. Wherever possible we have boiled these down to a minimum. Particular attention is called to the contribution of the committee on Jurisprudence and Law Reform, which offers what may prove to be one of the most valuable constructive contributions to the coming session. The Legislative Committee again presents the proposal for the granting of disciplinary powers to the Bar Association, which brought no depression period to the debates of the last annual meeting. Hence, if the report of the special committee on Unlawful Practice "gets under the wire" before publication day, the members will have advance notice of a plentiful supply of material for all manner of oratorical outbursts.

JURISPRUDENCE AND LAW REFORM

Your Committee on Jurisprudence and Law Reform, beg leave to report as follows:

Trial by Jury

Trial by jury is being subjected to much criticism, and no doubt some of this criticism is just. However, no amount of adverse comment in this regard can discredit the results of trial by jury, but much can be done to make it more satisfactory and less likely to result in miscarriages of justice. One thought particularly occurs to us in this connection. Jurors, as a rule, desire to follow the evidence and law applicable thereto, but frequently are in confusion as to what the law is—they fail to understand the Court's instructions, and have different understandings of what the Court meant under its instructions, and this, in spite of the fact, that the Court may have fully and correctly instructed them.

For the ordinary layman suddenly to come in contact with legal terms and phraseology, necessarily means the liklihood of a failure to properly understand. This lack of understanding, necessarily means confusion in the juryroom, and, oftentimes, results in mistrials, and even verdicts that are against the law. So, we feel that any change in procedure that will enable juries to understand the Court's instructions, will greatly improve the efficiency of trial by jury.

Therefore, having in view the improvement of trial by jury, we recommend that such changes both by Court rules and legislation as may be necessary be made to the end that the Court shall instruct the jury before argument, so that the attorneys in the case may, in their arguments, comment upon the law of the case, which, of course, is the law given by the Court. This would give the attorneys a chance to be of service to the juries, not only in marshalling the facts, but also in applying the law to such facts, and should there arise a difference of opinion as to what the instructions meant, the Court in the presence of the jury, could settle such dispute, and the jury would retire having not only the benefit of a discussion of the facts, but also of the law applicable thereto.

Some states already have adopted this practice and it has proven highly satisfactory, and we believe that in North Dakota, it would add greatly to the efficiency of trial by jury.

Opening Statement to Jury

Opening statements of attorneys are of great importance, because, they, in the outset of a trial, focus the minds of jurors upon what the lawsuit is. Under our practice, opening statement for plaintiff is made and the taking of proof begun with no statement from the defendant until the plaintiff has closed. This is obviously wrong and calculated to prevent that full and fair consideration from the jury which we all desire. We say this for two reasons:

First: Because when plaintiff makes his opening statement and proceeds with the taking of proof in support of same, with no statement from the defendant, there is a certain psychological advantage in the plaintiff that is not intended under the jury system.

Second: Because, if statements were made in the outset of the trial by both plaintiff and defendant, the jury has a clear mental picture of what the lawsuit is, and can follow the evidence much more intelligently in its application to the real issues as raised under the opening statements.

We, therefore, recommend that our procedure be changed so that opening statements be made by both plaintiff and defendant before the taking of proof is begun.

Speeding Trial Work

"The law's delay," is a pet phrase with many who criticise lawyers and courts, and if we are fair we must admit there is some room for criticism. As lawyers, in North Dakota, just how can we lessen the law's delays? We have a suggestion. With the exception of three or four counties in the State, courts meet in many instances only once per year, and in the balance only twice,—six months to twelve months to get a case tried that should not take over sixty days.—The machinery with which to expedite this work is functioning under full pay all the time, and we can obviate this delay by making slight changes in procedure.

We suggest that in civil cases, if there is no term of Court provided for under the law or the Court's orders, in the county in which action is begun, within ten days after the case is at issue, either party to the litigation may by proper notice to the other have such case transferred to the nearest county in the District in which Court is in session, and docketed and placed upon the trial calendar in such county, where it will come up for trial in regular order. Provided, the costs of such trial shall always be a charge against the county which is the residence of the defendant, and in case of several defendants from different counties to be prorated among the counties represented by such defendants.

We realize this will deprive the defendant of having a trial in his home county, in some instances, but in civil cases this would not prevent substantial justice from being done. Also, it will be said that many times this would result in additional expenses to litigants in preparation for and in trial of civil cases. Yes, some, but such additional expense we feel when compared with the good derived from speedy trial, would not be appreciable.

Sham Pleading

The general denial, in North Dakota, is probably used, at times, by all of us, for no other purpose than to delay action. While we may

not approve the practice, we realize it is legal and is being indulged in generally, and will be, until, as lawyers, we not only condemn it, but also bar the use of the general denial as a sham pleading.

We, therefore, recommend such change in legislation and court rules as will enable a plea of general denial to be attacked soon after its service under an order to show cause, upon affidavits, and, in the event the court shall be of the opinion upon such hearing that the general denial is a sham pleading, he may order it as such, stricken, and allow ten days within which to serve an answer setting up in clear and concise language, a defense, and in case no further answer is served within such time, default judgment to be entered.

Report is by P. W. Lanier, Chairman, other members being Peter A. Winter and Chas. H. Shafer.

Legislative Committee

The first meeting of this committee was called for Bismarck during the first few days of the legislative session. There were present at that meeting P. O. Sathre, A. W. Fowler, Gordon Cox, W. H. Stutsman, Halvor Halvorson, Secretary R. E. Wenzel and Lloyd B. Stevens. Mr. Halvorson very kindly consented to assist this committee as it was the desire of the President to have all of the lawyer members of the Legislature on the committee.

Pursuant to directions given the committee by the Bar Association at its last meeting the following matters were considered:

1. It was deemed unwise at this time to urge any legislation seeking to raise the salaries of judges, the Attorney General and his assistants.

2. It was decided that the directions of this Association relating to legislation providing for a review of decisions of Boards and Bureaus of state-wide jurisdiction were too indefinite to enable the committee to have such legislation introduced.

3. The Committee prepared and succeeded in having passed and approved a bill amending and re-enacting Section 8074 of the Compiled Laws of North Dakota for 1913 which Act, in substance, provides that proceedings to foreclose a real estate mortgage may be enjoined ex parte only during the thirty day period stated in the notice of intention to foreclose and after that time only on motion.

4. As a result of the committee's efforts there was passed and approved a bill amending and re-enacting Section 790 of the Compiled Laws for the year 1913. This law requires applicants for admission to the Bar to have completed a two year course of study in our University or some other reputable school of equal standard in the United States, in addition to the qualifications heretofore provided for such applicants.

5. The committee prepared and had introduced a bill defining the practice of law in this state. This bill immediately met with real opposition. The bill was worded substantially as proposed by Judge Ellsworth's committee at the last meeting of this Association. The bill was first introduced in the Senate and when first voted upon there the lawyer members of the Senate refrained from voting and the bill was defeated. Due to this action on the part of our lawyer members one

of the members of the Senate insisted that the bill ought to be reconsidered and that it could be amended in some way that would be satisfactory to the Bar and perhaps passed by the Legislature. This resulted in an amendment authorizing bankers to prepare deeds, mortgages and like documents for bona fide customers. This amendment did not meet with the approval of this committee nor with the President of our Association, as it might open the way to further amendments and in the end might result in allowing practically anyone not admitted to the Bar to prepare for others a great mass of legal documents and the object of the bill would be defeated. When this bill reached the House it again met with great opposition and was finally killed in committee. Both our President and this committee were well satisfied with that action because of the amendment above mentioned.

Recommendations

Legislation should 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 recom-

mendation 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 the rules as to hearing, and the rights of the person charged, are similar to those which we now have in our own State.

The matter of the raising of salaries of judges of the supreme and district courts, the Attorney General and his assistants as approved by our Association at its 1930 meeting should be kept alive and at a proper time in the future legislation to that end ought to be sponsored by the Association.

Mr. Stutsman and Mr. Swendseid oppose the first recommendation of the report relative to disbarment.

As far as the Chairman of this committee is concerned after the first meeting of the committee at Bismarck he had little to do with the work of this committee. The proposed bills and acts hereinbefore set forth were left in the hands of the lawyer members of the Legislature, our Secretary and Mr. Stutsman. They together with President Traynor, who was in Bismarck during most of the Session, carried on the work of this committee, and whatever the committee has accomplished is entirely due to their efforts.

Report is by Chairman L. B. Stevens, other members being L. L. Butterwick, H. F. King, W. E. Matthei, P. O. Sathre, R. E. Swendseid, A. W. Fowler, Gordon Cox and W. H. Stutsman.

Internal Affairs

This committee, membership upon which is among the undesirable acquisitions, and, usually, accepted only as a duty, consisted of E. T. Conmy, Chairman, W. H. Shure, Horace Young, Chas. Pollock, and the Secretary, and reports, through its Chairman, as follows:

"Your committee's experience suggests the advisability of the Association defining the jurisdiction, scope and function of its Internal Affairs Committee, and probably other committees. Two of the matters referred to the committee were returned to the Secretary as we felt they absolutely were not within our jurisdiction. One of these matters we later handled at your (President's) request, after the Ethics Committee had passed on it, and after their findings had been overruled by the Executive Committee. This was embarrassing, and, we think, can be avoided by a proper definition of the committee's functions."

Most of the complaints were, as usual, handled by the general secretary, acting as executive secretary for the committee. His report is that while there has been a considerable increase in the amount of correspondence concerning complaints, or rather alleged complaints, there was, for the first time, no charge involving "moral turpitude."

There is a growing tendency, probably traceable to the "depression," to make use of the Association to collect ordinary debts. About ninety per cent of the so-called complaints presented statements showing, at most, a failure to pay a plain debt. In none of these was there

any showing, or even allegation, of any act involving the practitioner as an attorney. These complaints, of course, never reached the other members of the committee, and all have been disposed of finally for the year.

Local Organizations

This Committee consisted of A. M. Kvello, Chairman, L. U. Stambaugh, V. E. Stenerson, Mack V. Traynor, Chas. Coventry, F. E. McCurdy and F. M. Jackson.

Its report shows the following meetings held during the year: First District, June 30, 1931, Grand Forks; Lake Region District, May 29, 1931, Rugby; Third District, September, 1930, Forman, and June 5, 1931, Wahpeton; Fourth District, no meeting; Northwestern District, March, 1931, Minot, and May 29, 1931, Minot; Southwestern District, June 20, 1931, Bowman.

"A marked feature of all of the meetings," says the report, "has been the adoption of the 'bring your wife along' idea. When the wife has attended one of these meetings she is a 'booster' for the next one. The result has been the forming of many fine friendships and the knitting together of the profession into a more compact whole. . . . Foremost on the program, has been discussion of the necessity for united action on the bill defining the practice of law and the advisability of amending the basic law so as to include the power of admission and discipline. . . . If the plan of holding a spring or summer meeting and a fall meeting after the annual state meeting is carried out it will only be a few years until all the lawyers of the State of North Dakota will be found standing shoulder to shoulder and co-operating as a united profession in matters of interest to themselves and for the general good of the whole State."

Fee Schedule

F. T. Cuthbert, Chairman, W. A. McIntyre, and L. T. Sproul constituted this committee, which, through its chairman, reports that a number of district officers have advised of infractions of the schedule. Says the report:

"The unfortunate and grievous part about it is that it is violated only too often by members of the Association whose standing in the profession should prevent any such misconduct. . . . We do not believe that this fight for maintenance of a schedule should be abandoned. . . . We should dislike to see a condition brought about such as they have in Canada where all charges will be fixed by law. However, unless the profession is willing to act ethically and make charges that are reasonable, we believe that that will be the final solution. . . . Undercharge is unfair competition, . . it is unethical. . . . The element of charity and inability to pay must necessarily, in some cases, enter in; but, unfortunately, the most flagrant and wilful violations of this schedule do not come from those cases. . . . The difficulty of such a situation (reaching those who are guilty) should not militate against our action. . . . If the matter can not be remedied by the bar itself, then we should go to the legislature and make the violation of this

feature a violation of ethics and ground for suspension and disbarment. . . . The bar should enter into this wholeheartedly and with determination. Let the chips fall where they may."

Bench and Bar Ethics

This committee was composed of Alfred Zuger, Chairman, N. J. Bothne, and Chas. Ego. It reports few questions submitted to it. Says the report:

"The past year has been singularly free from complaints, and, indeed, from inquiries. Such questions, very few in number, as were submitted to me, I have answered, apparently to the satisfaction of all concerned. I have nothing, therefore, to report. I want to say, however, that the bar of the State is on a higher plane than ever before. This relates to the bench as well as to the bar."

NO CRITICISM MADE, WE ARE NOW INFORMED

In the May issue of this publication reference was made to newspaper reports of addresses being then made on behalf of the anti-saloon league, and we requested that we be given the basis of the gentleman's reported criticism of our legal and judicial systems. Mr. C. C. Converse, of the Tax Department, and former Tax Commissioner, now writes as follows:

"In Bar Briefs for May you ask for information concerning the address made by a representative of the anti-saloon league. I assume that this was Mr. Spence, whose address at Bismarck was listened to by several members of the local bar.

"The news item you refer to was in error in stating that Mr. Spence severely criticised the legal and judicial systems of the United States. On the contrary, he was careful not to criticise American institutions or conditions.

"His reference to American courts was in connection with a discussion of Canadian experience with their present liquor laws. He pointed out that in Ontario in 1926, the last year of prohibition, so-called, there were 11,371 jail commitments and in 1928 under government control of liquor, this figure had increased to 23,786. Arrests for drunkenness increased from 11,370 in 1923 to 15,931 in 1928. Incidentally he called attention to the Ontario Liquor bill in 1929 of $55,360,569, the population of Ontario being about three million. In Manitoba in the year 1928-1929, the liquor bill was $9,852,088, a sum about three times the state tax levy in North Dakota.

"In the Dominion, the total of summary convictions, by which is meant convictions in cases triable to the court without a jury, was in 1923, 137,493. The year 1923 was the last year in which legislation over the Dominion as a whole approached most nearly prohibition. In 1928 the number of summary convictions had increased to 245,000, approximately. The total liquor law infractions for the Dominion as a whole in 1923 were 10,088. In 1928 they had increased to 15,263. I did not copy these figures from the address given by Mr. Spence but