North Dakota Law Review

Volume 6 | Number 4 Article 2

1929

The President's Page

A M. Kvello

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One hundred fifty-five out of five hundred seventy-seven lawyers in the State of North Dakota were members of the American Bar Association in 1928. South Dakota, with a slightly larger number of lawyers, had a membership of one hundred eighty-six. This is a very gratifying showing in view of the fact that less than one-third of the lawyers in the United States are members.

The American Bar Association was organized August 21, 1878, at Saratoga Springs, New York. The call for the organization conference was made through the Bar Association of Connecticut, under the leadership of Simeon R. Baldwin, later one of the American Bar Association Presidents. It was sent out to six hundred seven lawyers and judges in forty-one of the states and territories. Less than one in five made any response to the invitation. Only one of these was negative. Ninety-two lawyers were in attendance on the opening day, and these, with others who came before the sessions were completed, and those who had in writing signified their desire to join but were unable to be present, made up the charter membership of two hundred ninety-one. The State of Louisiana had the largest membership, with New York second. The state farthest west, represented at the conference, was Nebraska. The first President was Jos. O. Broadhead of St. Louis. Among the prominent lawyers who have since held this position are Joseph A. Choate, Alton B. Parker, William H. Taft, Elihu Root, John W. Davis, Frank B. Kellogg, Silas H. Strawn, and our present Chief Justice, Charles Evans Hughes.

The magnitude of the work being done by the American Bar Association is little appreciated by the profession or the public. This work should have the support of every lawyer everywhere. The membership dues of $10.00 per year include the twelve numbers of the American Bar Association Journal, which will keep the lawyer in touch with the manifold activities in which the Association is engaged. It also includes the bound volume of the proceedings of the annual meeting with all committee reports in full.

Among its many other activities, the American Bar Association is doing more than any other agency in devising ways and means to do away with the law's delays and technicalities, to improve the administration of justice, to simplify the law, to provide and secure the passage of uniform laws throughout the states and territories, and to raise higher and enforce correct professional standards, both of the Bench and the Bar.

This year the American Bar Association meets, under the direction of President Henry Upson Simms of Birmingham, Alabama, at Chicago, on August 20th, 21st and 22nd. It will probably be a long time again before an annual meeting is held as close to us as this. The gathering will be made more notable this year by the presence, as guests, of a large number of the prominent leaders of the Bar from Canada, Ireland, Scotland, England and France.

Our own annual meeting has been set for Friday and Saturday, August 15th and 16th, at Devils Lake. Why not plan an unusual and most enjoyable vacation now by deciding to attend the Devils Lake meeting, which is expected to be the largest and most interesting held thus far, and from there going on to Chicago. Your wife will enjoy both of these gatherings as much is being planned for her entertainment.

Begin now by joining the national organization. It would be a very fine compliment to the State of North Dakota, the first 100% state bar organization, if it could be said at this meeting that it had also the largest percentage of its lawyers as members of the national association.—*A. M. Kvello,* President.

REPRODUCTION COST AND ORIGINAL PRUDENT INVESTMENT

With the permission of the editors of the Iowa Law Review, we reprint the editorial on the above subject in the February issue of that journal, to-wit:

The cost of reproduction theory and the original prudent investment theory have furnished for many years the two leading plans upon which evidence is collected and introduced bearing upon the valuation of public utility property. The proponents of each urge that the element stressed by their theory should be given controlling influence in public utility valuation. During the many years of controversy on this point the respective sides have passed through several changes in attitude. The cost of reproduction theory was early advocated by attorneys representing the public, at a time when the cost of reproduction appeared to be far below the supposed original expenditure. On the other side, the utilities were urging that the amount of the original investment should be accepted as the test determining fair value. (*72 N. W.* 713; 50 *Pac.* 633; 15 *Mich. L. Rev.* 205; 18 *Mich. L. Rev.* 774.)

Later, as costs of construction and equipment began to advance, the utility attorneys, in turn, urged that the cost of reproduction be considered. (*P. U. R.* 1919*A* 448, 464.)

It is not strange, therefore, that courts and commissions gradually came to give this method of ascertaining value much emphasis in arriving at conclusions as to the proper rate base.

The United States Supreme Court gave an early, detailed consideration to the question in the leading case of *Smyth vs. Ames,* 169 *U. S.* 466. There, in listing the elements to be considered in the determination of fair value, the court said, " . . . in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under the particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as is just and right in each case." This statement did not make it altogether clear, which theory the court had adopted or whether it had accepted any particular theory at all. Subsequent cases, however, indicate that the Supreme Court looked upon cost of reproduction as one of the controlling factors to be considered in determining the rate base, (174 *U. S.* 739; 212 *U. S.* 19; 212 *U. S.* 1), but that it would not use that evidence as the sole test when it would lead to an unfair result. (230 *U. S.* 352.)

But as is illustrated by the concurring individual opinion of Mr. Justice Brandeis, (262 *U. S.* 276), favoring the original prudent investment theory, the decisions which emphasized cost of reproduction were not invariably the unanimous opinion of the court. Though the argu-