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### Our Supreme Court Holds

North Dakota State Bar Association

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stitution the individual must not be sacrificed to the Moloch of unworthy fear.

"Serenely dwelling above the sound of passing shibboleths, Mr. Justice Holmes steadfastly refused to harken to the din of the moment. But his humility was too deep to make him regard even the highest tribunal as a Grand Lama. Like all human institutions, the supreme court, he believed, must earn reverence through the test of truth."

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#### A NEW FIRM

William R. Pearce of Valley City and L. A. W. Stephan of Sanborn announce the formation of the law firm of Pearce & Stephan, with offices in the First National Bank Building Valley City, North Dakota.

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#### DELINQUENT LICENSE FEES

While our members have made a consistent record of 98% payment of their license fees in due season, the other two per cent continue to lag, and it is somewhat embarrassing to your officers in view not only of the old statute forbidding one to practice until the fee is paid, but the amendment of 1933 which makes it misdemeanor to do so, and unless compliance is made soon their names will be dropped from the rolls. This is obligatory.

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#### BAR BOARD REFERENDUM

Not later than December 1st your secretary mails to each member of the association a ballot to select three members for recommendation to the Supreme Court to fill the vacancy created on the State Bar Board by the expiration of the term of the Hon. J. P. Cain of Dickinson. These names are selected by the Executive Committee. Members may add other names or nominations by petitions directed to the Secretary signed by ten members; and such petitions can be filed with the secretary not later than November 20th.

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#### OUR SUPREME COURT HOLDS

(Continued from Last Month)

That under the laws of North Dakota, the Supreme Court, after hearing an appeal in a criminal action, must give judgment without regard to technical errors, or defects, or exceptions which do not affect the substantial rights of the parties.

That the evidence is considered and, for reasons stated in the opinion, held to be sufficient to sustain a verdict of murder in the second degree.

Appeal from the District Court of Burleigh County, McKenna, Special Judge.

The defendant was convicted of the crime of murder in the second degree and appeals from the judgment of conviction, and from orders denying her motions for a new trial.

Lyman County, South Dakota, a public corporation, App't, vs. Frank R. Scott, Resp't.

That under the provisions of Subdivision (a) of Section 64 of the National Bankruptcy Act, a trustee in bankruptcy may pay personal property taxes of the bankrupt only upon the order of the bankruptcy court.

That where the complaint in an action against the defendant alleges that as trustee in bankruptcy he breached his duty because he failed to pay personal taxes of the bankrupt, such complaint does not state a cause of action when it fails to allege that the bankruptcy court made its order for payment of such taxes and that the defendant failed to comply therewith.

That for reasons stated in the opinion, the lien for taxes upon personal property declared by Section 6759, of the Revised Code of South Dakota for 1919, is a lien for the purpose of distraint while the property is in the possession of the tax debtor, and an action in conversion based on such tax lien will not lie against a person through whose hands has passed property once owned by the person to whom delinquent personal taxes were charged.

Appeal from the District Court of Cass County. Hon. M. J. Englert, Judge.  
AFFIRMED. Opinion by Sathre, Judge.

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The State of North Dakota, upon the relation of W. H. Stutsman, for himself and all other taxpayers and electors of the State of North Dakota similarly situated, Repl'r and Resp't, vs. Roy D. Light, as County Auditor of the County of Oliver, et al, Def'ts, and Roy D. Light, as County Auditor of the County of Oliver, Def't and Appl't.

That a constitutional amendment shortening the term of office of a constitutional officer will not be held retrospective in its operation unless the terms of the amendment clearly disclose an intention to make it so.

That in determining whether an initiated amendment to the Constitution is prospective in its operation in the sense that it does not affect the terms of present incumbents of constitutional offices, the court will seek to ascertain the intention of the approving voters.

That the initiated measure proposed as an amendment to Section 82 of the Constitution of North Dakota and approved at the primary election in June, 1938, is examined, and it is held not to affect the terms of office of incumbent members of the Board of Railroad Commissioners.

That a constitutional question will be decided only when it is properly before the court and a decision thereon is necessary to a determination of the cause.

Appeal from the District Court of Oliver County. Hon. H. L. Berry, Judge.  
AFFIRMED. Opinion of the Court by Morris, Judge.