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Report of Committees

O. H Thormodsgard

E. T. Conmy

O. B Burtness

REPORTS OF COMMITTEES

American Law Institute

The Annual Meeting of The American Law Institute was held at Washington, D. C., on May 4, 5, and 6. Due to the continued agricultural depression and reduced budget, the University of North Dakota did not send a representative to the meeting.

From the Report printed in The American Bar Association Journal, the following progress of The Institute may be noted:

1. The Restatement of the Law of Contracts was published in book form in two volumes. This set has been well received by the bench and bar.

2. The approval of the Proposed Final Draft of the Restatement of the Law of Agency, which contains 549 pages.

3. Three Tentative Drafts of the Restatement of the Law of Business Associations were presented for consideration.

4. The Proposed Final Draft of the Restatement of the Law of Conflict of Laws have been reviewed, especially Draft No. 4, which includes the topic of "Administrative Estates."

5. On the subject of Property, the Council submitted Tentative Draft No. 4 covering the chapters on Transferability by Conveyance Inter Vivos, Succession on Death, and Subjection to the satisfaction of the claims of creditors.

6. The Council reported that in 1934, it will present the Proposed Final Drafts of two volumes on Torts.

Mr. Herbert F. Goodrich, Adviser on Professional Relations, again emphasized the importance of state annotations of the Restatements.

At the meeting in Chicago of The Association of American Law Schools, Herbert F. Goodrich, who is also Dean of the University of Pennsylvania School of Law, recommended the use of the Restatements by law teachers and law students. We may report that the faculty of our Law School has used the Restatements to the advantage of both teachers and students.

The Restatement of the Common Law will appeal to all judges, lawyers, and teachers of law, who have a scholarly and philosophical interest in the law. It will not appeal to the professional men who have no interest in the science and philosophy of law. It will have an appeal to a larger group of practicing lawyers when the Restatements are annotated to the laws of the different states, in that the Restatements will then be a useful working set for their daily practice.

Very little can be performed on the problem of North Dakota annotations, by the University law faculty with its limited budget, reduced faculty, and heavier teaching load. As to this problem, the committee will have to wait until conditions are more favorable, before the Law School can give creditable service in aiding and assisting the North Dakota Bar Association in the problem of state annotations.

O. H. THORMODSGARD, Chairman,
E. T. CONMY,
O. B. BURTNESS.

Citizenship and Americanization

In attempting to outline a program for this committee an endeavor was first made to get together with committees of other organizations working along the same line. There is considerable overlapping on the part of the various Citizenship and Americanization Committees resulting in waste of time, money and effort and it seemed a practical proposition to coordinate the work of the different bodies if possible.

A cordial response to the suggestion was received from some of the organizations but it was found that others had already arranged their programs for the year and responses were not received from two of them. The attempt was therefore abandoned but the committee still feels that such an arrangement is feasible and that it should be taken up by the new committee immediately after its appointment. We believe a satisfactory joint program can be arranged. Six or seven organizations working together along a united front would naturally get more definite results.

The committee deviated somewhat from the programs of preceding committees which had engaged in a study of the Constitution through the medium of essay contests in the schools, newspaper publicity and platform discussions, and concentrated its activities upon the public presentation of two questions deemed essential for better Citizenship. The subjects chosen were "Liberty Within the Law" and "Tolerance," on both of which there is a lamentable lack of clear thinking by individuals as well as groups. The members of the committee were asked to present these two subjects in addresses by members of the bar and other public speakers before schools, scout organizations, P. T. A. and other adult bodies. A bibliography of the material for study was suggested in preparation for these public addresses. The committeemen canvassed the speakership material within their respective counties and the response was very gratifying.

While all of the county chairmen have not reported there has been a sufficient return to indicate a wide discussion of these subjects. Particular credit is due for extensive work done on this program by T. L. Brouillard, Ellendale; Victor L. Thom, Goodrich; and F. E. Shaw, Sheldon. Others reported a number of interesting and successful meetings.

After the judicial recall matter became acute the question of what should be the attitude of the committee on this question was submitted to the members for decision. As a result a resolution was prepared and sent to each of the 53 members for consideration. Of the committee 38 voted in favor of the resolution without change; 2 were opposed; 1 thought it was not within the duties of the committee, and 12 did not express any opinion. The resolution submitted and adopted after reciting the factual history of the movement was as follows:

> "WHEREAS, In our judgment the threefold foundation form of our Governmental system, the Legislative, Executive and Judicial, is the best calculated to preserve the rights of all and for that purpose each must be sustained in its proper sphere; and
>
> WHEREAS, We believe, with Lincoln, that the fullest measure of Liberty lies within the law, and that it is our duty as American citizens to uphold the law;

THEREFORE, BE IT RESOLVED, By the Americanization Committee of the State Bar Association of the State of North Dakota, that the recall proceedings under these circumstances are Unjust and Un-American; that they are destructive of that freedom of Judicial consideration which constitutes the safeguard of the rights of every resident of this State to Life, Liberty and the Pursuit of Happiness, vouchsafed to us under the Constitution, and that the Recall should be condemned and opposed by every one who believes in the independence and integrity of our Courts, and in our American system of Government."

The committee, as shown by its vote, stands ready to meet its responsibility by resisting any attempt to make our courts the instruments of any clique or faction, either majority or minority; to combat any effort of those who would turn back upon the path of judicial progress; and to do all in its power to rally our Citizenship to a vigorous support of the principles upon which impartial justice is based.

A. M. KVELLO, Chairman.

Legal Education and Admission to the Bar

By the passage of Chapter 90 of the 1931 Laws of North Dakota, the educational requirements for admission to the Bar in this state have been brought up to the standards advocated by the American Bar Association. Under the provisions of this act, each applicant for admission, subsequent to July 1, 1936, will be required to have completed two years of pre-legal college work. Therefore, in the opinion of your committee, an attempt to obtain legislation raising the standards further at this time does not seem advisable.

The Bar Board is to be commended upon the thoroughness of their work in examining applicants and investigating their qualifications. An exhaustive investigation of the character and background of each applicant is made. The requirement that the applicant be of "good moral character" is construed to include a requirement that he must possess a high degree of integrity, and every precaution is taken to obtain information on this point, thereby guarding against the admission of members who might bring discredit to the profession. The continuance of this practice is, in the opinion of your committee, highly desirable.

The faculty of the College of Law at the University of North Dakota is also to be commended upon the good work of that institution and the good record being made by its graduates in the bar examinations. Members of this association are eternally interested in the proper training of prospective members of the profession, particularly in the matter of professional ethics and deportment. A high standard of professional integrity and courtesy is found only where there is a thorough understanding of the true function of the lawyer. It is only the practices of those who do not have this understanding that tend to too greatly commercialize the profession, bring discredit upon it and impede, rather than advance, the administration of justice. For this reason your com-

mittee feels that further recommendations should be made to the faculty of the College of Law that even greater stress be placed upon the subject of legal ethics.

L. U. STAMBAUGH, Chairman,
PHILIP R. BANGS,
CLIFFORD SCHNELLER.

Legislation

The Committee on Legislation submits the following as its report:

The Committee met at the call of President Hutchinson, at the Courthouse in the City of Bismarck, Burleigh County, N. D., during the Session of the Legislature.

For reasons already well known to most members of the bar, it was not deemed advisable by your Committee to undertake to obtain the enactment of a great deal of Legislation.

At the time of the meeting of the Committee, it appeared that the uniform act to secure attendance of witnesses from outside the State, as proposed by Judge Bronson at the last meeting of the Association, had already been presented. Some such law was enacted as Chapter 217, Session Laws 1933.

There had also been presented by Mr. Swendseid a measure proposed to clarify the law relative to appeals of civil cases tried without a jury. This procedure was clarified by enactment of Chapter 208 Laws 1933, and also the procedure for claiming property exempt in garnishment by Chapter 209.

These bills introduced by Mr. Swendseid, and their enactment, is not due to any particular action of the Committee of the Association.

The Committee caused to be introduced Senate Bill No. 291 through the courtesy of Senator Matthaei. This was enacted to law as Chapter 210, and amends Sec. 7571 A-2, 1925 Supp., merely changing the law in effect so it no longer becomes necessary to file the Garnishment Summons and Affidavit within ten days after service. Chapter 210 provides that the Garnishment Summons and Affidavit shall be filed at the time the Summons and Complaint in the action are filed.

Your Committee considered this as merely a minor change and not of great importance; however, it will probably have the effect of saving filing fees in many actions that are settled before being placed on for trial.

Your Committee also caused to be introduced a bill attempting to make more workable the provision of law relative to service of Garnishment Summons where the fund to be garnisheed is due for wages. However, this apparently failed of passage.

Certain members of the Committee, at the request of President Hutchinson, appeared before the Judiciary Committee of the Senate on the proposed law relative to the dismissal of actions without final determination on the merits, the same being the change proposed in Section 7597, C. L. 1913, Sub. 3. Your Committee, as instructed by the Association, was opposed to the change. However, the Legislature under House Bill No. 32 enacted the law with the change therein, but this was vetoed by the Governor.

Your Committee learned that an act for the proposed repeal of the so-called bad check law had been presented to the Legislature. Therefore, no action was taken relating to the repeal of this law, but the law, as proposed, had the backing of the State's Attorney of Burleigh County and others, and was apparently killed in the committee or not passed, as it failed to become a law.

It is apparent that the merchants' and retailers' association are opposed to the repeal of the bad check law.

Your Committee has very little to report in way of accomplishment. Certain conditions existing at the last Session of the Legislature, coupled with the general upheaval taking place throughout the State, appeared to make it almost impossible to accomplish anything in the line of constructive legislation. The lawyers were in bad standing before the Committees, and this standing was in no manner enhanced by the action of certain members of the bar in informing the Judiciary Committee, at which your Committee appeared, that the lawyers appearing were not representative of the Bar of the State, and that the action desired by your Committee was not, by any means, the desires of the Bar as a whole. In view of these things, it was deemed advisable to let matters rest during the Session of 1933.

In view of the fact that there is no legislative session until 1935, no recommendations are made as to any new measures to be sponsored by the Bar Association. Your Committee believes this is a matter that should be taken up by the Legislative Committee acting for the coming year, so that such proposed measures can be considered at the annual meeting of this Association.

W. H. HUTCHINSON, Chairman,
W. H. STUTSMAN,
F. G. KNEELAND,
F. E. MCCURDY,
ALFRED ZUGER,
C. L. FOSTER,
T. H. H. THORESEN,
A. W. FOWLER,
F. J. GRAHAM,
HAROLD B. NELSON.
Legislative Committee.

Criminal Law and Procedure

(From Last Year)

SECTION 1. DEFINITIONS. In this Act

(a) The singular number includes the plural and the plural includes the singular.

(b) The masculine gender includes the feminine and neuter genders.

(c) The words "person," "defendant" and similar words include, unless a contrary intention appears, a public or a private corporation.

(d) The term "act" includes omission to act.

(e) The word "property" includes any matter or thing other than a person, upon or in respect to which any offense may be committed.

(f) The words "indictment" and "information," unless a contrary intention appears, include any count thereof.

(g) The terms "writing" and "written" include words printed, painted, typed, engraved, lithographed, photographed, or otherwise copied, traced or made visible to the eye.

(h) The term "the court," unless a contrary intention appears, means the court before which the trial is had.

(i) The term "prosecuting attorney" includes the State's Attorney or Assistant State's Attorney of the county in which the offense sought to be prosecuted was committed; the Attorney General of the State of North Dakota or any of his duly appointed assistants, either regular or special, or any attorney at law duly appointed by the Court as now provided by law to prosecute.

SECTION 2. CAPTION — COMMENCEMENT—AMENDMENT. (1) Whenever an objection is made that an indictment or information does not contain a caption or commencement, a caption may be prefixed to, and a commencement may be inserted in, the indictment or information; and any defect, error or omission in a caption or commencement may be amended as of course, at any stage of the proceedings, and shall be in any event cured by a verdict.

(2) It is unnecessary to allege that the grand jurors were impanelled, sworn or charged, or that they present the indictment upon their oaths or affirmations.

SECTION 3. CONCLUSION. The indictment or information need contain no formal conclusion.

SECTION 4. SUBSCRIPTION AND VERIFICATION OF INFORMATION. (1) All informations shall be subscribed by the attorney. Except in cases where the defendant has been held to answer in a preliminary examination, the information shall be verified by the oath of the prosecuting attorney or that of the complainant or of some other person. When the information is verified by the prosecuting attorney, it shall be sufficient if the verification is upon information and belief.

(2) No objection to an information on the ground that it was not subscribed or verified, as above provided, shall be made after moving to quash or pleading to the merits.

SECTION 5. FORM OF INDICTMENT. The indictment may be in substantially the following form:

In the (here state the name of the court) the day of....., 19....., The State of North Dakota vs. A. B.

The grand jurors of the county of.....accuse A. B. of (here charge the offense in one of the ways mentioned in Section 7, —e. g. murder), (assault with intent to kill, poisoning an animal contrary to section 31 of the Penal Code) and charge that (here the particulars of the offense may be added with a view to avoiding the necessity for a bill of particulars).

SECTION 6. FORM OF INFORMATION. The information may be in substantially the following form:

In the (here state the name of the court) the day of....., 19..... The State of North Dakota vs. A. B.

X. Y. (here state the title of the prosecuting attorney) for the county of.....accuses A. B. of (here charge the offense in one of the ways mentioned in section 7—e. g. murder (assault with intent to kill, poisoning an animal contrary to section.....) and charges that (here the particulars of the offense may be added with a view to avoiding the necessity for a bill of particulars).

SECTION 7. CHARGING THE OFFENSE. (1) The indictment or information may charge, and is valid and sufficient if it charges, the offense for which the defendant is being prosecuted in one or more of the following ways:

(a) By using the name given to the offense by the common law or by statute.

(b) By stating so much of the definition of the offense, either in terms of the common law or of the statute defining the offense or in terms of substantially the same meaning, as is sufficient to give the court and the defendant notice of what offense is intended to be charged.

(2) The indictment or information may refer to a section or sub-section of any statute creating the offense charged therein, and in determining the validity or sufficiency of such indictment or information regard shall be had to such reference.

SECTION 8. BILLS OF PARTICULARS. (1) When an indictment or information charges an offense in accordance with the provisions of section 7 but fails to inform the defendant of the particulars of the offense sufficiently to enable him to prepare his defense, or to give him such information as he is entitled to under the constitution of this state, the court may, of its own motion, and shall, at the request of the defendant, order the prosecuting attorney to furnish a bill of particulars containing such information as may be necessary for these purposes; or the attorney may of his own motion furnish such bill of particulars.

(2) When the court deems it to be in the interest of justice that facts not set out in the indictment or information or in any previous bill of particulars should be furnished to the defendant, it may order the prosecuting attorney to furnish a bill of particulars containing such facts. In determining whether such facts and, if so, what facts, should be so furnished, the court shall consider the whole record and the entire course of the proceedings against the defendant.

(3) Supplemental bills of particulars or a new bill may be ordered by the court or furnished voluntarily under the conditions above stated.

(4) Each supplemental bill shall operate to amend any and all previous bills and a new bill shall supersede any previous bill.

(5) When any bill of particulars is furnished, it shall be filed of record and a copy of such bill given to the defendant upon his request.

SECTION 9. INSUFFICIENCY, OR INCONSISTENCY BETWEEN INDICTMENT OR INFORMATION AND BILL OF PARTICULARS—EFFECT OF. If it appears from the bill of particulars furnished under section 8 that the particulars therein stated together with any particulars appearing in the indictment or information do not constitute the offense charged in the indictment or information

or that the defendant did not commit that offense or that a prosecution for that offense is barred by the statute of limitations, the court may, and on motion of the defendant or of the prosecuting attorney shall, quash the indictment or information unless the prosecuting attorney shall furnish another bill of particulars which either by itself or together with any particulars appearing in the indictment or information so states the particulars as to make it appear that they constitute the offense charged in the indictment or information and that the offense was committed by the defendant and that it is not barred by the statute of limitations.

SECTION 10. NAME OF DEFENDANT. (1) In an indictment, information or bill of particulars it is sufficient for the purpose of identifying the defendant to state his true name, or to state the name, appellation or nickname by which he has been or is known, or, if no better way of identifying him is practicable, to state a fictitious name, or to describe him as a person whose name is unknown, or in any other manner. In stating the true name or the name by which the defendant has been or is known or a fictitious name, it is sufficient to state a surname, a surname and one or more given names, or a surname and one or more abbreviations or initials of a given name or names.

(2) If the defendant is a corporation, it is sufficient to state the corporate name of the defendant, or any name or designation by which it has been or is known or by which it may be identified, without an averment that it is a corporation or that it was incorporated according to law.

(3) If in the course of the proceedings the true name of a person indicted or informed against otherwise than by his true name is disclosed by the defendant to the court or appears in some other manner to the court, the court shall cause the true name of the defendant to be inserted in the indictment, information or bill of particulars and record wherever his name appears otherwise therein, and the proceedings shall be continued against him in his true name.

(4) In naming the defendant, no indictment, information or bill of particulars need further describe him by stating his addition, degree, estate mystery, occupation, title or residence unless such further description is necessary to charge an offense under section 7.

(5) In no case is it necessary to prove that the true name of the defendant is unknown to the grand jury or prosecuting attorney.

SECTION 11. TIME. (1) An indictment or information need contain no allegation of the time of the commission of the offense unless such allegation is necessary to charge the offense under section 7.

(2) The allegation is an indictment or information that the defendant committed the offense shall in all cases be considered an allegation that the offense was committed after it became an offense and before the finding of the indictment or information, and within the period of limitations prescribed by law for the prosecution of the offense.

(3) All allegations of the indictment, information and bill of parparticulars shall, unless stated otherwise, be deemed to refer to the same time.

SECTION 12. PLACE. (1) An indictment or information need contain no allegation of the place of the commission of the offense, unless such allegation is necessary to charge the offense under Section 7.

(2) The allegation is an indictment or information that the defendant committed the offense shall in all cases be considered an allegation that the offense was committed within the territorial jurisdiction of the court.

(3) All allegations in the indictment, information and bill of particulars shall, unless stated otherwise, be deemed to refer to the same place.

SECTION 13. MEANS. An indictment or information need contain no allegation of the means by which the offense was committed, unless such allegation is necessary to charge the offense under section 7.

SECTION 14. VALUE AND PRICE. An indictment or information need contain no allegation of the value or price of any property, unless such allegation is necessary to charge the offense under section 7, and in such case it is sufficient to aver that the value or price of the property equals or exceeds the certain value or price which determines the offense. The facts which give the property such value need not be alleged.

SECTION 15. OWNERSHIP. (1) An indictment or information need contain no allegation of the ownership of any property, unless such allegation is necessary to charge the offense under section 7.

(2) In charging an offense in which an allegation of ownership of property is satisfied by proof of possession or right of possession any statement in an indictment, information or bill of particulars which implies possession or right of possession is a sufficient allegation of ownership.

SECTION 16. INTENT. (1) An indictment or information need contain no allegation of the intent with which an act was done, unless such allegation is necessary to charge the offense under section 7.

(2) An allegation generally of an intent to defraud and injure is sufficient without alleging an intent to defraud or injure any particular person, unless such allegation is necessary to charge the offense under section 7.

SECTION 17. CHARACTERIZATION OF ACT. (1) An indictment or information need not allege that the offense was committed or the act done "feloniously" or "traitorously" or "unlawfully" or "with force and arms" or "with a strong hand," nor need it use any phrase of like kind otherwise to characterize the offense, nor need it allege that the offense was committed or the act done "burglariously," "wilfully," "knowingly," "maliciously," or "negligently," nor need it otherwise characterize the manner of the commission of the offense unless such characterization is necessary to charge the offense under section 7.

(2) An indictment or information need not contain the words "as appears by the record" or any other words of similar import.

SECTION 18. OMISSION OF UNNECESSARY MATTER. An indictment or information need not state any matter not necessary to be proved.

SECTION 19. ALLEGATIONS OF PLACES AND THINGS. Whenever it is necessary in an indictment or information to describe any place or thing in order to charge an offense under section 7, it is sufficient to describe such place or thing by any term which in common understanding embraces such place or thing and does not include any place or thing which is not by law the subject of, or connected with, the offense.

SECTION 20. NAME OF PERSON OTHER THAN DEFENDANT. (1) In an indictment, information or bill of particulars it is sufficient for the purpose of identifying any person other than the defendant to state his true name, or to state the name, appellation or nickname by which he has been or is known, or, if no better way of identifying such person is practicable, to state a fictitious name, or to state the name of an office or position held by him, or to describe him as "a certain person," or by words of similar import, or in any other manner. In stating the true name of such person or the name by which such person has been, or is known, it is sufficient to state a surname, or a surname and one or more given names, or surname and one or more abbreviations or initials of a given name or names.

(2) It is sufficient for the purpose of describing any group or association of persons not incorporated to state the proper name of such group or association, or to state any name or designation by which the group or association has been or is known or by which it may be identified, or to state the names of all the persons in such group or association, or to state the name or names of one or more persons in such group or association, referring to the other or others as "another" or "others."

(3) It is sufficient for the purpose of describing a corporation to state the corporate name of such corporation, or any name or designation by which it has been or is known, or by which it may be identified, without an averment that the corporation is a corporation or that it was incorporated according to law.

(4) In no case is it necessary to aver or prove that the true name of any person, group or association of persons or any corporation is unknown to the grand jury or prosecuting attorney.

(5) If in the course of the trial the true name of any persons, group or association of persons, or corporation, described otherwise than by the true name is disclosed by the evidence, the court shall cause the true name to be inserted in the indictment, information, bill of particulars and record wherever the name appears otherwise.

SECTION 21. PROPERTY DESCRIBED AS MONEY. In an indictment or information in which it is necessary to make an averment as to money, or bullion or golddust, current by custom and usage as money, treasury notes or certificates, banknotes or other securities intended to circulate as money, checks, drafts or bills of exchange, it is sufficient to describe the same or any of them as money, without specifying the particular character, number, denomination, kind, species, or nature thereof.

SECTION 22. DESCRIPTION OF WRITTEN INSTRUMENTS. Whenever it is necessary to an indictment or information to make an averment relative to any instrument which consists wholly or in part of writing or figures, pictures or designs, it is sufficient to

describe such instrument by any name or description by which it is usually known or by which it may be identified, or by its purport, without setting forth a copy of facsimile of the whole or any part thereof. The description, if in a bill of particulars, is sufficient if it sets forth the character and contents of the instrument with such particularity as to enable the defendant to prepare his defense.

SECTION 23. DESCRIPTION OF WRITTEN MATTER. Whenever in an indictment or information an averment relative to any spoken or written words or any picture is necessary, it is sufficient to set forth such spoken or written words by their general purport or to describe such picture generally, without setting forth a copy or facsimile of such written words or such picture. The description, if in a bill of particulars, is sufficient if the defendant is thereby sufficiently informed of the identity of the words or picture concerning which the averment is made so as to enable him to prepare his defense.

SECTION 24. MEANING OF WORDS AND PHRASES. The words and phrases used in an indictment, information or bill of particulars are to be construed according to their usual acceptation, except that words and phrases which have been defined by law or which have acquired a legal signification are to be construed according to their legal signification.

SECTION 25. ALLEGATION OF PRIOR CONVICTIONS. No indictment or information shall contain an allegation of a prior conviction of the defendant unless such allegation is necessary to charge the offense under Section 7.

SECTION 26. PRIVATE STATUTES. In referring in an indictment or information to a private statute or a right derived therefrom it is sufficient to refer to the statute by its title and the day of its passage or in any other manner which identifies the statute, and the court shall thereupon take judicial notice thereof.

SECTION 27. JUDGMENTS. In referring in an indictment or informaiton to a judgment or other determination of, or a proceeding before, any court or official, civil or military, it is unnecessary to allege the facts conferring jurisdiction on such court or official, but it is sufficient to allege generally that such judgment or determination was given or made or such proceeding had, in such manner as identifies the judgment, determination or proceeding.

SECTION 28. EXCEPTIONS. No indictment or information for an offense created or defined by statute shall be invalid or insufficient merely for the reason that it fails to negative any exception, excuse or proviso contained in the statute creating or defining the offense.

SECTION 29. ALTERNATIVE OF DISJUNCTIVE ALLEGATIONS. No indictment or information for an offense which may be committed by the doing of one or more of several acts, or by one or more of several means, or with one or more of several intents, or with one or more of several results, shall be invalid or insufficient for the reason that two or more of such acts, means, intents or results are charged in the disjunctive or alternative.

SECTION 30. INDIRECT ALLEGATIONS. No indictment or information shall be invalid or insufficient for the reason that it

alleges indirectly and by inference or by way of recital any matters, facts or circumstances connected with or constituting the offense.

SECTION 31. LIBEL. No indictment or information for libel shall be invalid or insufficient for the reason that it does not set forth extrinsic facts for the purpose of showing the application to the party alleged to be libelled of the defamatory matter on which the indictment is founded.

SECTION 32. PERJURY AND KINDRED OFFENSES. No indictment or information for perjury, or for subornation of, solicitation of, conspiracy or attempt to commit perjury shall be invalid or insufficient for the reason that it does not set forth any part of the records or proceedings with which the oath was connected, or the commission or authority of the court or other official before whom the perjury was committed or was to have been committed, or the form of the oath or affrimation, or the manner of administering the same.

SECTION 33. OFFENSES DIVIDED INTO DEGREES. In an indictment or information for an offense which is divided into degrees it is sufficient to charge that the defendant committed the offense without specifying the degree.

SECTION 34. PARTIES TO OFFENSES. Every person concerned in the commission of an offense, whether he directly commits the offense or procures, counsels, aids, or abets in its commission, may be indicted or informed against as principal.

SECTION 35. REPUGNANCY. No indictment or information that charges an offense in accordance with the provisions of section 7 shall be invalid or insufficient because of any repugnant allegation contained therein.

SECTION 36. SURPLUSAGE. Any allegation unnecessary under existing law or under the provisions of this chapter may, if contained in an indictment, information or bill of particulars, be disregarded, as surplusage.

SECTION 37. DEFECTS, VARIANCES AND AMENDMENT. (1) No indictment or information that charges an offense in accordance with the provisions of section 7 shall be invalid or insufficient because of any defect or imperfection in, or omission of, any matter of form only, or because of any miswriting, misspelling or improper English, or because of the use of sign, symbol, figure or abbreviation, or because of any similar defect, imperfection or omission. The court may at any time cause the indictment, information or bill of particulars to be amended in respect to any such defect, imperfection or omission.

(2) No variance between those allegations of an indictment, information or bill of particulars, which state the particulars of the offense, whether amended or not, and the evidence offered in support thereof shall be ground for the acquittal of the defendant. The court may at any time cause the indictment, information or bill of particulars to be amended in respect to any such variance, to conform to the evidence.

(3) If the court is of the opinion that the defendant has been prejudiced in his defense upon the merits by any such defect, imper-

fection or omission or by any such variance the court may because of such defect, imperfection, omission or variance, unless the defendant objects, postpone the trial, to be had before the same or another jury, on such terms as the court considers proper. In determining whether the defendant has been prejudiced in his defense upon the merits, the court shall consider all the circumstances of the case, and the entire course of the prosecution.

(4) No appeal, or motion made after verdict, based on any such defect, imperfection, omission, or variance shall be sustained unless it is affirmatively shown that the defendant was in fact prejudiced thereby in his defense upon the merits.

SECTION 38. MISJOINER, MULTIPLICITY, DUPLICITY AND UNCERTAINTY. (1) No indictment or information shall be invalid or insufficient for any one or more of the following defects merely:

(a) That there is a misjoinder of the parties defendant.
(b) That there is a misjoinder of the offenses charged.
(c) That there is duplicity therein.
(d) That any uncertainty exists therein, provided it charges an offense in accordance with section 7.

(2) If the court is of the opinion that the defects stated in subsection 1, clauses (a), (b), and (c) or any of them exists in any indictment or information it may order the prosecuting attorney to sever such indictment or information into separate indictments or informations or into separate counts, as shall be proper. (3) If the court is of the opinion that the defect stated in sub-section 1, clause (d) exists in any indictment or information it may order that a bill of particulars be filed in accordance with section 8. (4) No appeal, or motion made after verdict, based on any of the defects enumerated in this section shall be sustained unless it is affirmatively shown that the defendant was in fact prejudiced in his defense upon the merits.

SECTION 39. AMENDMENT AFTER VERDICT. The defendant and the prosecuting attorney are entitled upon motion made by either after verdict and before sentence is pronounced or the defendant is discharged to have the indictment or information amended so as to state the particulars of the offense, as proved, in such a manner that the indictment or information shall without evidence aliunde be such evidence of the offense charged and its particulars as to bar a subsequent prosecution for the same offense constituted by the same particulars.

SECTION 40. INTERPRETATION OF THE ACT. Nothing contained in this chapter shall be so construed as to make invalid or insufficient any indictment or information which would have been valid and sufficient under the law existing at the date of the enactment of this chapter.

SECTION 41. FORMS FOR SPECIFIC OFFENSES. The following forms may be used in the cases in which they are applicable:

AFFRAY: A. B. and C. D. made an affray.

ASSAULT. A. B. assaulted C. D.

ASSAULT AND BATTERY. A. B. committed an assault and battery upon C. D.

ASSAULT WITH INTENT. A. B. assaulted C. D. with intent to murder him, (or kill, or rob, or maim him as the case may be).

ARSON. A. B. committed arson by burning the dwelling house of C. D.

ATTEMPT. A. B. attempted to steal from C. D. A. B. attempted to commit larceny of the goods of C. D. A. B. attempted to commit burglary of a dwelling of C. D.

BURGLARY. A. B. committed burglary of the dwelling of C. D.

CONSPIRACY. A. B. and C. D. conspired together to murder E. F. (or to steal the property of E. F., or to rob E. F.).

FORGERY. A. B. forged a certain instrument purporting to be a promissory note (or describe the instrument or give its tenor or substance).

LARCENY. A. B. stole from C. D. one horse.

LIBEL. A. B. published a libel concerning C. D. in the form of a letter (book, picture, or as the case may be) (the particulars should specify the pages and lines constituting the libel, when necessary, as where it is contained in a book or pamphlet).

MURDER. A. B. murdered C. D.

MANSLAUGHTER. A. B. unlawfully killed C. D.

PERJURY. A. B. committed perjury by testifying as follows (set forth the testimony).

RAPE. A. B. raped (or ravished) C. D.

ROBBERY. A. B. robbed C. D.

SECTION 42. DISCLOSING THE FINDING OF AN INDICTMENT OR THE FILING OF AN INFORMATION FORBIDDEN. No grand juror or official of any court shall, except in the performance of his official duty, disclose the fact that an indictment has been found or an information filed against any person for an offense, unless such person is in custody or has been admitted to bail for such offense.

SECTON 43. FILING AND RECORDING OF THE INDICTMENT OR INFORMATION. When an indictment has been presented by the grand jury or an information filed by the prosecuting attorney, it shall be filed by the clerk of the court, and transcribed in a book kept for that purpose. In each case the clerk shall certify in the book that he has compared the transcription with the original and that the transcription is a true copy of the original.

SECTION 44. INSPECTION OF INDICTMENT, INFORMATION AND RECORD. All indictments, information and the records thereof shall be in the custody of the clerk of the court to which they are presented, and shall not be inspected by any person other than the judge, the clerk, the attorney general and the prosecuting attorney until the defendant is in custody or has been admitted to bail.

SECTION 45. INDICTMENT OR INFORMATION LOST, MISLAID, ETC. COPY MAY BE USED. When an indictment or information, filed or provided for in section 43, has been so mutilated

or obliterated as to be illegible, or has been lost, mislaid, destroyed, stolen or for any other reason can not be produced at the arraignment or trial of the defendant, he may be arraigned and tried on a copy thereof taken from the clerk's book and certified by the clerk.

SECTION 46. COPY OF INDICTMENT OR INFORMATION TO BE FURNISHED DEFENDANT. Every person who has been indicted or informed against for an offense shall be furnished with a copy of the indictment or information together with the indorsements thereon at least twenty-four hours before he is required to plead thereto, and he shall not be required to plead to such indictment or information if it has not been so furnished to him. A failure to furnish such copy shall not affect the validity of any subsequent proceeding against the defendant if he pleads to the indictment or information.

SECTION 47. NAMES OF WITNESSES TO BE ENDORSED ON INDICTMENT OR INFORMATION. When an indictment or information is filed, the names of all the witnesses or deponents on whose evidence the indictment or information was based shall be endorsed thereon before it is presented, and the prosecuting attorney shall endorse on the indictment or information at such time as the court may by rule or otherwise prescribe the names of such other witnesses as he purposes to call. A failure to so endorse the said names shall not affect the validity or sufficiency of the indictment or information, but the court in which the indictment or information was filed shall, upon application of the defendant, direct the names of such witnesses to be endorsed. No continuance shall be allowed because of the failure to endorse any of the said names unless such application was made at the earliest opportunity and then only if a continuance is necessary in the interest of justice. JAMES MORRIS, Chairman.

Constitution and By-Laws

(From Last Year)

Your Committee on Constitution and By-Laws of the State Bar Association respectfully report that after careful consideration of the Constitution and By-Laws of the Association they have only one recommendation to make in the form of an Amendment to Article IV of the Constitution, which has reference to the officers in the Association.

The provision in the Constitution of the Association, relating to membership, namely Article III, is identical with the Statute under which the Bar Association was created, namely § 813a1 of the 1925 Supplement and under that Statute, the members of the Association consist of all practicing attorneys who have paid their annual license fees to, and have received their Licenses from the Clerk of the State Bar Board, as provided by law, and all other attorneys who have been duly admitted to practice by the Supreme Court of the State of North Dakota, and by laws exempted from the payment of such license fee.

Under the provisions of § 812-Supplement of 1925, it is provided that every person practicing law in this State and acting as an attorney or counselor-at-law therein, except those mentioned in § 793 of the Compiled Laws of North Dakota for the year 1913, shall secure an annual license from the State Bar Board.

The exemption under § 793 of the Compiled Laws of North Dakota for 1913, applies to any member of the Bar of another State actually engaged in any cause or matter pending in any Court in this State. In other words, it has reference to foreign attorneys.

Your Committee is of the opinion that under the provisions of § 812, there is an implied exemption from the payment of the license fee, to persons who have been duly admitted to practice law, but who are not practicing law in this State and acting as an attorney or counselor-at-law therein.

Your Committee is also of the opinion that under the provisions of § 813a1, these same attorneys to whom this implied exemption is applicable, are, by virtue of the Statute, members of the State Bar Association.

Under the provisions of § 813a1, the members of the Association are entitled to all the rights and privileges of said Association, and to vote and to participate in its meetings. This provision does not however, in the opinion of your Committee, prevent the Association from restricting the qualifications for holding office in the Association.

Your Committee is of the opinion that when the Bar Association was created, it was intended that it should be an association of practicing attorneys, resident in this state, and for the benefit of practicing attorneys.

Your Committee is of the opinion that in keeping with the spirit of the Act creating the State Bar Association and in accordance with the spirit and purpose of the organization, namely the banding together of the practicing attorneys of this State, for the welfare and improvement of the Bar of this State, that the officers of this Association should be limited to members who are active practitioners at the Bar in this State and for the purpose of effecting this, your Committee submits the following Amendment to Article IV of the Constitution:

ARTICLE IV.

Officers: The officers of this Association shall be a President and Vice-President, who shall be elected at the annual meetings of the Association and shall hold their offices until the next annual meeting succeeding their election. There shall also be elected, by the Executive Committee of the State Bar Association, at a meeting following the annual meeting of the Association, a Secretary-Treasurer, who shall hold his office until his successor is elected and it is further provided that no member of this Association shall be elected to the office of the President or Vice-President of the Association, who is not an active practicing attorney. Provided further, that a member of this Association, while he is holding any public office which charges him with the devotion of his entire time to the performance of the duties of such office, shall not be eligible to hold the office of President or Vice-President of this Association.

In accordance with Article X of the Constitution, which provides that the Constitution may be amended at any annual meeting by a majority vote upon Amendments which have been suggested at a previous annual meeting, or Amendments which have been suggested

at the next preceding annual meeting, your Committee respectfully submits the foregoing Amendment to Article IV, to be voted upon at the next annual meeting.

Your Committee is of the opinion that in the event of the adoption by this Association, of the above Amendment to Article IV, that then Article V of the Constitution, which has to do with the organization of the Executive Committee of the Association, should be amended to read as follows:

ARTICLE V.

The Executive Committee shall consist of the President and Vice-President of this Association and the President of each of the District Bar Organizations of the State as such Districts are now or may hereafter be organized. The Secretary-Treasurer of the Association shall act as Secretary of the Executive Committee but he shall have no vote. In the event that any such District Organization shall not have a duly elected President, then the President of the Association shall appoint a member from such District. The representative of such District Bar Association shall serve upon such Executive Committee until the next annual meeting of the State Association, notwithstanding the election of a new President of such District Organization.

PHILIP R. BANGS,
THOMAS A. TONER,
CLYDE DUFFY.

Your Committee on Amendment to Constitution and By-laws to whom was referred the report of similar committee made to the 1932 annual meeting of the Bar Association of North Dakota, held at Fargo, North Dakota, after careful consideration of such report and recommendations therein contained have unanimously agreed upon the following report, namely:

That Articles 4 and 5 of the Constitution of the Bar Association of the State of North Dakota be amended to read as follows:

> ARTICLE IV. OFFICERS: The officers of this Association shall be a president and a vice president who shall be elected from the membership at the annual meeting of the Association and shall hold their offices until the next annual meeting succeeding their election; provided, however, that no member of this Association shall be elected to the office of president or vice president of the Association who is not an active practicing attorney and that no member of this Association, while he is holding any public office which charges him with the devotion of his entire time to the performance of the duties of such public office, shall be eligible to hold the office of president or vice-president of this Association. There shall also be elected by the executive committee of the State Bar Association at a meeting following the annual meeting of the Association a secretary-treasurer who shall hold his office until his successor is elected.
>
> ARTICLE V. Executive Committee: The executive committee shall consist of the president and vice president of this Association and the presidents of the several district bar associations of the state as such districts are now or may

hereafter be organized. In the event that any such district bar association shall not have a duly elected president, then the president of this Association shall appoint, from the territory covered by said district bar association, a member for said executive committee. The representative of such district bar association shall serve upon such executive committee until the next annual meeting of this association, nothwithstanding the election of a new president of such district bar association. The Secretary-Treasurer of this Association shall act as secretary of the executive committee but he shall have no vote.

Your committee in adopting the recommendations above set forth wish it distinctly understood that the recommendation is not made as, and should not be construed as criticism in any way of the activities of any of the Judges of the District or Supreme Court of this State, or of any officer in the State employ. The members of your committee feel that the bar as a whole profits by the contact had through members of the Courts of the State and State employees in their association in State Bar matters. Especially do we feel that the participation on the part of members of the Supreme and District Courts of the State and employed officers of the State in the proceedings of our State and District Bar Association meetings not only adds to the interest in such meetings, but tends to bring about a closer and more helpful spirit between the practicing attorneys of the State and those entrusted with interpretation of our laws and the enforcement of our laws, and your committee sincerely trust that if the proposed amendments to sections 4 and 5 are adopted, that they will not be construed by any person as a desire to limit the activities of members of the Supreme and District Courts of the State and employed officers of the State in the affairs of the State or District Bar Associations.

Respectfully submitted,
W. A. McIntyre,
A. W. Cupler,
F. J. Traynor.

Uniform State Laws

Last year in Fargo the Bar Association approved the Uniform Act to secure the attendance of non-resident witnesses in criminal cases.

Accordingly, at the last session of the Legislature, Senator Whitman of Grand Forks, at the request of our Committee, introduced for passage the Uniform Act so recommended by the Association. It duly passed both branches of the Legislature and is now Chapter 217 of the Laws of 1933.

We also requested Representative A. E. Sandlie to introduce the Uniform Machine Gun Act, adopted by the Commissioners on Uniform State Laws in 1932. The Legislature, however, indefinitely postponed the Bill upon the grounds that it had previously adopted a Uniform Machine Gun Act known as Chapter 178 of the Laws of 1931.

The principle of Uniformity in State Legislation, is continuously gaining ground. I presume you all are familiar with the American Legislators' Association, which now, and for recent years past, has been concerned in improving State Legislation. It has aided and assisted in enacting Uniform State Laws.

There are now in force in this State the following Uniform State Laws:

Acknowledgment Act,
Act Regulating Traffic on Highways,
Aeronautics Act,
Air Licensing Act,
Declaratory Judgments Act,
Desertion and Non-Support Act,
Firearms Act,
Illegitimacy Act,
Motor Vehicle Anti-Theft Act,
Motor Vehicle Registration Act,
Negotiable Instruments Act,
Proof of Statutes Act,
Reciprocal Transfer Tax Act,
Sales Act,
Veterans' Guardianship Act,
Warehouse Receipts Act,
Act to secure the attendance of non-resident witnesses in Criminal Cases.

A. P. PAULSON,
A. W. AYLMER,
H. A. BRONSON.

Local Organization

Your Committee on Local Organization beg to report:

1. That owing to the financial circumstances it has been thought best to make no considerable expense on the part of this committee.

2. The District Bar Associations have held splendid, enthusiastic and very profitable sessions.

3. The various counties' organizations have held different meetings with such success and doing a lot of splendid help in their communities. Both the District and County Bar Associations have sent speakers free of charge to all of the schools inquiring for them in their various counties, and various different local associations have entertained teachers and principals of various town high schools over the state, and on the whole the local associations have been doing good throughout the past two years.

JOHN KNAUF, Chairman.

THE LAW OF MORATORIA

C. L. YOUNG

The word moratorium is used to designate a suspension of all or of certain legal remedies against debtors. We commonly think of it as an incident of war. There was some legislation of the kind during the Civil War. During the World War the federal government made provision for the protection of soldiers and sailors engaged in war service through the *Soldiers' & Sailors' Civil Relief Act of 1918.* A number of our states, including North Dakota, passed similar statutes. In popular discussion it is assumed that such legislation in the emergency