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### For the Bar Briefs

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# BAR BRIEFS

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## STATE BAR ASSOCIATION' OF NORTH DAKOTA

M. L. McBride, Editor

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### FOR THE BAR BRIEFS

The Grand Forks County Bar Association at a meeting held in Grand Forks on Nov. 1, 1941 extended an invitation to the Executive Committee to hold the next annual convention of the Association in 1942 at Grand Forks. The last previous convention was held in Grand Forks on Sept. 6 and 7, 1935, at a time when C. L. Foster of Bismarck was President.

The Board of Governors of the American Bar Association have selected Detroit, Michigan as the place of the next annual convention to be held there during the last week of August, 1942.

The previous annual convention of the American Bar Association in Detroit was held on Sept. 2, 3 and 4, 1925, which your President then attended at a time when Charles E. Hughes, now retired, was President of the Association. His annual address there was a noteworthy effort worthy of his great achievements and his subsequent splendid services as Chief Justice of our United States Supreme Court.

The American Bar Journal, in the November 1941 number, contains the incoming address of Walter P. Armstrong before the House of Delegates as President of our American Bar Association.

It was delivered at Indianapolis upon his election as President of our American Bar Association.

It has been characterized by many members of our American Bar Association as equal to a State Paper,  
(Continued on next page)

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and it should be read by every member of our Association in this State.

The outstanding accomplishment of the annual meeting at Indianapolis was the minority report of Roscoe Pound, Dean Emeritus of the Harvard Law School. He presented a very strong presentation for the right of judicial review of administrative proceedings.

It may be remembered that Roscoe Pound delivered an address upon the Law of the Land at the annual meeting of our Association held at Grand Forks on Sept. 6 and 7, 1927 at a time when W. A. McIntyre was the President of the Bar Association.

HARRISON A. BRONSON, President.

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### REAL PROPERTY—JOINT TENANCY—MORTGAGE CONSTITUTES SEVERANCE

Where land is devised to A and B as joint tenants and A without the knowledge or consent of B gives a mortgage of his undivided interest to C and A dies before redemption or foreclosure, is the right of survivorship destroyed by said mortgage?

It is settled in law that a joint tenant may alienate or convey to a stranger his portion or interest in the reality and thereby defeat the right of survivorship, *Wilken et al. v. Young*, 144 Ind. 1, 41 N. E. 68 (1895). Having these rights and powers in the land so held, there can be no sufficient reason urged why the right of the joint tenant to mortgage the same should be denied. The right of the joint tenant to mortgage is supported by the following authorities: *York v. Stone*, 1 Selk. 158, 91 Eng. Rep. R. 146 (1709); *Simpson's Lessee v. Ammons*, 1 Bin. (Pa.) 175, 2 Am. Dec. 425 (1806).

If the joint tenant then has the power to mortgage his undivided interest, what is the effect upon the joint tenancy and survivorship? "A mortgage of a joint tenant of his share to a stranger, would be effectual against survivorship, and may amount to a severance of the joint estate." *Washburn on Real Property* (5th Ed. 1887) Section 412. According to *Corpus Juris* "The undivided interest of a joint tenant may be made the subject of a mortgage by him without the consent or concurrence of his cotenant, and to the extent of the mortgage lien the right of survivors will be destroyed or suspended, and the equity of redemption at the death of the mortgagor tenant will be all that will fall to his surviving cotenants." 33 C. J. 914. "The joint tenancy is severed by the mortgage at any rate for the time being, and until it is paid or redeemed." 2 *Thompson on Real Property* (1st. ed. 1924) Section 1716.

The authority for the above rules of law is found in four cases, *York v. Stone*, *supra*; *Simpson's Lessee v. Ammons*, *supra*;