



1929

## Report of the Legislative Committee

Lloyd Stevens

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solute exemptions shall be allowed. 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.

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

C. H. STARKE, Chairman.

### MINORITY REPORT

I agree heartily with the report of the committee in general, but dissent on certain details, as follows:

I should like to add that compulsory insurance is not only unwise for North Dakota, for the special reasons stated in the majority report, but that a study of the theory, and of such experience as has been had by Massachusetts, indicate that it is unwise generally. It tends to make accidents increase rather than decrease, and presents some very difficult problems, which it would take too long to discuss here.

I do not agree with the recommendation that only absolute exemptions should be allowed against a judgment for personal injuries or property damage. The right remedy, in my opinion, is to forbid such judgment debtors the use of the roads, and this remedy ought to prove effective. I think the law as to exemptions ought not to be tinkered with in piecemeal fashion.

JOHN H. LEWIS.

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### 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 submitted 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 reproof, 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.

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## 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 mater 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.