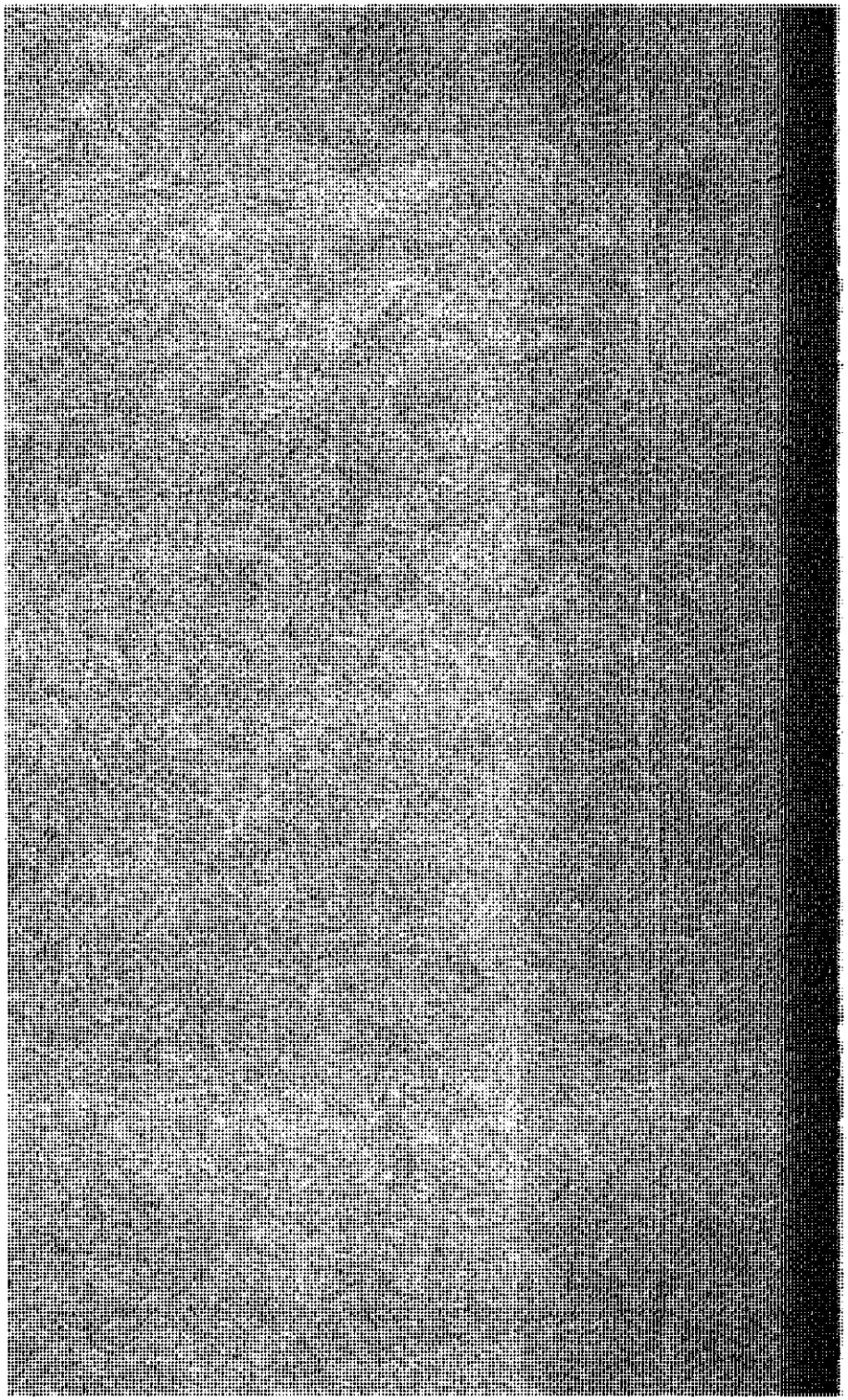
PROCEEDINGS

IDAHO STATE BAR ASSOCIATION



PROCEEDINGS

OF THE

IDAHO STATE BAR ASSOCIATION

Vol. 1 1921

NINTH BIENNIAL MEETING
HELD AT FEDERAL COURT ROOMS
BOISE, IDAHO
JANUARY 13, 14, 15, 1921

Syms-York Company, Inc.
Boise

ANNOUNCEMENTS

The Secretary endeavors to keep a complete card index of *all* attorneys of the State, whether members or not. Please send immediately to him all changes of address, and names of new attorneys and of deceased attorneys.

Complaints and grievances should be sent to the Secretary for reference to the proper Grievance Committee. Complaints should give full facts, be sworn to, and there should be attached all documents and correspondence relating to the grievance.

Refer matters which come within the jurisdiction of any of the Association Committees to the Secretary or Chairman of the Committees.

If you have anything which the Association should investigate, or in which it can assist you, write the Secretary.

Are you a member of the AMERICAN BAR ASSOCIATION? If not, you should join.

If your name does not appear in the membership list, it is because you are not a member or have neglected to pay dues. If the former, apply for membership on attached application, accompanying with $2.00 for current dues; if the latter you may be reinstated by payment of delinquent dues.

Every attorney ought to belong to the Association. Induce the attorneys of your city to join and help the work of the Association.

APPLICATION FOR MEMBERSHIP

To the Secretary, Idaho State Bar Association:

I hereby make application for membership in the IDAHO STATE BAR ASSOCIATION, and for that purpose enclose $2.00 for 1921 dues, and give the following information as required by the Constitution:

....

(Name in full) (Residence)

....

(Place of Practice) (Place and date of birth)

.....

(Place and date of naturalization)

.....

(Admitted to Practice, what other States, and dates)

I was admitted to practice before the Supreme Court of Idaho on

.....

and since said date have been, and now am, in good standing before said Court.

Dated this.....day of....., 19.....

Applicant.....

PRESIDENTS

Richard Z. Johnson, Boise	1899-1901
James E. Babb, Lewiston	*1901-1909
Frank T. Wyman, Boise	1909-1911
Frank Martin, Boise	1911-1913
Fremont Wood, Boise	1913-1915
Karl Paine, Boise	1915-1917
James H. Hawley, Boise	1917-1919
W. E. Sullivan, Boise	1919-1921
James F. Ailshie, Coeur d'Alene	1921-1923

SECRETARIES

Milton G. Cage, Boise	*1899-1909
B. S. Crow, Boise	1909-1917
O. W. Worthwine, Boise	1917-1919
Sam S. Griffin, Boise	1919-1923

TREASURERS

Selden B. Kingsbury, Boise	*1899-1909
O. O. Haga, Boise	1909-1911
Charles F. Koelsch, Boise	1911-1913
Frank B. Kinyon, Boise	1913-1915
P. E. Cavaney, Boise	1915-1919
N. Eugene Brasie, Boise	1919-1921
Office consolidated with Secretary	1921

* The records of the Association show no meetings or elections from 1901 to 1909.

OFFICERS AND COMMITTEES
1921 - 1922

PRESIDENTS
James F. Ailshie, Coeur d'Alene

SECRETARY-TREASURER
Sam S. Griffin, 610 Overland Building, Boise

VICE-PRESIDENTS FOR EACH JUDICIAL DISTRICT

First—Donald A. Callahan, Wallace
Second—W. E. Lee, Moscow
Third—Dana E. Brinck, Boise
Fourth—F. T. Disney, Shoshone
Fifth—J. R. S. Budge, Pocatello
Sixth—A. S. Dickinson, Blackfoot
Seventh—Alfred F. Stone, Caldwell
Eighth—C. H. Potts, Coeur d'Alene
Ninth—G. W. Talbot, Idaho Falls
Tenth—T. S. Randall, Lewiston
Eleventh—M. J. Sweeley, Twin Falls

EXECUTIVE COMMITTEE

The President and Secretary-Treasurer
Jos. E. Pence, Boise
D. L. Rhodes, Nampa
E. A. Walters, Twin Falls

STANDING COMMITTEES

JURISPRUDENCE AND LAW REFORM

Dean Driscoll . . . Boise
Joseph Peterson . . . Pocatello
James E. Babb . . . Lewiston

JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE

John C. Rice . . . Boise
Ed. L. Bryan . . . Caldwell
F. S. Dietrich . . . Boise

NEEDED LEGISLATION

B. W. Oppenheim . . . Boise
E. W. Whitcomb . . . Blackfoot
A. H. Oversmith . . . Moscow

MINING AND IRRIGATION LAW

Edwin Snow . . . Boise
C. W. Beale . . . Wallace
L. L. Sullivan . . . Hailey

COMMERCIAL LAW

C. E. Crowley . . . Idaho Falls
J. H. Norris . . . Payette
Harry S. Kessler . . . Boise

PUBLICATIONS

E. G. Rosenheim . . . Boise
O. W. Worthwine . . . Boise
L. W. Tennyson . . . Boise

SPECIAL COMMITTEES

MEMORIAL COMMITTEE

Henry Z. Johnson.....Boise
W. H. Healy.....Boise
Roger Wearne.....Coeur d'Alene
D. C. McDougall.....Pocatello
T. A. Walters.....Caldwell

REVISION OF IDAHO LAWS

(a) *Appeals*

W. E. Sullivan.....Boise
Jess B. Hawley.....Boise
J. H. Richards.....Boise
M. J. Sweeley.....Twin Falls
J. H. Forney.....Moscow

(b) *Settling the Issues and Trial Procedure*

Frank Martin.....Boise
Wm. M. Morgan.....Boise
A. A. Fraser.....Boise
Eugene Cox.....Lewiston
A. C. Cherry.....Weiser

(c) *Probate Practice and Procedure*

Charles M. Kahn.....Boise
W. C. Dunbar.....Boise
C. J. Orland.....Moscow
P. E. Stookey.....Lewiston
S. E. Blaine.....Boise

GRIEVANCE COMMITTEES

STATE COMMITTEE

O. O. Haga, Boise, *Chairman*
Frank Wyman, Boise
Charles L. Heitman, Wallace

DISTRICT COMMITTEES

The Vice-President for each District is ex-officio Chairman of the Grievance Committee of his District. The following are the other members. Where none are given the Vice-President has failed to make recommendations therefor to the President:

First—
Second—Frank E. Smith, Orofino; F. Clayton Keane, Moscow.
Third—Charles Koelsch, Idaho Building, Boise; Col. E. G. Davis, Sonna Building, Boise.
Fourth—P. K. Perkins, Hailey; W. T. Stafford, Gooding.
Fifth—A. B. Gough, Montpelier; T. E. Ray, Malad.
Sixth—Milton A. Brown, Challis; L. E. Glennon, Salmon.
Seventh—John H. Norris, Payette; Finley Monroe, Emmett.
Eighth—Herman H. Taylor, Sandpoint; Wm. D. Keeton, St. Maries.
Ninth—H. W. Soule, St. Anthony; C. A. Bandel, Rigby.
Tenth—
Eleventh—

MEMBERS OF THE IDAHO STATE BAR ASSOCIATION

A

Adair, Ralph W., Blackfoot
Ailshie, James F., Couer d'Alene

B

Babb, James E., Lewiston
Babcock, W. A., Twin Falls
Baker, Hugh A., Rupert
Bandel, C. A., Rigby
Barber, Ira E., Boise
Barber, Sidman I., Boise
Barnes, Evans P., Boise
Baum O. R., American Falls
Benting, C. O., Pocatello
Bissell, W. G., Gooding
Black, Roy L., Boise
Blaine, S. E., Boise
Brasie, N. E., Boise
Brinck, Dana E., Boise
Brodhead, Wm. A., Hailey
Brown, Milton A., Challis
Bryan, Ed. L., Caldwell
Buckner, Thos. E., Caldwell
Budge, Alfred, Boise
Budge, Jesse R. S., Pocatello
Burtenshaw, L. L., Council
Byers, James S., Idaho Falls

C

Callahan, Donald A., Wallace
Carter, Pasco B., Boise
Cavanah, C. C., Boise
Cavaney, P. E., Boise
Chapman, W. Orr, Twin Falls
Cherry, A. C., Weiser
Church, M. I., Boise
Clark, Chase A., Mackay
Cockerill, Orville P., Moscow
Colvin, J. F., Boise
Connor, Albert H., Boise
Coulter, Ed. R., Weiser
Cowan, Frederick J., Blackfoot
Cox, Eugene A., Lewiston
Crowley, C. E., Idaho Falls

D

Dampier, Ed. R., Rupert
Daugherty, Thos. G., Wilder
Davidson, W. B., Boise
Davis, E. G., Boise
Davis, Frank M., Fairfield
Davison, W. H., Boise
Delana, B. F., Boise
Delana, E. S., Boise
Dickinson, A. S., Blackfoot
Dietrich, F. S., Boise
Dodd, G. Fletcher, Burley
Dunbar, Wm. C., Boise
Dunn, R. N., Boise

E

Edgerton, J. W., Fairfield
Elam, Laurel E., Boise
Eldridge, J. B., Boise
Ensign, H. F., Hailey
Erb, Fred E., Weiser
Erb, George E., Boise
Estabrook, Frank, Nampa

F

Featherstone, A. H., Wallace
Flynn, John M., Sandpoint
Fox, Orval M., Caldwell
Frawley, E. J., Boise
Freehafer, A. L., Boise
French, Burton L., Moscow

G

Gibson, Claude W., Boise
Givens, Raymond L., Boise
Glennou, L. E., Salmon
Good, J. R., Boise
Gough, A. G., Montpelier
Griffin, Sam S., Boise
Gwinn, Jas. G., St. Anthony

H

Haga, O. O., Boise
Hagelin, F. A., Nampa
Hanson, Walter H., Wallace
Hart, I. W., Boise
Hartson, C. H., Boise
Hawley, James H., Boise
Hawley, James H., Jr., Boise
Hawley, Jess, Boise
Haydon, Curtis, Caldwell
Hays, S. D., Boise
Hays, S. H., Boise
Hedrick, J. G., Hailey
Hietman, Chas. L., Wallace
Helman, John H., Payette
Henke, Alfred W., Midvale
Hicks, A. R., Twin Falls

J

Jackson, John, Boise
James, A. F., Gooding
Jensen, L. Ivan, Shelley
Johannesen, O. A., Idaho Falls
Johnson, Kendrick, Boise
Johnson, Miles S., Lewiston
Johnson, Richard H., Boise
Jones, T. J., Boise

K

Kahn, Charles M., Boise
Katerndahl, R. W., Dubois
Keeton, William D., St. Maries
Keyser, Harry, Boise

L

Lampert, J. M., Boise
Lamson, George W., Nampa
La Veine, E. W., St. Maries
Lee, T. Bailey, Burley
Lee, William A., Boise
Lee, William E., Moscow
Loofbourrow, W. C., American Falls
Lowe, George H., St. Anthony

Mc

McCarthy, Charles P., Boise
McClear, J. L., Boise
McCracken, R. M., Boise
McCutcheon, Otto E., Idaho Falls
McDougall, D. C., Pocatello
McFadden, J. J., Hailey
McNaughton, Wm. F., Coeur d'Alene

M

Martin, Frank, Boise
Martin, Paris, Boise
Martin, T. L., Boise
Mills, Homer C., Twin Falls
Monroe, Finley, Emmett
Moran, John O., Pocatello
Morgan, William M., Boise
Morrison, Charles W., Rigby
Morrow, McKeen, Boise
Myer, John H., Idaho City
Myers, Maurice M., American Falls

N

Neal, B. F., Boise
Nelson, R. S., Coeur d'Alene
Norris, John H., Payette
Nugent, John F., Washington, D. C.

O

Oles, Charles E., Idaho Falls
O'Neill, Eugene, Lewiston
Oppenheim, B. W., Boise
Orland, C. J., Moscow

P

Padgham, George W., Gooding
Padgham, Harry A., Gooding
Padgham, John H., Salmon
Paine, Karl, Boise
Partridge, Jos. A., Nampa
Perkins, Proctor K., Hailey
Perky, K. I., Boise
Peterson, Joseph H., Pocatello
Pizey, Paul, Boise

Q

Quarles, Ralph P., Salmon

R

Randall, F. S., Lewiston
Ray, Thos. E., Malad
Reddock, C. F., Boise
Rhodes, D. L., Nampa
Rice, John C., Boise
Richards, J. H., Boise
Rosenheim, Ed. G., Boise

S

Seales, W. N., Grangeville
Snow, Edwin, Boise
Soule, H. W., St. Anthony
Steele, Edgar C., Moscow
Stockslager, C. O., Shoshone
Stone, Alfred, Caldwell
Stookey, P. E., Lewiston
Stoutemeyer, B. F., Boise
Sullivan, I. N., Boise
Sullivan, L. L., Boise
Sullivan, W. E., Boise
Sutphen, D. H., Gooding
Sutphen, P. T., Gooding
Sutton, A. O., Payette

T

Talbot, George W., Idaho Falls
Tennyson, L. W., Boise
Terrell, Robert M., Pocatello
Tipton, S. L., Boise

V

Van de Steeg, Geo. H., Nampa
Van Winkle, A. L., Hailey
Varian, B. S., Weiser

W

Walters, E. A., Twin Falls
Watts, J. G., Mountain Home
Wearne, Roger G., Coeur d'Alene
Wedekind, R. R., Dubois
Whitcomb, E. W., Blackfoot
White, F. C., Boise
Wilson, A. B., Twin Falls
Wilson, R. E., Cambridge
Winstead, Charles E., Boise
Wise, J. M., Twin Falls
Witty, W. H., Pocatello
Wolfe, E. M., Twin Falls
Wood, Fremont W., Boise
Wyman, Frank T., Boise
Wyman, Harry C., Boise

PROCEEDINGS

OF THE

IDAHO STATE BAR ASSOCIATION

JANUARY 13, 14 AND 15, 1921

Pursuant to the call of the Executive Committee, the meeting of the Idaho State Bar Association was called to order by President Willis E. Sullivan, at ten o'clock A. M., Thursday, January 13, 1921, at the Federal Court Rooms, Federal Building, Boise, Idaho. A quorum being present, to-wit: thirty-two, the president announced that the first order of business was the receipt of reports of standing committees.

Needed Legislation. B. W. Oppenheim, Chairman. A written report was submitted by the chairman of the committee and will be found in the files of the Needed Legislation Committee, Secretary's office. Considerable discussion was had of this report, particularly with relation to the matter dealing with the Code Commissioner or Revisor, by Karl Paine, B. W. Oppenheim, Clinton H. Hartson, T. J. Jones, Frank Martin, M. I. Church, Sam S. Griffin, J. H. Richards, P. E. Cavaney.

P. E. Cavaney moved that the president appoint a general legislative committee of seven members to which should be referred all matters considered by the Association as desirable to present to the attention of the Idaho State Legislature, and that said committee attend to the presentation of such matters as are so referred. The motion having been seconded and discussed was put to a vote and declared carried.

At the suggestion of J. H. Richards, B. W. Oppenheim, Chairman of the needed Legislation Committee presented the following resolution:

> "*Resolved:* That this Association urge the Legislature to authorize a supplement bringing the Compiled Statutes down to the close of each session with new enactments and with subsequent decisions arranged under the Compiled Statutes' numbers."

A motion having been made to adopt the report of the Needed Legislation Committee, and the Resolution of Mr. Oppenheim, and that the same be referred to the Legislative Committee for action, was duly seconded and having been put to a vote was carried. The Legislative Committee was requested to take up with the Legislature the revision or indexing of the session laws, and a provision for expert drafting of bills for presentation to the Legislature.

The president presented for the action of the association a resolution forwarded by the American Bar Association relating to uniform procedure in the Federal Court by rule of the Supreme Court of the United States, and the passage of an Act of Congress providing therefor. After discussion, E. G. Davis moved that the resolution and the pamphlet accompanying it be referred to a member of the Association for study and report, and the same be a special order of business on Saturday morning following the scheduled address. The motion having been duly seconded and having been put to a vote was carried.

Whereupon, the President appointed E. G. Davis to study said resolution and the pamphlet accompanying it and to report at the Saturday morning session.

Commercial Law Committee. The report of the Commercial Law Committee was presented by C. E. Crowley of Idaho Falls. The report was written and is filed in the files of said Committee in the Secretary's office. Said report was discussed by Chas. M. Kahn, B. W. Oppenheim, Frank Martin and others. P. E. Cavaney moved that the Association approve the principle of the report. Said motion was discussed by Jos. Pence, Chas. M. Kahn, C. E. Crowley, Edward Rosenheim, Frank Martin and others.

Whereupon, B. W. Oppenheim presented an as amendment the following resolution:

> *Resolved,* That this Association approve the regulation of conditional sales contracts and more especially as proposed by the Uniform conditional sales act recommended by the Conference of Commissioners on Uniform State Laws."

and moved the adoption of said resolution. Said motion having been duly seconded and put to a vote, was carried.

Upon motion duly made, seconded and carried the Association recessed until afternoon.

AFTERNOON SESSION, THURSDAY, JANUARY 13, 1921

TWO O'CLOCK P. M.

The Association re-convened at the Federal Court Rooms, Federal Building, Boise, Idaho, at the above hour and date. Present thirty-six.

Memorial Committee. The report of the Memorial Committee commemorating the lives of Judge W. W. Woods, Moscow; W. C. Howie, Mountain Home; Judge J. F. Guheen, Pocatello; Judge I. F. Smith, Weiser; Lycurgus Vineyard, Grangeville; C. S. McDonald, Lewiston; E. E. Teachnor, Lewiston; Felix T. Jones, Boise; George H. Rust, Boise; George F. Zimmerman, Emmett; Robert E. McFarland, Coeur d'Alene, and William Lee McConnell, Idaho Falls, was presented by its chairman, William Healy; said report is on file in the Secretary's office.

Mining and Irrigation Law Committee. An extended oral report was made by the chairman of said Committee, Edwin Snow, dealing with the the pay of Water Masters, the cumbersome law dealing therewith, its contradictory character, the inability to secure competent men for the position, the necessity for conservation of water, provisions for the appropriation of waste waters, and laws for credits for irrigation improvements and districts.

At the conclusion of the report, the same was discussed by B. F. Neal, Karl Paine and others.

Publication Committee. The report of the Publication Committee was delivered by the Chairman, Edward Rosenheim. The Committee recommended charging higher dues in order to raise sufficient money to publish proceedings.

Community Property Committee. A written report was filed by said committee and delivered by the Chairman, Chas. M. Kahn. The report is in the files of the Secretary's office. At the conclusion of the report, discussion was had by Claude W. Gibson, Frank Martin, Harry Kessler, C. H. Potts, McKeen Morrow, P. E. Cavaney, Edwin Snow, Dana Brinck, J. F. Ailshie, J. T. Pence, Jess Hawley, Laurel Elam, Edward Rosenheim, William Cameron and others.

Jess Hawley moved that the report be adopted with the elimination of the words "that a certified copy * * * for this proceeding" and inserting "final" before "decree" line 6 from the bottom, page 3 of the report, which said motion was seconded. After some discussion, Harry Kessler moved as a substitute for said motion that the committee report be adopted except the reference to the statute, but that that part of the report be amended to coincide with the suggestions of J. F. Ahsbie. and Karl Paine Said substitution was thereupon seconded. After some discussion, it was suggested that the motion be made in writing, and it was agreed that such written motions would be presented at the Friday morning session.

Whereupon, the President appointed as the members of the Legislative Committee, Frank Martin, Chairman; W. M. Morgan, J. H. Hawley, Frank Wyman, E. A. Walters, J. H. Peterson and E. C. Boom, and as the nominating committee E. G. Davis, Chairman; C. E. Crowley and C. H. Hartson.

Whereupon, the Association recessed until the evening session.

EVENING SESSION, THURSDAY, JANUARY 13, 1921

EIGHT O'CLOCK P. M.

The Association re-convened at eight o'clock P. M. at the usual meeting place. Present thirty-five.

Whereupon, the President delivered his address which is written and will he found in the Secretary's files under the heading "Addresses," and appears in full hereinafter.

At the conclusion of the President's address, Jess Hawley moved that a committee of three be appointed by the Secretary to consider the President's address and make such report to the Association as it deemed advisable before the close of the meeting, which said motion, having been seconded and put, was duly carried.

Whereupon the Secretary appointed as said committee Jess Hawley, Chairman, T. J. Jones and J. F. Ailshie.

The Association thereupon recessed until Friday morning at ten o'clock A. M.

MORNING SESSION, FRIDAY, JANUARY 14, 1921

TEN O'CLOCK A. M.

The Association re-convened Friday at ten o'clock A. M. at the usual place. Present thirty.

The Community Property Law Committee presented an amended report embodying the suggestions of Jess Hawley and J. F. Ailshie; said report as amended is in writing and in the files of the said committee in the Secretary's office.

Whereupon, Harry Kessler presented the following motion:

"I move that the Idaho State Bar Association recommend that Section 7803 of the Idaho Compiled Statutes be amended to read as follows, to-wit:

§7803. *Devolution of Community Property.* Upon the death of either husband or wife, one-half of all the community property shall go to the survivor, subject to the community debts, and the other half shall be subject to the testamentary disposition of the deceased husband or wife, in favor only of his, her or their children or a parent of either spouse, subject also to the community debts, provided that not more than one-half of the decedent's half of the community property may be left by will to a

parent or parents. In case no such testamentary disposition shall have been made by the deceased husband or wife of his or her half of the community property, it shall go to the survivor, subject to the community debts, the family allowance, and the charges and expenses of administration: *Provided, however*, That in administration upon the estate of the wife, if she dies intestate, notice to creditors need not be given and upon the return of the inventory of the estate, the court or the judge thereof may, by order, require all persons interested to appear on a day fixed, to show cause why the whole of said estate should not be distributed according to law. Notice thereof shall be given and proceedings had in the same manner as upon the settlement of accounts of executors and administrators. If upon the hearing the court finds that all of the property was community property and that the deceased died intestate, it shall distribute all of the property of the deceased to the surviving husband. In such case where the husband is appointed administrator, no bond need be furnished unless required by the court."

Said motion having been seconded, a discussion was had thereof by Karl Paine, P. E. Cavaney, Claude Gibson, William Dunbar, Frank Martin, Pasco Carter, Charles M. Kahn and others.

Whereupon, a motion was presented that the vote upon said motion be a rising vote. The same having been duly seconded and put, was carried.

Said original motion was put to a vote, and the president announced that said motion had carried.

A motion was made that the said motion be referred to the Legislative Committee with power to change the exact language, and to present the same to the Legislature. Said motion having been seconded and put, was carried.

It appeared that M. J. Sweeley, who was to address the association on "How to Increase the Usefulness of the Association" was unable to be present, but had prepared a paper on the above subject, and the same might be presented to the association at Saturday's session if agreeable.

The president announced that the reading of said paper would be had at the Saturday session.

The Special Committee on Incorporation of the Bar presented its report, which report is in writing and on file in the secretary's office. At the conclusion of the report, which was made by the chairman, it was moved that the report be considered by the Association as a special order of business at the morning session Saturday morning; said motion having been seconded and put was carried.

It was suggested that the secretary notify the Justices of the Supreme Court of the consideration of said matter. Upon motion duly made, seconded and carried, the Association recessed until the afternoon at 2 o'clock.

AFTERNOON SESSION, FRIDAY, JANUARY 14, 1921

TWO O'CLOCK P. M.

The Association reconvened at 2 o'clock P. M. Present forty.

T. L. Martin of Boise was introduced to the Association by the president and presented an address on "Examination of Abstracts of Title". The address is written and will be found in the secretary's files under the heading "Addresses", and is printed hereinafter. At the conclusion of the address, the same was discussed by various members of the Association.

The matter of preparation of a minimum fee schedule was informally discussed by members of the Association.

The secretary presented his report. The same was written, and will be found in the files of the secretary's office under the heading "Secretary". It shows, among other things, 194 members entitled to membership privileges; that seventeen complaints were submitted to the Association and disposed of by the Grievance Committee during 1919-1920.

Whereupon, Karl Paine moved that the Association express its appreciation of the time and labor devoted to the upbuilding of the Association by the secretary and express that appreciation by a vote of thanks. Said motion having been seconded, was put and carried.

The treasurer presented his report, which report is written and is found in the Secretary's files under the heading "Treasurer". It shows receipts of $1,141.66 and disbursements of $221.99 during 1919 and 1920; balance cash on hand, $919.67.

The president appointed as a committee to audit the accounts of the secretary and treasurer, H. C. Wyman, chairman; P. E. Cavaney and L. W. Tennyson.

Upon motion duly made, seconded and carried, the Association recessed until eight o'clock P. M.

EVENING SESSION, FRIDAY, JANUARY 14, 1921

EIGHT O'CLOCK P. M.

The Association reconvened at eight o'clock P. M. Present thirty-eight.

Whereupon, a general discussion of the organization of the bar and the incorporation thereof was had. At the conclusion of the discussion Edward Rosenheim moved that the report on incorporation of the bar be adopted; said motion having been seconded and put to a vote, was carried.

Whereupon, at the suggestion of the president, the secretary read the so-called "Goodwin Model Act" for organization of the bar, which was recommended by the committee, and said act was discussed.

It was moved that the Association recommend to its Legislative Committee the organization of the bar under the so-called Goodwin Act, and that the matter of amendment thereof and manner and method of presentation to the Legislature be left to the committee. Said motion having been seconded, was carried.

Frank Martin, chairman of the Legislative Committee, requested that the Association discuss each section of the proposed act and present the Association's views for the benefit of the committee. The secretary read the act section by section and discussion was had thereof and changes were recommended. The act as endorsed, embodying changes, and presented to the State Legislature, is as follows:

AN ACT PROVIDING FOR THE ORGANIZATION AND GOVERNMENT OF THE IDAHO STATE BAR.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. *Board of Commissioners Established.* That there is hereby established a Board of Commissioners of the Idaho State Bar, consisting of five members to hold office for a term of five years and to be selected in the manner hereinafter provided. The Board shall have perpetual succession, use a common seal and be authorized to receive gifts and bequests designed to promote the objects for which it is created and the betterment of conditions surrounding the practice of the law.

SEC. 2. *Selection of Commissioners.* The Board of Commissioners shall be selected by the members of the Idaho State Bar, who shall vote by ballot. The ballots shall be deposited in person or by mail with the Secretary of the Board, or such other officer as it may designate. There shall be an annual election for the purpose of selecting successors to the Commissioners whose terms expire and for the purpose of filling vacancies. The Board shall fix the time for holding the annual election and prescribe rules and regulations in regard thereto not in conflict with the provisions of this Act. The Board shall, in accordance with its rules, give at least sixty days' notice by mail of the time for holding the election each year.

SEC. 3. *First Election of Board.* For the purpose of the first election of Commissioners the Clerk of the Supreme Court with two assistants to be selected by himself, shall constitute an election and canvassing board; they shall:

(a) Set a time for closing the voting not less than sixty days from the time of notice to the members of the Idaho State Bar;

(b) Notify all such members by mail of the time for voting and the time for closing nominations, which latter time shall be thirty days from the time of mailing notice:

(c) Receive nominations and prepare a ballot containing the names of all persons nominated according to the provisions for nomination hereinafter set forth;

(d) Mail such ballot to every member of the Idaho State Bar at least fifteen days before the time for closing the voting:

(e) Receive and canvass the vote and certify the names of the five candidates receiving the largest number of votes to the Secretary of State as the first Board of Commissioners.

SEC. 4. *Nominations.* Nomination to the office of Commissioner shall be by the written petition of any ten or more members of the Idaho State Bar in good standing. Any number of candidates may be nominated on a single petition. For the purposes of the first election the petitions shall be sent through the mails to the above provided election and canvassing board. Thereafter such nominating petitions shall be mailed to the secretary within a period to be fixed by the rules made by the Board of Commissioners.

SEC. 5. *Organization of the Board.* On the fourth Tuesday following the certification of their names the first Commissioners shall meet at the office of the Clerk of the Supreme Court and organize by the election of the following officers of the Idaho State Bar and its Board of Commissioners, namely: a president, a vice-president and a secretary. The Commissioners first elected shall hold office for one, two, three, four and five years respectively and at the first meeting their terms shall be determined by lot. Their successors shall hold office for five years. The secretary may be selected either from within or without the membership of the Board and the Board may provide for an assistant secretary.

SEC. 6. *Authority Conferred.* The Board of Commissioners shall have power to determine, by rules, the qualifications and requirements for admission to the practice of the law and to conduct examination of applicants, and they shall from time to time certify to the Supreme Court the names of those applicants found to be qualified. The approval of the persons whose names are so certified, by the Supreme Court, shall entitle them to be enrolled in the bar of the State, and to practice law. The Board shall formulate rules governing the conduct of all persons admitted to practice and shall investigate and pass upon all complaints that may be made concerning the professional conduct of any person admitted to the practice of the law. In all cases in which the evidence, in the opinion of a majority of the Board, justifies such a course, they shall take such disciplinary action by public or private reprimand, suspension from the practice of the law, or exclusion and disbarment therefrom, as the case shall in their judgment warrant. Upon the making of any order by the Board suspending or disbarring any member of the Idaho State Bar from the practice of law, the Board shall cause a certified copy thereof to be immediately filed with the Clerk of the Supreme Court. The Supreme Court may in any case of suspension or disbarment from practice review the action of the Board, and may on its own motion, and without the certification of any record, inquire into the merits of the case and take any action agreeable to its judgment.

The Board of Commissioners shall also have power to make rules and by-laws not in conflict with any of the terms of this Act concerning the selection and tenure of its officers and committees and their powers and duties, and generally for the control and regulation of the business of the Board and of the Idaho State Bar.

SEC. 7. *License Fee.* Every member of the Idaho State Bar shall, prior to the first day of July in each year, pay into the State Treasury as a license fee the sum of ten dollars and the fund thereby created shall constitute a separate fund to be disbursed by the State Treasurer on the order of the Board of Commissioners, and all moneys received in said fund are hereby permanently appropriated to pay the expenses incurred in carrying out the provisions of this Act.

SEC. 8. *Disbursements.* For the purpose of carrying out the objects of this Act, and in the exercise of the powers herein granted, the Board shall have power to make orders concerning the disbursement of said fund, but no member of the Board shall receive any other compensation than his actual necessary expenses connected with attending meetings of the Board, or in the performance of the duties directed by the Board.

SEC. 9. *Discipline Procedure.* The Board of Commissioners shall establish rules governing procedure in cases involving alleged misconduct of members of the Idaho State Bar, and may create committees for the purpose of investigating complaints and charges, which committees may be empowered to administer discipline, including suspension or disbarment from the practice of law, in the same manner as the Board itself, but no order for the suspension or disbarment of a member shall be binding until approved by the Board. The Board or any such committee may designate any officer authorized by law to take depositions, to take testimony under oath in any such investigation.

SEC. 10. *Supreme Court's Power to Approve Rules.* All rules made by the Board concerning the examination of, or admission of, applicants to practice law, or for the disciplining of members of the Idaho State Bar, shall, before becoming effective, be submitted to, and approved by the Supreme Court.

SEC. 11. *Power of Subpoena.* In the investigation of charges of professional misconduct the Board, and any committee appointed by it for this purpose, shall have power to summon and examine witnesses under oath and compel their attendance and the production of books, papers, documents and other writings necessary or material to the inquiry. Such summons or subpoena shall be issued under the hand of the secretary of the Board, or any member of the Board, or any member of a committee appointed by the Board to conduct such investigation or hearing, and shall have the force of a subpoena issued by a court of competent jurisdiction, and any witness or other person who shall refuse or neglect to appear in obedience thereto, or who shall refuse to be sworn or testify or produce books, papers, documents or other writings demanded shall be liable to attachment upon application to the Supreme Court of the State or to any judge of any court of record for the district where the investigation is conducted, as in cases of contempt.

SEC. 12. *Rights of Accused Member.* Any member of the Idaho State Bar complained of shall have notice and opportunity to defend by the introduction of evidence and the examination of witnesses called against him, and the right to be represented by counsel. He shall also have the right to summon witnesses to appear and testify or produce books, papers, documents or other writings necessary or material to his defense in like manner as provided in Section 11 of this Act. In case of suspension or disbarment from practice the accused shall have the right to have the order of the Board reviewed by the Supreme Court.

SEC. 13. *Record of Proceedings.* A complete record of the proceedings and evidence taken by the Board, committee or Commissioner shall be made and preserved by the Board.

SEC. 14. *Annual Meeting of Bar.* There shall be an annual meeting presided over by the President of the Idaho State Bar, open to all members of the Bar in good standing, and held at such place as the Board of Commissioners may designate, for the discussion of the affairs of the Bar and the administration of justice. At noon on the last day of such meeting, the annual election shall close and the ballots be canvassed and the result announced. Special meetings of the Idaho State Bar may be held at such times and places as the Board of Commissioners may designate. Notice of such meeting shall be given by mail not less than fifteen days prior to the date of said meeting.

SEC. 15. *Unlawful Practice of Law.* If any person shall, without having become duly licensed to practice, or whose license to practice shall have expired either by disbarment, failure to pay his license fee, or otherwise, practice or assume to act or hold himself out to the public as a person qualified to practice or carry on the calling of a lawyer, he shall be guilty of an offense under this act, and on conviction thereof be fined not to exceed Five Hundred Dollars, or be imprisoned for a period not to exceed six months, or both.

SEC. 16. All Acts or parts of Acts in conflict with this Act are hereby repealed.

Wherenpon, Lot L. Feltham opposed the bill and the principle thereof. After some discussion, a motion to recess until the morning session, Saturday morning at ten o'clock, was put and carried.

MORNING SESSION, SATURDAY, JANUARY 15, 1921

TEN O'CLOCK A.M.

The Association reconvened at ten o'clock A. M. Present, thirty.

Whereupon, the report of the State Grievance Committee was presented in writing and will be found in the Secretary's files.

It was moved that said report be adopted and the appreciation of the Association be extended to the Grievance Committees. Said motion having been seconded, was put and carried.

Whereupon, the Auditing Committee reported its approval of the accounts of the secretary and treasurer and motion was made that the report of the committee be accepted. Said motion having been seconded and put, was carried.

Whereupon, the secretary presented the following resolution for the amendment of the constitution:

"*Resolved*, That Sections 3 and 4, Article III, and Section 2, Article IV of the Constitution of this Association adopted January 22, 1919, be, and the same hereby are, amended to read as follows, to-wit:

ARTICLE III. OFFICERS.

"'SEC. 3. A *Secretary-Treasurer*, who shall be ex-officio a member, and Secretary, of the Executive Committee and ex-officio Secretary of the State Grievance Committee. He shall have charge of the records of the Association, conduct the correspondence thereof, collect, and upon

order of the Executive Committee, disburse, the funds of the Association, keep a record of the accounts, report thereon at the meeting of the Association or to the Executive Committee whenever called upon so to do, and perform such other duties and have such further powers as are incident, necessary or usual for such office or as are imposed upon or granted to him by said committee. He may appoint one or more assistants, for whose official acts he and his sureties shall be responsible. He shall receive a salary, not less than $50.00 per year and in such further amount as the Executive Committee may determine and shall be required to give bond for the faithful performance of his duties and trust in such form and amount as the said committee shall require, the premium for which the Association shall pay.'

ARTICLE IV. COMMITTEES.

"'SEC. 2. *Executive Committee.* There shall be an Executive Committee, consisting of the President (or, in case of his disability or permanent absence, a Vice-President, in the order provided in Article III, Section 2, hereof), the Secretary-Treasurer and three members elected in the same manner, at the same time and for the same term as other officers. The Executive Committee shall have general charge of and supervision over the work, programme, activities and interests of the Association. A majority shall have power to act for the Committee, and may fill any vacancy therein'."

and moved the adoption of said resolution. Said resolution was seconded. Whereupon, it was moved that there be substituted for the figures "$50.00" the figures "$120.00". Said motion was seconded, and, having been put, was carried. Whereupon the original motion as amended was put to a vote and unanimously carried and declared by the president to be a part of the constitution of the Association.

Whereupon, it was moved that Hon. I. N. Sullivan and Hon. James H. Hawley be made life members of the Association in view of their distinguished services to the Bar of the State, in the courts, and the upbuilding of Idaho. Said motion was seconded and after favorable discussion, was unanimously carried.

The president introduced to the Association Clyde M. Gray, Chief of Income Tax Division, Internal Revenue Department, Boise, Idaho, to address the Association on "Suggestions on Income Tax Procedure". The address was not written. After discussion of the address, it was moved that the thanks of the Association be given to Mr. Gray for his helpful address. The motion was seconded, and having been put to a vote, was carried.

Whereupon, the address of M. J. Sweeley upon "How to Increase the Usefulness of the Association" was read to the Association by E. M. Sweeley. The address will be found in the Secretary's files under the head "Addresses" and is printed in full hereinafter.

It was moved that the address be delivered to the Executive Committee, together with suggestions of other members relating to the same matter for the action of the committee. Said motion was seconded, and, having been put to a vote, was carried.

Whereupon, the Special Committee on Publication of the President's Address presented a written report recommending the printing of the president's address and other addresses delivered at the Association meeting. The written report will be found in the Secretary's files under the heading "Reports".

It was moved that the report of the committee be accepted, approved and adopted. Said motion was seconded, and having been put to a vote, was carried.

Whereupon, E. G. Davis reported, under the special order of business, on the American Bar Association resolution relative to Supreme Court Rules of Practice, and moved the adoption of said resolution. The motion having been seconded and put, was carried.

Whereupon, the president appointed as members of the committee provided for in said resolution A. H. Featherstone and E. G. Davis.

Upon motion duly made, seconded and carried, the Association adjourned until two o'clock P. M.

AFTERNOON SESSION, SATURDAY, JANUARY 15, 1921

TWO O'CLOCK P. M.

The Association reconvened at two o'clock P. M. Present fifty.

The secretary presented the following resolution:

"*Resolved*, That a certain resolution of this Association adopted at the morning session, January 14, 1911, and appearing at page 77 of the Minute Book, relating to honorary members, be and the same is hereby repealed; and

"*Resolved*, That upon the election, or appointment, and qualification each Justice of the Supreme Court of Idaho, each Judge of a District Court of the State of Idaho, and the Judge of the United States District Court for Idaho, be admitted, without further act or application, to membership in this Association, and that during their respective terms of office the payment of annual dues be not required; and

"*Resolved*, That paragraph II hereof shall take effect as of January 1, 1921, and apply to all Judges then or thereafter in office, and the secretary is hereby directed and empowered to issue to such Judges the usual membership card of the Association each year without receipt of annual dues therefor."

and moved its adoption. The motion was seconded, put to a vote and was carried.

Whereupon, the secretary presented the following resolution:

"*Resolved*, That the president shall, after each meeting of the Association, appoint three committees of this Association, consisting of five members each, chosen as far as may be from diverse portions of the State, which shall consider the revision, improvement, amendment or change and coordination of a certain defined portion of the laws of the State of Idaho each two years, draw a proposed bill embodying such revision, and submit a copy thereof to each member of the Association at least six months prior to the meeting of the Association succeeding its appointment, for criticism and suggestions; that in view of such criticism and suggestions such hill shall be redrawn and printed and submitted to the association at its meeting succeeding such appointment for recommendation, and if or as approved shall urge the passage thereof. As an example of a defined portion of the laws as meant hereby would be 'Appeals', 'Corporations', 'Probate'. The first committee appointed hereunder shall consider 'Appeals'. The Executive Committee may make appropriations of Association funds for the purpose of the foregoing committee."

Said motion having been seconded and put to a vote, was carried.

It was moved that the Association contribute $100.00 to the European Relief Commission for the relief of the starving children of Europe, and that the Secretary and Treasurer be instructed to draw the warrant of the Asso-

ciation in favor of G. R. Hitt, Treasurer, Idaho Council, European Relief Commission. Said motion was seconded, and being put to a vote, was carried.

William M. Morgan of Boise thereupon addressed the Association upon "Preparation for and Admission to the Bar". The address was oral.

Whereupon the nominating Committee reported as follows:

Boise, Idaho, January 15, 1921.

We, your Nominating Committee, make the following nominations, and recommend the election of the following officers:

PRESIDENT—
J. F. Ailshie, Coeur d'Alene.

VICE-PRESIDENTS—
First Judicial District, Donald A. Callahan, Wallace.
Second Judicial District, W. E. Lee, Moscow.
Third Judicial District, Dana E. Brinck, Boise.
Fourth Judicial District, M. J. Sweeley, Twin Falls.
Fifth Judicial District, J. R. S. Budge, Pocatello.
Sixth Judicial District, R. W. Adair, Blackfoot.
Seventh Judicial District, Alfred F. Stone, Caldwell.
Eighth Judicial District, C. H. Potts, Coeur d'Alene.
Ninth Judicial District, G. W. Talbott, Idaho Falls.
Tenth Judicial District, F. S. Randall, Lewiston.

SECRETARY-TREASURER—
Sam S. Griffin, 610 Overland Bldg., Boise.

EXECUTIVE COMMITTEE—
D. L. Rhodes, Nampa; E. A. Walters, Twin Falls; J. T. Bence, Boise.

Respectfully submitted,
E. G. DAVIS, Chairman.
C. E. CROWLEY.
CLINTON H. HARTSON.
Nominating Committee.

It was moved that said report be adopted and that the Secretary cast the unanimous vote of the Association for each of the persons therein named for the office for which the said committee had nominated him. Said motion was duly seconded, put to a vote and was carried, and the secretary thereupon cast the vote of the Association for each of said nominess.

Whereupon, James F. Ailshie, the new president of the Association, was escorted to the chair and addressed the Association.

It was moved that the thanks of the Association be presented to Willis E. Sullivan, the retiring president. Said motion having been seconded and put to a vote, was unanimously carried.

Upon motion duly made, seconded and carried, the association adjourned.

EVENING SESSION, SATURDAY, JANUARY 15, 1921

The Association met in the banquet hall of the Boise Chamber of Commerce at six-thirty o'clock P. M. At the conclusion of the banquet, J. H. Peterson of Pocatello assumed the duties of toastmaster and introduced to the assembled guests the following persons, who addressed them: T. J. Jones, John C. Rice, D. W. Van Deusen, D. T. Miller, Major Fenn, Jess Hawley, E. W. Whitcomb, Guy Bissell, Charles P. McCarthy and J. L. McClear.

"PROBLEMS OF THE HOUR AND OF THE ASSOCIATION"

Address of PRESIDENT WILLIS E. SULLIVAN of Boise

Since our meeting two years ago many changes have taken place. We were just at the close of a great and appalling war. It was a time for national rejoicing rather than a time to deal with local legal problems.

The war of many nations having come and passed, the world has again turned to its customary pursuits and vocations. But it is hard to again settle down to the smooth and accustomed methods. The disturbances of life, habits and business have produced conditions never dreamed of before and with no precedents to follow. We find upheavals in many parts of Europe which have completely overturned forms of government, and the people of those parts are finding it exceedingly difficult to adjust themselves to any stable government. The people of many countries of the world are in a fever. Things are seething and boiling. With disorder, discontent, confusion and restlessness everywhere and internal dissension threatened in most every government, we have been for the past two years, and now are, face to face with most serious problems of reconstruction. And out of the business and industrial troubles since the ending of the World War has come new ideas, new thoughts, new calls which mean new adjustments in almost every line of business. The confusion has been so great, the public mind so tense, the changes so rapid that there has been no chance of a settling down.

CONDITIONS IN UNITED STATES

When the war closed America found itself with many big questions to meet, such as the International League of Nations, national suffrage, national prohibition, government ownership and control of railways, telephone and telegraph lines, government control of prices, employment of returning soldiers, cancellation of immense contracts by the government, deportation of undesirable aliens, great labor questions, etc. Many of these problems have been solved.

However, our country still finds itself face to face with many other problems. The wheels of trade and commerce do not yet run smoothly; extravagance, altho decreasing, is still practiced by many; complaints of housing and accommodations are still heard; the public is still moving about and traveling extensively; and at present the cries of the high cost of living are mingling with the cries of those suffering from sudden, unexpected and unforeseen declines in prices in some industries; factories, mills, manufactures, railroads and large business houses are reducing their number of employees; some industries are reducing wages, others closing down. Clouds dark and threatening are hovering over both employers and employees.

These are times when attacks are being made upon our laws and constitution; when men seek to tear down proper administration of our laws by constituted authority. The world is in the midst of a period of unrest; there is a growing spirit which seems to indicate the dawn of a new era; changes for many months last past have been fast and numerous; many new proposals and doctrines are hovering around; and we are undergoing certain degrees of evolution and revolution. And to many it appears that the swing of the pendulum is toward radicalism.

RADICALISM AND BOLSHEVISM

During the war an internal battle arose in many countries, and ever since has continued, in an attempt to fasten its clutches upon the governments of such countries.

Democracy, via Bolshevism and Socialism, became the rage. The cry is to do away with despotism and autocracy and establish liberty and greater freedom, with no governmental restrictions to speak of. The method sought to be accomplished is a tyrannical despotism and autocracy, based upon false ambition and ignorance where a few, far less in numbers than those under the old form, seek to rule.

The thrones of the former despots toppled and fell. Those despots, however, at their very worst, reckoned with the lessons of history, and were possessed of sufficient reason and common sense to see that the under class were shown some degree of fairness and justice.

But Bolshevism swings still further to another extreme and demands the complete destruction of the so-called upper, or property class. It requires not only a reign of terror and crime unspeakable, but an annihilation and a wreck of property rights; in other words, it not only oppresses but demolishes, loots, slaughters and transgresses and violates womanhood. The sincerity of those now in control is exemplified by their former battle cry of free press and free speech; both are now extinct. The free press is suppressed as being too dishonest and too slanderous; free speech, if it criticises any of those in control, means imprisonment or death.

The ordinary Socialists are theorists and dreamers. Their imagination runs to ownership of everything by the government and the laboring class, ruled by the Socialists. The Bolshevists are those who carry their principles into action, whether right or wrong. They believe in action, swift and violent. They beheaded the owners of lands and put the peasants in possession; they took the factories and industries from the owners, exiled or murdered them, and placed the wage workers in charge.

Instead of liberty there is less freedom; instead of fairness there is tyranny; instead of literacy there is illiteracy; instead of a government ruled by a greater number there is a government ruled by a lesser number, and instead of a removal of individual restrictions there are far greater limitations.

So the result has been in those countries to take away the last vestige of liberty and to change from one autocracy to another, far more absolute, far more autocratic and tyrannical, and far more damnable in its deceit and hypocrisy. The face of the old—white, cold, stern and immovable—is now supplanted by a face, ugly, vicious and vastly more terrible in its greediness and intense desire to rule absolutely. None other, in all the annals of the world, was ever conceived so despotic and terrible in its consequences.

They would substitute the despotism of one class over every other class. And the amazing thing is that they seek to establish and continue their rule, not by the consent of the governed but by the force of a small minority.

We must conclude the progression hailed as relief for the great masses, the consistent braying for a greater freedom, and the continual prating by adherents whose minds are warped and twisted by theories and impractical methods, while they can only produce unsafe, impractical and impossible ideas, has proved a woeful failure.

If successful through the world we will have vastly less freedom than we enjoy today and construct an edifice under whose influence none of us could ever hope to escape.

Where does America stand today? is the careful thought of all of us. All kinds of untried and impractical schemes are advocated; all sorts of foolish and dangerous doctrines are preached; wild eyed fanatics are inciting the discontented and ignorant to destroy our government; dangerous men, pretending a love for the laboring man, seek to inspire him with class hatred; they advocate that the only way to remedy the failures in our law is to abolish all laws; that the working man is entitled to what he wants, regardless of honor, duty or religion; under such ravings and doctrines we are apt

to become hysterical. It must be admitted that many of our people are nibbling at these radical doctrines, but the great majority of them, under this unrest and disturbance, are in search of proper and orderly relief.

We must not, however, deceive ourselves, and so, in reaching a sane conclusion, we must have in mind the reds, with their flag of anarchy, the deadly bombs, the bolshevik propaganda, the I. W. W. menace, the glib-tongued orators, the calamity bowlers, the soap box agitators, the smooth-voiced and high-browed individual, more interested in free love than free institutions, all systematically endeavoring to stir up dissension, and to churn up public thought to a foam with erratic theories and false versions.

We must admit, it seems to me, that there is a general tendency in the direction of change and reform. That America could ever really start on the road to bolshevism and anarchy is, of course, unthinkable. Our ideas on education, morality, patriotism, and equal justice to all, together with good common sense of the American laboring man, all preclude such a catastrophe, and satisfies us thoroughly that our free land will not plunge into the mad whirl of class hatred and class rule. The supporters of such a change are generally found to be those whose human instincts are to exist without work at all, and if that cannot be, then with as little work as possible. "Maximum pleasure and living with a minimum effort" is their motto. They want a government that will support them and give them what they want without work, bother or trouble. They are like the natives of the South Sea Islands who do no strenuous labor, but sit and wait under the tree until the fruit falls.

No nation can be successful where the just rewards and honest earnings of one man's thrift, economy, skill and energy are to become the reward of another's idleness, shiftlessness and indolence. If one in this age, or any other, knows that if he practices the virtues of self-denial, economy and thrift, only to have his accumulations taken away and turned over to a government or its radical supporters who scorn honest toil, then an impossible government is created which by the very nature of things cannot survive, as the supply will rapidly decrease and the system will die for lack of support and something to feed on.

If we can get rid of that class of aliens who profess to find our institutions so intolerable that tbey can see no remedy except bloody revolution, then we will have no real difficulty. Between those who love America there will be many and serious differences of opinion; the views of some will carry us to ultra-conservatism, and the views of others to ultra-radicalism, but no matter how serious the questions are that arise, I am sure we all have enough faith in our country to believe that such differences, if we exclude those who despise our institutions and seek their destruction, will be decided under the great rule adopted by our governmental procedure, to-wit: the will of the majority.

RELATIONS BETWEEN EMPLOYER AND EMPLOYEE

Another serious question, and to me the most important of all, is the one between employer and employee. Our papers are now discussing the merits and demerits of an "open shop". It looks as if a serious fight was developing. This is a generation of money madness. The relations between capital and labor are not solved. They may at any time now burst forth with more fierceness, more violence, and with more serious menace to our institutions. These matters are now confronting the American people.

When we look straight at the question and think of how the difference naturally arose, we wonder why a proper solution has not long ago been found. At first, during pioneer times in America, there was practically but one class—labor. Most all men took part in manual labor. Every man was a workman. Tbe boss worked side by side with the laborer. Then as business increased,factories and manufacturing establishments became necessary.

Our internal commerce had its birth. Money in large quantities became necessary. Men to raise the money and direct the operations became essential; in other words, brains and head work were forced into action. From there on the work of the head gradually separated from the work of the hand. Head work soon became known as "capital" and hand work as "labor".

How simple it all seems—both, in these times of large enterprises, are absolutely necessary. Neither can be dispensed with. Each relies absolutely upon the other. Neither can or should control or dictate. Destruction of one means destruction of the other.

So any government will reach the conclusion some time that a government ruled and operated by men's hands and not by their brains is an idle dream. Likewise, any attempt now to rule any people by the capital class, or by the labor class, or by any class, is out of the question. So we should all discourage at all times any such attempt hy either class to control Congress or our Legislatures or dictate as to our State or National laws.

Antagonism surely exists between such classes. Vast organizations of labor have developed and on the other hand are offset by organizations of employers. Disputes have arisen time and time again which have caused all concerned immense losses, destroyed business, stopped industries.. And, strange to say, in a country where the equal rights of all are held up so reverently, the public has never been considered, regardless of loss, deprivation, inconvenience, suffering and at times starvation.

All rights should be respected, which means that the antagonism between capital and labor, which is becoming more bitter, violent and expensive, should give way to reasonable cooperation. Any other relation is fundamentally wrong and undemocratic. Any other course means trespassing upon the rights of a large majority of our citizens, and is destructive of liberty under our laws.

The great question of how to successfully deal with the rights of employers, the rights of employees, especially striking employees, and the rights of the general public, is yet to be solved. Whether our industrial life is retarded by an unreasonable and selfish group of employers, or from an unreasonable and selfish group of employees, it matters not. In either case it tends to deprive the people of their rights. Let the industrial workers unite, and let the employers unite, if they desire, each to better their own condition, but the very minute either oversteps the mark, and resorts to selfish, unjust or arbitrary action, let us stand for the greater rights of the greater majority and not permit our government to drift into a place where any minority shall dictate.

There is only one way to meet the controversy between capital and labor, and that is to treat them as two organizations, one of employers and one of employees, and then keep uppermost in our minds the fact that there remains a large majority of our citizens belonging to neither, composed of many and divers other organizations. It seems to me that we must treat both organizations of employers and employees in the same manner. We have seen both organizations at their best, when controlled by conservative men, and we have seen them at their worst, where one was controlled by I. W. W.'s and radicals and the other by trusts and monopolies. The same query can be applied to both, to-wit: Should they be left alone to develop as each sees fit or should they be regulated? If you regulate one, for the benefit of the great body of citizens, why should not the other likewise be regulated with the same purpose in view? Must not both be given reasonable recognition to perpetuate the good that is in them, and then regulated so as to eliminate the evil that is in them?

The abnormal high wages, the abnormal high prices, and the enormous fortunes made on all necessaries of life have led to the general belief here and abroad that we are mercenary only. Conditions are again changing. In the march of time we are apt to be called upon to meet more strenuous and bitter strifes between said classes.

It is gratifying indeed, however, to observe that during the present time, when some of our western industries are seriously crippled and almost destroyed, there exists a feeling on the part of certain employees that is commendable indeed. We have all, no doubt, heard of the action of many employees in notifying their employers that they may exert their efforts to save their businesses, without considering them; that they will not only demand no increase in wages but that they will not insist upon any wages being paid at all during the winter months. This is an ideal spirit to be shown, and even surpasses any that could be expected.

The people today might be termed in western vernacular as like "a bunch of steers milling around". They have been on high gear so long they may become unmanageable. They are craving guidance and will readily be responsive to leaders who advance sound principles.

The conditions require sound, sane and cautious reasoning by sound, sane and cautious men.

In the world's most critical period, our nation finds itself in the position of its greatest industrial troubles, but on the other hand, it is also in the position of its greatest opportunities.

We are in an era of change and reform. The methods under which business has been conducted in former days are being superseded by new methods, new principles and new ideas, which require new laws. The World war has brought around these new relations. It brings with it new responsibilities and new opportunities. All these new issues must be met and properly adjusted with conservative minds. In fact, there never has been such a period in the history of the world where there existed more uncertainties and more serious and puzzling problems confronting us for solution, and calling for the best methods, the most efficient cooperation, for well-equipped men who are strong and conservative in their make-up, and who will meet all these conditions fairly and equitably.

The time is at hand for real leaders to undertake the settling process, to smooth out the difficulties and problems. It can only be accomplished slowly through great and persistent efforts, having as a basis wise and just laws. Normal conditions will not return if the law governing these affairs is held in low esteem. We must maintain a government of law and order, and not of men.

In the midst of these demands, when some of them, unreasonable in their nature, are receiving the plaudits of the crowd, it behooves lawyers to stand firm for clear and concise laws, for orderly and just administration. We should take a careful inventory of the present situation and the probable and possible conditions in the near future, and then, using conservative judgment, determine what part we will take. Strong minds are necessary to steer the world out of its critical situation. The position of influence in which the lawyers find themselves makes their duties doubly responsible.

It is, of course, our duty to assist and to recall the people to their former good judgment, and to remind them that through all the trials and adversities that may come they must ever obey the law.

The profession of law is unique. As a matter of course, it stands foremost, in a country where law is supreme, where life and property are protected, where rights depend on law, and where the only legal way to procure rights and redress wrongs is through litigation, which naturally leads to attorneys and courts.

We all hope that this unrest is momentary and it will not be long before we master the new difficulties and assume again our old-time thrift as law-abiding and orderly people.

The great majority of our citizens, whether lawyers, farmers, merchants or laborers, still cherish our national ideals and expect each man to do his share and contribute his services to the upbuilding of our resources and welfare.

I believe I am right when I say, that amid the turmoil and strife of the world's affairs and the mad scramble in commercialism, and profiteering, our profession, which is not in the chase, still has its high ideals, and can be trusted to help meet conditions as they must be met.

OUR BAR ASSOCIATION AS VIEWED FROM WITHOUT

The many subjects now before lawyers and Bar Associations are fraught with such tremendous import that we might well be excused from being somewhat slow in approaching them.

There is, beyond doubt, a feeling throughout the country, which is quite widespread, that the bench and bar have not in the past in many ways met past conditions and are not now doing nearly all in their power to meet the demands of the present conditions, and thereby creating a distrust for our courts and the legal profession and disrespect for our lawyers. On the other hand, we well know that the Bar is aroused and is conscientiously endeavoring, through its State Associations and through the American Bar Association, and other legal associations, to eradicate and dispel such disrespect and to remedy where there is just complaint.

The Bar, by reason of its exclusive knowledge, is close to the administration of justice, but unfortunately it is not permitted directly to take much part in the formation of laws governing attorneys, the bar, or practice or procedure. There are always a few lawyers in our Legislature, but their honest acts in seeking to remedy and simplify procedure are often looked upon with suspicion as interested parties. And when the Bar Association, through the daily experience of its members in such matters, and then after thought and consideration, as an organization, realizes and concludes certain changes are needed, it is almost suicidal to let its views be known.

In other words, I think we all realize that as a class we are looked upon as a necessary evil— and in the private thoughts of many we are considered subject to watching and many would gladly grab us by the roots, toss us about roughly, and totally demoralize and disorganize our Association. This is all very evident though lamentable. In fact, the lawyers have been blamed and criticised for so long and so often they would feel neglected if the unkind remarks ceased.

I believe our judiciary is upright and conscientious.

I also believe the lawyers of this country as a whole are honest, trustworthy and of average legal ability.

In short, the American lawyer and American judiciary have, regardless of oft-repeated slurs and criticisms, a remarkable record for honesty, fair-dealing and integrity. I believe it has been the experience of all of us that the lawyer, in most every instance, is, to the best of his ability, and whether paid a good fee or nothing, a fair fighter, out to win for his client, absolutely honest and conscientious in a trial from the start to the finish; that he cannot be bought; that he does not throw his clients; that he cannot be swerved from his duty.

We all know that oftimes the party who loses is apt to charge his defeat to a mere suspicion that his attorney was bought by the other side. This charge, I think we can all say, is absolutely false, with no foundation whatever, at least ninety-nine times out of one hundred. I am sure the experience of each of us has been that it is far less true than the charges of dishonesty that are made in other classes of business and professions.

There are abuses which should be brought to light and corrected. It is no doubt true that there are certain acts of attorneys which need condemnation. Discipline is a primary concern of all Bar Associations. It has its unpleasant and difficult features, but they must be met fearlessly and without favor.

Another criticism, and one in which I believe there is some merit, is that we have had laws for years which are known by the lawyers generally to be defective, and yet we allow these defective laws to remain. The truth is that we are unconsciously using our trade for private gain and failing to treat it as a real part of our government which the people are primarily interested in and the perfection of which should be first in our minds.

It is a waste of time to attempt to fix or apportion the blame for the past shortcomings of the attorneys in failing to step up and remedy these defective laws and demand necessary changes and reforms, but it is of the highest importance to the best interests and reputation of the profession that this be done by the attorneys themselves; that we proceed to set our house in order and clear away the impression that lawyers like defective laws.

Our future, and the removal of the unjust charges, depends upon ourselves. Are we going to do anything to correct the erroneous opinion? Can we stir up the indifferent lawyer? Can we wake up the sleepy lawyer? We can do but little individually. We can do much collectively. We must advance the standard of lawyers. We must redeem ourselves from the suspicion and reproach which, unfortunately, is our unhappy lot today.

We all hold high ideals of professional obligation, and feel keenly the reproaches flung at the profession. I am sure that with proper cooperation and with a real, live, wide-awake Association we can soon strengthen the popularity and reputation of the profession throughout all communities of the State.

THE IDAHO BAR ASSOCIATION FROM WITHIN

Frankly stated, after two years experience, our State Bar Association is without practical organization. The membership of the existing Bar Association is a small minority of the Bar. There are about seven hundred lawyers in the State. There are about two hundred members in our Association. The work and powers of our Association in the past have been confined largely to holding biennial meetings, where reports of most of the standing committees have been conspicuous by their absence, electing officers, holding a banquet and passing resolutions. What little we have been able to accomplish towards reform in practice and procedure is due to the heroic efforts of a comparatively few lawyers. I have always found the attorneys, individually, willing to give their time and assist in any matter pertaining to the profession. But here is not where the difficulty lies. It is in the working of our Association as a body. We have a meeting every two years. It is almost impossible to create sufficient interest in any subject, no matter how important or vital to each of us as attorneys, or to the public good, to secure even a fair attendance. There have been matters before us upon several occasions where a special meeting has been suggested, but each time when talked over and considered it was concluded to be impractical.

The main difficulty is the vast territory over which the lawyers of this State are scattered, the great distances necessary to travel and expense required to attend meetings of the State Association.

We can only reach a reasonably perfected Association by hard work and securing the interest of the attorneys generally, and by reason of the work we are doing draw their attention to the Association. The Association today is commended in certain ways and criticised in others. We must be honest with ourselves and seek to remove our defects. I believe at the present time that the main objection to the Association is that it is not of much benefit to the attorneys residing outside of Boise. This matter is quite serious and deserves careful consideration and thought. The present officers have discussed the matter upon various occasions. The remedy to obviate such objection is by no means easy. The main remedy suggested has been annual or biennial meetings in different sections of the State and also the election of officers who reside in another section than Boise. A question arises

whether the attorneys would then attend. If the attendance of the meetings at Boise are a criterion, then the attendance in places where there are but a few attorneys would be discouraging. I am sure the Boise attorneys will gladly support officers from another section and a change of meetings to other places. The reason for holding the biennial meeting at Boise, when the Legislature is in session, was the fact that it was thought that at such time outside attorneys would be collected here and that a larger and more varied attendance could be ontained.

I am informed that when Hon. Karl Paine was president of the Association an effort was made to hold a meeting in north Idaho, he being of the opinion that it would be well to have a meeting elsewhere than at Boise. Attorneys from that section were consulted and their opinion seemed to be that the attendance at a meeting in north Idaho could not be increased, and they advised against holding a meeting there. So this effort failed. Later other places in southeastern Idaho were discussed by the executive committee. But likewise consultation with attorneys from that section made the committee come to the conclusion that a meeting there would not secure the desired attendance. So the matter still stands in abeyance. I take it that on this most serious question there is no jealousy and that the attorneys from any section will be willing to have the meeting in any other section if they are convinced that a better attendance can be obtained there. Let this matter be thoroughly discussed from all angles.

It seems to me that some method must be devised and programs arranged so attractive that they will draw a larger attendance. There is one thing sure, something must be done to arouse the attorneys and make them realize that their interests and welfare can be greatly increased by a real, live Association. Prominent men from the outside to address us would be a drawing card. I see the president of the American Bar Association addresses many of the State Bar Associations.

I might say, in passing, that we attempted to secure an outside speaker of prominence to address the Association this year. We requested ex-Senator Sutherland of Utah, Justice Frick of the Supreme Court of Utah, United States District Judge Rudkin of Washington, and Honorable E. J. Cannon of Spokane, to address the Association, but each was unable to attend.

After the biennial meeting all interest in the Association seems to cease. The officers alone cannot make the organization. Each member must assist, and have in mind at all times that he is a member of an organization which all lawyers respect and that it is his duty to be ever watchful of matters that should be properly brought to the attention of the Association, and, when such an occasion arises, not then to neglect it and pass it over, but immediately to call it to the attention of the proper officers, and then insist that it receive attention.

We ought to make the State Association such that every attorney will take pride in having it known that he is a member, and that when it is remarked that one is a member it has its effect, it means something, in gives him a standing, and when it is remarked that he is not a member it should hurt and detract from his standing, and thereby make it necessary for every attorney of the State to join.

MEMBERSHIP DRIVE

When the present officers assumed their duties their first thought was to do all they could in making the State Association as strong as possible. Our first step was to secure new members. Much time was spent in going over the situation and adopting the most feasible method of securing members. The simplest forms of application for memhership, giving the necessary information of the proposed member, were prepared and printed. Then we spent much time in getting the names of all the lawyers in each city and town. Then came up for consideration the attorney in each town that

would be most apt to be active in securing new members. Many applications were then forwarded with a list of the attorneys in the particular town who were not members of the Association, with an earnest request to make an active campaign. In Boise we selected an active attorney in each office building who was given charge of securing members in his particular building. The effort in Boise was exceedingly successful in that most of the resident attorneys joined the Association. In some of the other towns the membership was also largely increased. But you will all realize the natural difficulties that arise in such a campaign for new members. Many of the attorneys written to did not answer, and apparently gave no time to the securing of new members. We were then in no position to keep the matter alive and push the membership drive. It requires an enormous amount of work, and the secretary of our Association, or any other officer, did not have the time to follow it up. This can only be overcome by having a secretary who will agree to devote the time necessary to such matters and the Association must then insist upon paying such a secretary a reasonable monthly allowance for such work.

Then, again, it was not so hard to secure new members where the matter was presented to the attorneys, or to collect the first annual dues, but when it came to the collection of the dues for the second year we were again in hot water. Notices had to be mailed out, but few of the first notices would be given any attention, and, in fact, in some cases, it made no difference how many notices were sent out, no remittances were received. This was due, I believe, not through any desire of the members not to pay such small yearly dues, but rather to inadvertance and neglect and putting the matter off until entirely forgotten. Here, again, was an amount of work that could not reasonably be expected from a secretary not obligated by compensation to give it the necessary attention.

LIST OF IDAHO LAWYERS

The second matter of the Association that was given considerable attention was that of securing a list of the Idaho attorneys. Attorneys were selected in each town who were written to and requested to forward complete lists of all attorneys residing in their respective towns. Again, some answered and some did not. It was then necessary to take the matter up with other attorneys residing in the towns not reported or to catch attorneys who were residents of such towns in Boise and have them give us a complete list. Through much correspondence by our secretary, and personal interviews with attorneys, and with the valuable assistance of Mr. Hart, Clerk of the Supreme Court, we were able to revise the old lists, check off those deceased, and add new members, until we have quite a complete list.

At the last meeting a motion was made to have such a list of attorneys prepared and printed and a copy forwarded to the members of the Association. Such a list, after much work and many revisions, has been prepared and is now ready, but has not been printed.

CARD INDEX, APPLICATION FORMS AND MEMBERSHIP CARDS

The secretary has been instrumental in preparing a card index system which is invaluable to the Association. The correspondence and matters of the Association are increasing year by year, and the old system in use by the Association was not in any way modern or up to date.

New forms for application were also prepared and printed, which would furnish in the most concise form, and with the fewest questions possible, the data that was necessary to be furnished by the applicant.

Then, again, it was thought advisable to have a new form of receipt for annual dues which, when issued, would act as a certificate to the holder that his dues to date were paid, and that he was a member of the Association in

good standing. Some time was spent on these forms by the secretary and your president.

So your secretary and president believe that certain changes in the system and business management of the Association have been installed which will be of benefit to the incoming officers and save them considerable time and trouble.

PUBLICATION OF PROCEEDINGS

The publication of the proceedings of each Bar meeting is necessary to keep up the interest of the members who are unable to attend. Most all Associations do publish. We have been handicapped in this regard as we have never been in a financial position to publish. Lack of funds is a great drawback. We are getting in shape, bowever, to do this before long. I respectfully urge that this Association start publication of its proceedings as soon as possible.

PROPER ADVERTISING

In this connection I think it well to call your attention to the fact that the Association on various occasions has had brought to its attention the matter of proper advertising or proper legal cards. This matter came up in such a way that it was known that the Association was taking an active interest regarding advertisements. The result was that I have had attorneys, before issuing their cards, or placing an advertisement in newspapers, come and see how the Association viewed certain advertisements. We would inform them of the way the matter had been discussed and that the Association was taking an interest in such matters. And I am of the opinion that the knowledge that the Association is looking into these matters as they come up, and criticising those they deem contrary to good ethics, will mean that attorneys will hereafter be more careful in their advertisements and their methods of securing business.

INCREASE OF SUPREME JUDGES

It may, or it may not, be of interest to the members of the Association to know what it did toward the amendment to the constitution increasing the Justices of the Supreme Court from three to five members. All attorneys were, of course, interested in having the amendment passed. The matter has been under discussion before the meetings of the Bar for at least the last two biennial meetings. Great interest was displayed in the discussion, especially as to the form of relief. The officers of the Association thought it proper for it to do its part on the amendment. I accordingly appointed a general committee of three, whose duty it was to take the matter up with the vice-president of each Judicial District, and also make it a point to have all speakers in the campaign call attention to the amendment and urge its adoption. Two political committees were appointed to secure the passage of a favorable plank in the platform of the Republican and Democratic parties. Then a publicity committee was selected to prepare a statement of existing conditions and to have it published in the various papers of the State, and then follow the same with further editorials or articles. Each of these committees rendered valuable services. The largest amount of work, however, fell upon the publicity committee, and to this committee the Association and lawyers generally owe its appreciation. Mr. Rosenheim, who was chairman of the committee, gave the matter personal attention and spent much time in preparing articles for publication.

Then the officers of this Association gave the matter considerable attention in writing a personal appeal to each attorney in the State, about 650 in number, enclosing a printed slip of existing conditions and urging upon each attorney the necessity of individual work among his clients and among

the citizens of his community towards securing a favorable vote on the amendment.

Later the matter was further taken up with the different vice-presidents by our secretary, making similar appeals to them to interest each attorney within the district. The fact is, your officers contributed their time and labor on the matter, but the result was satisfactory, so we all feel repaid and well satisfied.

WORK OF GRIEVANCE COMMITTEES

To me the most satisfactory work that has been accomplished by the Association is that which has been done in the past two years through the State Grievance and the local Grievance Committees of the Association. The State committee and many of the local committees have had considerable to do in considering and passing upon complaints made against some of the attorneys of the State. Our new constituion, passed two years ago, was the means by which the Association has been able to handle such matters more completely than in the past. Formerly we had the State committee only. Now we have such a committee and also ten local committees, one for each Judicial District. Formerly it was almost impossible to take up complaints except complaints of the most serious kind; by that, I mean, the matters would have to be presented to the Grievance Committee in Boise and they could not have the parties from the distant counties to hold a hearing. But under the present arrangement the local Grievance Committees have in many instances held hearings, called the attorney before them, heard both sides and reported to the Association. We find that this is far more satisfactory. It is more expeditious and the results obtained are usually beneficial. Many times the committees have had serious questions of ethics to pass upon. From my knowledge of several of the complaints, I can state that these Grievance Committees have been impartial in their findings. In many instances the attorneys in question were considered guilty of infractions or breaches of the code of ethics which the Grievance Committee thought should be the standard of this Association, and it did not hesitate to so report.

In some cases the Supreme Court has had under consideration charges of disbarment and would turn the matter over to the Association for its consideration before taking the matter up itself. I do not hesitate to say that these grievance committees, the state and the local, deserve the praise of this Association for the splendid work they have done.

These investigations have their effect both within and without the Association. The fact that the lawyers are being watched, that there is a place to make complaints, and that the acts of attorneys are being scrutinized by other members who know the ins and outs of the profession, tends to raise the standard of the profession, both among the laymen and attorneys.

"Cleaning house" appeals to all in every walk of life, and if the Association at all times persists in an honest cleaning then we are in a position to meet the criticisms from without.

OUR SECRETARY

I cannot appear before you and recite the matters our Association has had to deal with, as just discussed, without calling your attention to the work of our secretary, Mr. Griffin. He is entitled to the real praise of this Association. He has had our interests in his mind at all times. Ever ready to undertake any amount of work which meant the advancement of the Association, he would spend time in his busiest day and then go to his office in the evening to perfect a system for this or that which meant better records and better data hereafter. His assistance was invaluable. He has made many excellent suggestions. He has been instrumental in adopting new forms

for use in our Association work. He has been as persistent in collecting not only dues but Association data, as a collection attorney. He entered wholeheartedly into a drive for new members and kept at it constantly.

I compliment and congratulate this Association in having a secretary who has rendered such splendid service. He deserves the thanks of each member and I think you will find it exceedingly hard to fill his place.

And right here I might remark that the duties of our secretary have become so burdensome and take so much time that our next secretary should be paid for his services. I hope this matter will be taken care of before we adjourn. It appears to me that it is now essential.

ENCROACHMENTS BY LAYMEN

Another advantage which would come from a better organization of the Bar would be the creation of available means to meet many petty encroachments on the legal profession. Many wills, contracts, deeds and mortgages are drawn by laymen and by real estate brokers, clerks, cashiers of banks, etc. In many instances they are simple forms and require only a mere clerical ability, while in others it is necessary to use exceptional care, skill and technical phrases. The average man is not able to recognize such an instance when it arises. Again many titles are examined and passed upon by laymen. The result is that many evils follow. There are few of us who cannot recall cases where serious litigation has arisen and titles thrown into court by reason of an error which no member of the profession would have committed. When we take such a position openly there are those who are wont to say that our interests arise simply by reason of the fee that we are thus deprived of. Such, however, are not the real reasons, as the fee is a mere trifling matter. And this does not represent the attitude of the profession, as it has been many times shown that the profession of law is willing to sacrifice its financial interests to the welfare of others, such as its advocacy of workmen's compensation acts, and other similar measures. Apart from such mistakes and the injuries resulting therefrom, such unauthorized practice of the law works a hardship on the younger members of the Bar. They are precluded by our code of ethics from actually soliciting business and forced to sit quietly by and see such matters, which they have been trained specially to do at considerable expense, go into incompetent hands.

Again, we find trust companies, title companies and collection agencies practicing law. In the larger cities these companies have become quite common and have taken over many matters which were formerly handled by attorneys. This brought a strong protest from the local bar associations and from the Conference of Bar Association Delegates.

The matter has been agitated until it now seems that there should be some line drawn between what constitutes in such matters tbe "business" transaction and the "legal" transaction. There are certain parts of trusts, decedent and guardian estates that can probably best be handled by trust companies or banks, that is, the part dealing strictly with the business parts of such estates, such as the custodian of money, and the handling of the same, and the matter of investments, etc., but when they reach the point of drawing wills, deeds, contracts, mortgages, etc., and giving advice, on the construction of the same and the probate of estates, we arrive at the legal end, which should be entirely handled by attorneys.

Again, we find bonding companies refusing to purchase or bid on municipal and other bonds unless the whole proceedings leading up to the bonds are prepared and regulated by the bonding company's attorneys, whose services are to be paid by the municipality issuing the bonds. This means that such legal matters are to be wholly handled by attorneys outside of the State.

Again, we find many accountants and parties who are passing on the income tax under the Federal law. We all know that these statutes are very

confusing and that innumerable questions arise in regard to the legal obligation of the taxpayer; this necessarily requires a knowledge of the fundamental principles of law, and in many cases decisions have to be applied to the questions that arise. But, nevertheless, we find thousands of such parties engaged in advising those who have to make income tax returns in regard to these questions, and doing it as a permanent business, although they are not authorized to practice law.

Though the accountant has his place and is generally competent so far as the examination of books and the making up of schedules is concerned, he is not a lawyer and he is not competent to decide and advise those making returns on questions of law arising under the Federal Statute, and he should not be allowed to do so.

I was very much pleased to note that at the last session of the Conference of Bar Associations at St. Louis in August, a special committee reported upon what constitutes the practice of law and what constitutes unlawful and improper practices of the law by laymen and lay agencies. It appears from such report that the American Bar Association and the Conference Bar Associations are taking a live interest in this matter, and that the State and local Bar Associations should do the same.

While this matter has not arisen in Idaho to any very great extent, we find it has been initiated. Certain institutions are now acting as trustees, executors, administrators, etc., and requesting clients to consult with their officers or managers. I do not know whether they prepare legal documents and give legal advice as to procedure in such matters or not. If so, the matter should be watched, and if occasion arises should be examined into.

Now as these matters are being discussed all over the country, it seems to me that it is time for the Bar Association of this State to follow such practices carefully and if they find that it is being done with any intent to practice law, appropriate action should be taken.

DELAY

The one great fault of our judicial system is delay. Our constitution provides for "speedy" remedies and that right and justice shall be administered without "delay". It appears to me that each year there creeps upon us greater delays, although I am aware that there are those who believe the delays are not as great as they have been.

Where lies the correction of this fault? It will require considerable effort and time to accomplish a remedy.

The Legislatures, the Bar and the Courts are giving this subject much thought and attention, but we do not seem to be getting very far. This means, as time goes on and complaints increase, that a radical change may come in our present system. It behooves us to see that in the near future unnecessary delay is eliminated from all our courts, both lower and upper. We must make rapid progress in this direction or expect severe criticism.

We, as an organization, should be the first to move in this matter of delay. We should not wait for an outraged people to arise on such a patently unjust cause and until the public conscience can stand it no longer, and demand and secure the remedial action that our position demands we should secure.

A righteous wave of opinion is sure to come. There are indications now that a change is not far distant. Trials without attorneys, at least in certain classes of matters, are being advocated; standard methods of arbitrations, without lawyers, are likewise suggested; conciliation courts are actually being tried in two or three states. Let us be the ones to make and cause this reform and not be forced to see laymen make it.

The delay and slowness of our procedure has no doubt created a deep-seated desire by every sensible business man to keep out of court, whether

right or wrong. This objection could be greatly overcome by a change of procedure in regard to small cases. If we could adopt a procedure that was prompt and inexpensive for small cases instead of them having to take the regular course of larger actions, then we would be making a great stride towards removing the objections. If we do not we will surely stand convicted by the public and the criticisms will increase instead of lessen.

If it happens that the citizens of this country do not have speedy and impartial trials, whether through high costs or delays, the Bar has then made for itself a real enemy.

Our delay and neglect in acting in all these matters has been due to the fact that we did not realize, or probably did not take enough interest to realize, the true condition of affairs. We can, I think, plead ignorance no longer or allow neglect to further exist. We know the danger, we know the difficulties, we know fully the facts, we know, or should find out, the means of overcoming these defects.

The time for action has come.

REASONS FOR JOINING THE BAR ASSOCIATION

This Association, in its real sense, represents a great brotherhood. It is bound together by ties of fraternal interest. It is not, however, a social club or exclusive club. It is a voluntary association, not for profit or financial gain; neither is it a partisan organization.

Surely exchange of views between attorneys from different parts of the State is beneficial. No one will be disposed to deny that he is benefitted by contact with his fellow practitioners. Careful study and discussion among ourselves, where the views of many are frankly expressed, should be the desire of all lawyers.

Thorough discussion and mature deliberation in our own organization will result in precise thinking, and then as we separate each one of us is better qualified to act and advise, in the different sections where we reside, upon the complex and confused questions now existing.

It is apparent that the reasons and advantages to be gained by such an organization are so numerous and affect so many in the administration of justice that it is a wonder that any attorney need be urged to become a member.

While the State Association has not accomplished so very much, it is slowly but gradually gaining headway, and I predict that the time is not far distant when our Association will be on such a plane that a new attorney will figure that after he signs the roll and takes the oath, that the next important step is to join the State Association.

INCORPORATION OR LEGISLATIVE ORGANIZATION OF BAR

Can the Bar Association of this State accomplish more and be of greater benefit to its members through another form of organization; that is, instead of remaining a voluntary organization as it is, should it be organized under an act of the Legislature? This is the question now being considered by many voluntary State Bar Associations.

Although I have watched with much interest the rapid development towards an official organization, including all attorneys, with power to admit, discipline and disbar, and read the reports of a special committee of the Conference of Bar Association Delegates, and also the model act making the organization a "Special Incorporation" and the model act in the form of organizing the Bar, which is treated as a body politic, I will not discuss any of such matters, as it has already been taken up by the chairman of the Committee on Needed Legislation, and will be further presented by the special Committee on the Incorporation of the Association.

If, from my experience as president of the Association, I have arrived at any definite conclusion on any matter, it is in reference to official organization of the Bar. No society or association can properly advance without a system and a complete organization. I believe legislative action is necessary. An association which includes only about a fourth of its class cannot be expected to procure the best results. Where a part only of a class is struggling to benefit the class as a whole, and the large majority is lukewarm and considering self-interests only, then some action is justifiable which will compel each member of the class to stand up and contribute his share, financially and in labor, toward the welfare of the class and of the public generally. It is manifestly unfair to have the weight and burdens of a Bar Association put upon the shoulders of a few. I say, without any hesitancy at all, bring in the delinquents.

"Organization" should be our slogan and then follow it up by "keeping out" and "weeding out" all attorneys who are not true to the profession, and who are a disgrace to it. No "mealy mouthed" conclusions on applications for admissions or for disbarment should be countenanced.

It is the only remedy. It lies with us.

It is highly important in any association or organization which expects to attain success of its class that it be in a position to systematize and control the entire class which it seeks to cover. When young men are brought into an organization in which they are interested, it is natural that they respond with enthusiasm to the high traditions of the organization, and they take the keenest interest in supporting and upholding the reputation of the organization, and so it is if young lawyers, at the time they are admitted to practice, become part of a professional organization and are given a voice in the election of its officers and management of its affairs, they will, from the start, support the true ideals of the legal profession. If every practicing attorney is made to feel that he is part of the State organization and that he thereby has responsibilities, duties and obligations to perform growing out of such relation, he then becomes an interested party and is more apt to take an active part for the preservation of such interest.

Again, in this connection, I might suggest that each one of us is greatly influenced by the general views of our associates, consequently, if an attorney joins a Bar Association in which he is to partake and have a share, he at once becomes affected by the spirit of the organization and feels it his duty to support the highest aspirations of the organization. In many cases we find that the one who is guilty of unethical conduct in our profession is the lawyer who remains out of the Association, and refuses to become a part of the professional organization. He stays out and has no interest in the Bar as a whole, is conscious only of his own self-interest. He feels that there is no one who should advise him as to his duties and obligations; general legal ethics to him do not have the influence of the adopted legal ethics of an official organization with a procedure for violation of the same. So it is that in many cases the young lawyer, when called upon to meet some delicate question of professional conduct, is left to work it out by himself.

So it appears to me that the real need, and I might almost say the vital need, of the Association depends upon an official organization where every attorney is a member of the State organization.

Other states are at it: Nebraska, Wisconsin, Indiana, Michigan, Kansas, Iowa, Illinois.

Year by year the American Bar Association has extended its influence and usefulness and now its meetings are of nation-wide interest.

So we, as an Association, should diligently strive year by year to increase our influence until our meetings create state-wide interest.

I do not hesitate to state that the lawyer who devotes his entire time to the advancement of his own selfish structure—be it great or small—and

holds himself separate from his own class organization, where certain matters can only be dealt with successfully, and thereby fails to contribute in keeping sound the larger structure, which is necessarily the foundation upon which his own must rest, is placing his profession on a low plane. Be he ever so successful in his own narrow sphere, he will, in the end, find himself the greatest of all failures by reason of accepting law as his calling and then refusing to assist in the larger problems which have for their purpose the adding of confidence and respect to the very profession under which he operates and makes use of for his livelihood.

The coming problems are to he solved in many instances by the lawyers. How can we meet them most effectively? Are we to meet them with a membership which is only a small per cent of the lawyers of the State? Are we to meet them individually—a lawyer here and a lawyer there? Are we to act singly or in a body?

There is one answer and only one—we must be combined and act as a unit. Great good may then be accomplished and we may then come into our own in the eyes of the public.

The period of organization is here. It applies to State and local Bar Associations as well as to any business. Some manner must be devised of interesting all of the attorneys in our Association. The day is at hand and we should not shirk the responsibility.

The State Bar Association, until it becomes stronger, will have but little influence in the line most essential, that is, in the passing of legislation. While the legislative bodies truckle to other organizations, the Bar Association has not been blessed with their call for assistance. The Bar Association can be turned down and snubbed with impunity time and time again. The Legislature and the public in general are indulgent toward a Bar Association which confines its activities to eloquent after-dinner speeches and the passing of sweet-sounding resolutions.

The remedy is: a perfected organization, large membership, full attendance, rousing meetings, taking the lead on live issues, let all know that our Association is in the game, and that we are to be considered and reckoned with. Then we will be called upon, sought out, run after, bowed to and sufficiently urged to take a position that justly becomes such an organization.

We must meet together, reason together, and pull together and by so doing progress together. Let each one of us make it a point to urge upon our fellow members the necessity of having for our motto "All together". We cannot help but appreciate that trained lawyers, as a class and body, must be continually consulted in the swift changes that almost daily appear.

We talk a great deal about "law" and "justice". We refer to them almost daily. Has it all been mere talk? Has it been merely for the purpose of extricating our clients out of their difficulties?

Individually we may use these terms for the personal interests of our clients and ourselves. As an Association we should at least have higher aims.

The country needs lawyers and Bar Associations who can, in these strenuous and confusing times, mediate between the different individual interests of their clients and the interests of society generally, and arrive at a genuine and hearty cooperation between the conflicting private rights and the advancement of the public welfare, without creating ill-feeling, prejudice and radicalism in the minds of any class.

Is the Bar of this State taking its part and doing its share in this regard and in the correction and development of the law? Is it being foremost in perfecting a sound and sane system of jurisprudence? Is it going to do anything towards meeting present conditions? Is it living up to the requirements of our profession?

In my humble opinion it is not. It is shirking its obligations. If we are to live up to our duty we must have institutions through which it can be done. The lawyers of Idaho are able, conscientious and patriotic. Our judges are competent, just and high-minded. The members of our Association are earnest, sincere and loyal to the interests of the administration of justice and compose the leaders of the Bar in this State, but we are not accomplishing what we should.

CONCLUSIONS

Never was there need for more conscientious, able, learned, and industrious lawyers than in this age of transition. The world is passing through a critical period. We, as lawyers, must hold true and fast to the historic place of the bar. The public looks, and rightly so, to the stability of the bar. It expects the bar to be foremost in keeping the law abreast of the swift changes and growing demands of the active and intelligent people of our nation.

Never was there a time when the disinterested and earnest advice of attorneys was so needed in the diverse processes of reform all about us. Public opinion is wide awake. It is on the alert. There can be no rest until a happy and honorable solution is found and worked out. Lawyers can come in and be a guiding star in these settlements or stay out. But a settlement there will be. For one, I hope they will not stay out.

In the clash that is almost inevitable, when wages are decreased and employees reduced, when many business methods are changing, when certain industries are on the verge of ruin, when farms product and livestock, with all their branch lines, are in the balance, it necessarily means other principles, other laws and the offering of every relief possible. So we are at a stage when the political, social and industrial affairs of the world are in an abnormal state of uncertainty. We must assist in framing just laws in the coming economic struggle in commerce and industry.

We must also be instrumental in framing laws which protect personal liberty, but realizing that like every other human advantage it must be restricted, and when abused to too great an extent, by the careless, the foolish, the misguided, it may be taken away entirely.

The lawyers as leaders in American life must bear the burden of maintaining law and order and see that these new conditions are all met in a legal, just and equitable way, and that law-abiding and government-loving citizens are protected from theorists and irresponsible persons. This is the opportune time to discuss the proper solution of the difficult problems which are daily arising and will continue to arise until we have again adjusted ourselves to the new conditions.

We are almost sure to be bombarded with a multitude of laws, good, bad and indifferent, to meet the rapid changes to which the laws must be adapted.

The query comes to us all: What part is the profession we follow to take in the solution of the perplexing problems before the people of this nation, which so vitally involve relief in many forms, a reshaping of our institutions, and, in the last analysis, the permanency of our form of government? It is the recognized duty of lawyers in these matters to lead, not follow; to counsel, not obey. There is no way for us to shirk the responsibility of leadership. We must keep abreast of the steady stream of legislation sure to follow. We must keep up with the procession.

The outcome, fraught with so many grave, stupendous and serious questions, is for our consideration. Out of the maze is to come the commanding influence over other nations, which is to fall upon the shoulders of this beloved republic of ours, and which primarily will fall upon the wisdom, courage and statesmanship of our profession—a wisdom which does not act too quickly but advisedly—a courage tempered with intelligent thought—and a statesmanship looking well into the future through experiences of the past.

All problems, great and small, will be overcome. None are too large for the sensible, reasonable and conservative people of this country. None are too weighty for a people who will have, above everything else, fair dealing and equal justice to all. So let all problems come, when they will, in what form they will, and as often as they will—the American people will be found always ready to meet them. Fair prices, good products, good wages, good times and good spirits, feeling and fellowship, throughout our land, is sure to come out of the adjustment now in progress.

In the adjustment let our Association step in first, not last; let us be moving, not sitting back; let us be noisy for changes of merit, not silent; let us push ahead, not hold back, and by so doing let us pull our profession out of the mire in which it finds itself and restore the respect of the general public and remove the prejudice and distrust against the profession so dear to us all, the field of our life work.

In this light, gentlemen of the Idaho State Bar Association, I present the bright prospect awaiting a real live Bar Association, interwoven with difficulties we can, and should, as lawyers, meet and overcome, with an abiding faith that a little sacrifice of our individual time will bring most of the lawyers of our State into a strong, powerful and useful Bar Association.

"HOW TO INCREASE THE USEFULNESS OF THE ASSOCIATION"

By M. J. SWEELEY, Twin Falls

The subject of this address was not of my own choosing, but, like greatness with some people, was thrust upon me, and thereby hangs a tale, which tale includes both an explanation and a moral, for the situation convinces me that someone, whose name is on the official roster of this Association, has a good memory and possibly a mean disposition.

It was my experience to attend our meeting of two years ago, and after it was over I indiscreetly gave expression to some opinions, among which was one that questioned whether I was getting any personal benefit from our organization, and whether, in a general way, it was producing desired results. These expressions were called for by the facts which then confronted me, and of which I made mention—for I called attention to the situation which showed that although there were some seven hundred lawyers in the State, on one morning of our meeting there were present but twenty-one, and of these nineteen were from Boise. It looked to me very much as though the word "State" in the name was, in the language of our motions, immaterial, redundant and surplusage—and I even went so far as to threaten the life of the Association by refusing to pay my annual fee of $2.00. Later I relented and kept the treasury alive by a remittance, but it is probable, and of this I am fully convinced, that either the president or the secretary, more than likely the latter, remembered what I had said and determined to call my bluff by putting it up to me to say how the Association could be made more useful—hence my subject.

I might as well confess here that at the time I committed the indiscretion and uttered the threats above mentioned, I really entertained no plans which might be adopted by the Association for its greater usefulness, and it might be safely charged that the criticisms then uttered were not of a constructive character, and even now, after a lapse of two years in which the subject generally has been with me, and a further lapse of two weeks, in which it has been specifically brought to my attention for my action, I have very serious doubts whether I can suggest anything that has not already occurred to the officers and members of the Association, which is practical or which might be worked out to our advantage. The moral of the tale, therefore, can be put out here in advance, like the syllabus of a Supreme Court decision, and it is this: DON'T KNOCK.

I find some comfort in the situation, because a critical consideration of the wording of my subject leaves a loophole or two by which I can possibly profit, and thereby get relief from what might otherwise be serious embarrassment.

It will be noted that I am not to give advice as to how to increase the usefulness of the Association to any particular person or class of persons, and there are three classes to be considered: first, ourselves; second, our clients; and third, the public generally. I am not trying to name these in the order of their importance; in fact, I am not sure that I could do this in a manner that would be generally accepted. It is my recollection, that Paul wrote in one of his Epistles that, "If any provide not for his own, and specially for those of his own house, he hath denied the faith and is worse than an infidel", and an application of this might lead to the conclusion that our first duty is to ourselves. However, we will leave this to the theologians and proceed in the assumption that all three of these classes need to be taken into consideration in whatever we do.

These biennial meetings of certain members of the Bar of the State, referred to in a large way as a meeting of the "State" Bar Association, are exceedingly pleasant to those who have the good fortune to be present, and it is possible that the satisfaction derived from the renewing of old and the forming of new acquaintances, and the obtaining of a square meal at the close of the session, is a sufficient consideration for the effort expended, but I feel that so far as any permanent benefit, either to the profession or to our clients or to the State is concerned, the meetings are held at a poor purpose, for but little is accomplished.

From the fact that the biennial meeting is held during a session of the Legislature, I assume that this time was fixed in order that if any legislation was deemed to be desirable, action could be taken, with a hope at least, that the proper bills could be passed, but in this, I think, a mistake is being made, for by the time we have formulated the views which may be expressed here and drafted them into bills, the work of the session is well under way. The members have come here with matters about which they have been thinking since, and perhaps before, their election, and upon these matters their attention and efforts are concentrated, so that questions which we may bring to them, even though they may be very meritorious, are liable to be side-tracked and eventually lost. I believe that the things we want to accomplish by legislative enactment should be thought out and put into shape at an earlier date, so that they could be taken up with the members of the Legislature in the several counties before they come to Boise.

There are other reasons why, in my opinion, the meeting of the Association as a whole should not be held at this time of the year. In the first place, the accommodations at the Capital City are not always equal to the demand, and more than this, traveling by automobile, especially for a very long distance, is not to be thought of, and in these days of high railroad rates, the coming to Boise involves considerable expense. Then during the winter months, and particularly immediately after the holidays, our District Courts are in session and the lawyers over the State are busy with their work in a most laudable effort to recoup their financial condition after making payment of their first installment of taxes and preparing for the the time when their annual contribution to Uncle Sam must be made, so that but few of us can find time for a trip away from home, except on business.

I might also bring to your attention a fact with which we are all familiar, which is that this State is large and the different portions are a long ways from each other. To come to the Capital City from the ends of the State involves the expenditure, not only of a considerable amount of money, but of several days' time, and this leads me to the suggestion that there should be a division of the Association in two, and perhaps three parts; if into two parts, they should correspond with the Congressional Districts of the State, but I would more earnestly advocate the making of three divisions, one to embrace the counties of the north, another those of the central portion, and the third those of the southeast, and meetings of the members of these several divisions should be held during the summer months when our Courts are in vacation and when the members of the Bar are ready to enjoy their annual outings.

If the Association were thus divided, and meetings were scheduled for the vacation period, we would look forward to them in our respective districts with anticipation of that keen enjoyment which, to the active person, comes from combining business and pleasure, and could take advantage of this in having our families with us for a number of days in the open at some enjoyable and attractive place. Those of the north could gather at Coeur d'Alene or Sandpoint, or some other good town in that section, with attractive scenery and pleasures close at hand. Those in the middle portion could meet at Boise with visions of trips to Payette Lakes or Arrowrock Dam, or

even a stay and a rest at the city's world-famous automobile camp grounds or they could assemble for their business session at Hailey, and then answer the call of the wild by taking a drive over the Galena Summit to the lakes and unequalled scenery of the Sawtooths. Those of the south and southeast could gather at Pocatello or Idaho Falls or St. Anthony, with their final plan after business was disposed of, to go on and see the wonders of Yellowstone Park.

At these several meetings, matters of particular interest to the profession should be taken up and discussed, and if concerning any of them legislative action is needed, there would then be plenty of time to get the measure prepared, some public sentiment created if necessary, and members of the Legislature could be seen during and after the campaign so as to make them acquainted with what is to be asked of them and get them disposed, if possible, to a favorable consideration of what is required. At each of these gatherings a legislative committee should be appointed to look after the measures that are thought to be called for, and the committees from the three divisions should then act together, so as to join in a common report, which would have the united support of all sections.

I would not do away with the general meeting of the entire Associati n at the Capital City as now held, for I believe that these meetings are helpful and that they could be made much more so, if they were supplemented and interest in them increased by the district meetings. As a conclusion concerning this portion of my address, I earnestly advise a rearrangement or reorganization of the Association along the lines herein suggested and believe that the new meetings proposed would direct attention to matters affecting the Bar of the State and in a personal way would make us better acquainted, and through that acquaintance, association and exchange of ideas and experiences, much would develop to benefit not only matters pertaining to ourselves and our courts but public affairs in general.

I touch upon another matter suggested by my subject, which affects all of us, and more particularly those in certain Judicial Districts of the State and that is in regard to the relief of our Courts and those whose business interests depend upon their decisions. As we all know, we are and for some time have been, submitting to a situation which greatly delays the ending of litigation, the settling of controversies concerning private and public interests and the meting out of justice. To remedy this in part, an amendment has recently been added to our constitution and by virtue of its adoption, we now have five Justices of our Supreme Court. The work of that Court is about two years behind, and according to the best information that can be obtained, and judging by such experience as has fallen to our lot, the five justices can do no better than to keep up with the work, and will not be able to bring the docket up to date. It will be recalled that this same matter was discussed at our meeting of two years ago, at which time it was earnestly advocated that the plan adopted in other states be pursued here and that commissioners be appointed in sufficient number to dispose of the business that had accumulated on the docket of our highest Court. Unfortunately we were defeated in our proposition, and although the increase of the Justices to five will give us partial relief, the long delay in disposing of our cases which has caused so much worry and distress to ourselves and our clients will remain with us. A like, and perhaps even worse, situation exists in at least two of the Judicial Districts of the State, which makes a delay of practically four years in securing the final disposition of a suit after its commencement. One of the things obtained by the Barons at Runnymede seven hundred years ago was the assurance that to none would be sold and to none would be denied or delayed, right or justice. Our own State Constitution provides that, "Courts of justice shall be open to every person and a *speedy remedy* afforded for every injury to person, property or character, and right and justice shall be administered *without sale, denial, delay or prejudice.*" These rights which seem guaranteed to us

by our constitution are absolutely ignored by our lawmakers. Government is divided into the three well-known departments of legislative, executive, and judicial, each of equal importance with the others, and yet in actual practice, the executive and legislative departments are fed, while the judicial department is starved. Our legislators at their session two years ago not only denied relief to us but voted a nine hundred thousand dollar bond issue for the completion of the wings of our State Capitol in which they could hold their sessions with greater comfort and convenience. If either House wants any additional clerk or more help of any kind to keep up its work to date, provision is immediately made for the required assistance. If there was anything that the executive department of our State government wanted two years ago that it did not get, it was because it forgot to ask for it. I was interested in reading a few days ago an editorial in one of the daily papers published at Boise, under the caption of "The Axe", in which great economy in public expenditures was advocated. In its spirit it harmonizes with my own views, but when it comes to practicing economy by depriving the judicial branch of our government of the necessary help to dispose of the business it must take care of, I protest. This Bar Association should make known the needs of our Courts, so that business properly before them can be disposed of in accordance with the guarantees or our fundamental law, and I can think of no way in which it can be more useful than to bring about the relief which is so pressing, by giving to our Courts the help they must have to dispose of the business that has been pending before them so long and that is continually increasing in volume. I would not ask the Legislature to make the needed appropriations as a favor either to the Bar or to the Courts or to litigants, but would go to them with a demand that as a matter of right, proper assistance should be provided in the way of additional judges or commissioners to bring and keep our work up to date, and that the necessary appropriations be made therefor without quibble or delay. It would cost no more to pay the expenses of the number of commissioners which would be required to bring the work of our Supreme Court up to date within six months than would be called for to pay the expense of one-third the number, who would require eighteen months to accomplish the task. If I had my way about it, I would provide for three sets of commissioners, one to hear the cases in the north, another to hear those pending at Boise, and the third those on the docket at Pocatello, and make their recommendations to the Supreme Court of the judgments to be entered and the decisions to be announced, and would immediately provide for the appointment, either permanently or temporarily, of a sufficient number of additional Judges of our District Courts, so that litigants could have their cases heard and disposed of within a reasonable time after they were commenced.

There is another way in which this Association might be useful, if it has any influence and if that influence is properly used, and that is to secure the passage of laws that will prevent the taking of so many appeals, first, those from the inferior Courts to the District Courts, and next, those from the District Courts to the Supreme Court. Under existing statutes, any case can be appealed, regardless of the amount involved and not infrequently it happens that the Courts are engaged in trying cases in which the amount involved is less than the cost of trying them. I was recently in the chambers of one of the Justices of our Supreme Court, when another Justice entered and told of a case then pending upon which he was engaged in writing an opinion, which had been tried in the Probate Court, appealed, and again tried in the District Court, and from there it found its way into the higher Court. The case involved but sixty-five dollars in damages and raised no question of law, the determination of which could be helpful to any other litigant or to the Courts or to the lawyers. If the laws were changed, fixing and limiting amounts involved in cases from which appeals could be taken, a large number of these cases would not find their way into the higher Courts and more business of importance could be transacted and disposed of.

There are other matters in which we are vitally concerned which, if taken up in the right way and properly handled, would result in great benefit to the State at large and particularly to our Courts and those of us who have business in them, and I feel that if we were to provide a plan for annual district meetings an increased and absorbing interest in our common welfare would be created, and thereby the usefulness of this Association would be very greatly increased.

"EXAMINATION OF ABSTRACTS OF TITLE"

By THOMAS L. MARTIN of Boise

Real property is the greatest source of wealth. History does not record a time at which it was not bought and sold. When it first became the subject of private ownership is not known, but it would seem that from the dawn of history, with varied limitations and restrictions, civilized nations recognized the right of private ownership in land.

The first conveyance of record is that set out in Chapter XXIII of Genesis, wherein is recorded the sale of the cave of Machpelah from Ephron, son of Zohar, to Abraham as a burial place for the body of his wife, Sarah. Even in this dawn of history land had a value, as shown by the transaction between Ephron and Abraham. Abraham said:

> "I will give thee money for the field; take it of me, and I will bury my dead there."
>
> And Ephron answered Abraham, saying unto him:
>
> "My lord, hearken unto me; the land is worth four hundred shekels; what is that betwixt me and thee? bury therefore thy dead."
>
> And Abraham hearkened unto Ephron; and Abraham weighed to Ephron the silver, which he had named in the audience of the sons of Heth, four hundred shekels of silver, current money with the merchant.
>
> And the field of Ephron, which was in Machpelah, and which was before Mamre, the field, and the cave which was therein, and all the trees that were in the field, that were in all the borders round about, were made sure
>
> Unto Abraham for a possession in the presence of the children of Heth before all that went in at the gates of his city.

Thus closes the first real estate transaction recorded in history and the contract seems to be complete in every detail; parties, consideration and subject matter.

It would not be interesting to trace the limitations upon alienation of real property from the dawn of history to the unrestricted right of alienation, or to dwell at length upon the changing conditions which brought about the necessity for abstracts and laws of registration. It is sufficient to say that in our early history there were few sales or exchanges of land, and the purchaser was willing to rely, for his title, upon the covenants of warranty in the conveyance and the physical possession of the land, delivered to him. He usually had access to all prior conveyances and was able to make a personal examination of them.

When conveyances became more numerous and the value of land increased, the purchaser was unwilling to pay the purchase price in exchange for such a doubtful title. Abstracts then became a necessity. Registration laws were soon passed and permanent records were made of transfers. Abstracts are now in common use throughout the civilized world.

Little can be said regarding the origin and history of abstracts. English writers mention their having been in use during the first half of the nineteenth century, but no attempt is made to fix a definite date when their use began. I am unable to ascertain either the date or origin of abstracts in this country. I think it may be safe to assume, however, that some form of abstract was adopted as soon as sales of land became sufficiently numerous, and land of sufficient value to cause a purchaser to hesitate to part with his money without some evidence of title other than unrecorded instruments,

which of themselves often failed to show defects which might mitigate against his title.

In approaching the subject of examination of abstracts, I think it would be well to have in mind a brief but clear statement of what constitutes a proper abstract of title.

A definition of such an instrument is given by Thompson on *Titles to Real Property*, as follows:

> "An abstract of title is a methodically written or printed history of the title to a designated tract of land. It constitutes a summary of, or an epitome of the material parts of each recorded instrument of conveyance which in any part affects the land, or the title thereto, or any estate or interest therein, together with a brief statement of all liens or incumbrances to which the same may be subjected. In short, it is a summary or short epitome of facts relied on as evidence of the title of real estate, and may consist of a note of single conveyance, as it always does where the grantee from the Government furnishes an abstract of title. * * * In a legal sense, an abstract is a summary of facts relied on as evidence of title. Such facts are usually arranged in chronological order, and intended to show the origin, cause and incidents of the title without the necessity of referring to the original instruments or the records wherein they are recorded.
>
> "The object of the abstract is to afford a prospective purchaser or mortgagee of real estate a speedy and convenient means for ascertaining the condition of the title. By its use the purchaser, or his attorney, may readily pass upon the validity of the title in question without having to make a specific inspection of all the original instruments affecting the title, or without resorting to a laborious search of the records.
>
> "It should set forth the contents of each instrument of record affecting the title so fully that no reasonable inquiry shall remain unanswered, so brief that the mind of the examiner shall not be distracted by irrelevant details, so methodical that counsel may form an opinion on each conveyance as he proceeds in his perusal, and so clear that no new arrangement or dissection of the evidence shall be required. When thus prepared abstracts will serve as a safe and convenient guide to purchasers or to investors in real estate securities."

Thus, having in mind the objects, purposes and limitations of an abstract of title, it becomes the duty of the attorney or examiner to ascertain therefrom the condition of the title under consideration.

I think for the purpose of this discussion I should assume that an abstract is being examined with the view of determining whether or not the title presented is a "marketable title". A fee simple title and a marketable title are very closely allied, if not synonymous terms.

> "A fee simple title is the greatest interest and most absolute in the right conferred that a person can have in real property, and carries with it an unlimited power of alienation. It is the highest estate which the law recognizes, and when this term is used, and no words of qualification or limitation are added, it necessarily implies an estate owned in severalty, and an estate in possession."

"MARKETABLE TITLE"

> "Many definitions are to be found by different courts as to the meaning of the term 'marketable title'. A review of the cases considering the question indicates a marketable title to be a title free from liens or incumbrances, and dependent for its validity upon no doubtful questions of law or fact; and if dependent upon facts extrinsic to the record, dependent only upon facts sure to be easily accessible at all times in the

future, to the purchaser, should his title at any time be attacked. The title must also be such as to make it reasonably certain that it will not be called in question in the future so as to subject the purchaser to the hazard of litigation with reference thereto."

This definition is supported by the decisions of the Supreme Court of the United States and of the Supreme Courts of Arkansas, California, Florida, Illinois, Indiana, Kansas, Maine, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Dakota, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington and West Virginia.

"An agreement to convey in fee simple, free and clear of all incumbrances, implies the assurance of a marketable title."
Bell vs. Stadler, 31 Idaho 568.

A contract to convey a fee simple title requires a marketable title.
39 Cyc. 1452.

I shall, therefore, deal with marketable or fee simple titles as being synonymous.

It would be of no value to this Association for me to discuss defects which render titles unmarketable, in regard to which there would be little or no difference of opinion. The Bar would doubtless agree that a title is not marketable where a deed in the chain of title contains a misdescription so that the owner may be compelled to bring suit to reform it; or if a deed in the chain of title is subject to different constructions because the language used is ambiguous; or if the validity of the title depends upon some instrument, the proper construction of which depends upon extrinsic facts; or if there is doubt as to whether the estate of the vendor is in fee or for life; or if it is not clear as a matter of law whether a conveyance constitutes an absolute or a conditional sale; or if a grantor has been adjudged to have been insane at the time of the execution of his deed; or if, in the chain of title, there are deeds so defectively acknowledged as not to be entitled to record; or if one of the deeds in the chain of title is executed by an attorney-in-fact under a power defective either as to substance or acknowledgment; or if a deed is signed by several grantors and it does not clearly appear therefrom that each duly executed and acknowledged said deed; or if the validity of a title depends upon the foreclosure of a mortgage, and all the parties interested in the equity of redemption were not made defendants, or if there are building or other restrictions running with the land which affect its value; and many other questions which are frequently met.

As attorneys we are not interested in the broad, well-marked roads which lead us to the conclusion that a title is marketable or unmarketable, but rather are we interested in the dim and less frequented paths which may, or may not lead us to the conclusion that a title is marketable.

DISCREPANCY IN NAMES

Suppose, for instance, an abstract shows title vested in George F. Williams and the deed tendered is executed by Henry F. Williams. There would be such a discrepancy in names as to cause any attorney to hesitate to advise the title was marketable.

But suppose when Henry F. Williams tenders his deed he incorporates therein a statement that he is one and the same person as George F. Williams, grantee in the deed by which the property was conveyed to him, and that the name George F. Williams was inserted by inadvertance and mistake and that his true name is and was Henry F. Williams.

Upon first impression we might be led to the conclusion that this cured the defect.

An examination of the case of Peckham et al vs. Steward (Cal.), 31 Pac. 928, would raise a grave doubt in our minds, and that doubt would be strengthened by Walters vs. Mitchell et al (Cal.), 92 Pac. 315.

Suppose the defect in names had been discovered by the grantee, and soon after the original conveyance he had secured a new deed from his grantor and the new deed recited "that it was made for the purpose of correcting the discrepancy in the name of the grantee in the original deed"; might we then conclude that the defect had been cured? If we reach such a conclusion without investigation we might be surprised upon reading the case of Walters vs. Mitchell, *supra*, to find it holds that the grantor could not correct such a mistake, and the correctness of the position of the Court seems to have been conceded by counsel for the grantee, the theory being that when the grantor made his original deed he parted with his title and therefore had nothing to convey.

Suppose we go a step farther and Henry F. Williams brings an action against his grantor to reform the deed in which he was improperly described as George F. Williams, and the Court entered a decree reforming the same. It may be startling to know that the above case holds that such a decree has no validity unless George F. Williams is made a party defendant and if the return of summons shows he cannot be found that summons must be served on him by publication.

The California decisions above referred to holding the titles in question unmarketable, are based upon the theory that a contract for a marketable title requires a marketable title of record, and the fact that a title may be proved good by extrinsic evidence is not sufficient to remove the objection; the rule in that state being, to be marketable the title must be free from litigation, palpable defects and grave doubts, and must be fairly deducible from the records.

I do not find that the Supreme Court of Idaho has passed upon the questions involved in the above cases.

GUARDIAN'S SALE

Again, suppose the abstract shows that title is derived through a guardian's sale and upon examination of the guardianship papers it is ascertained that the guardian did not give the bond required by Sec. 7880 of the Idaho Compiled Statutes, which section reads as follows:

"Every guardian authorized to sell real estate must, before the sale, give bond to the ward, with sufficient surety, to be approved by the Court, or a Judge thereof, with condition to sell the same in the manner, and account for the proceeds of the sale, as provided for in this chapter and chapter 279 of this Code."

Is the examiner to treat this failure to give bond as an irregularity or as a fatal defect? Upon examination of the question the examiner will find that the Courts do not agree. A similar statute to that of Idaho is found in North Dakota, Minnesota, Mississippi, Kentucky, Maine, California and Montana. Of these states Minnesota, North Dakota, Mississippi, Kentucky and Maine have held that such sale is void, while California and Montana have held that the failure to give bond is an irregularity and not fatal to the sale.

Hubachek vs. Maxbass Security Bank (Minn.), 134 N. W. 64.
Rucker vs. Dyer, 44 Miss. 591.
Barnett vs. Bull, 81 Ky. 127.
Williams vs. Morton, 38 Me. 47; 61A Dec. 229.
Hughes vs. Godal (Mont.), 66 Pac. 702.
Scarf vs. Aldrich (Cal.), 32 Pac. 324.

I do not find that our Supreme Court has passed on this question. An attorney's inquiry is not whether the Courts would hold the failure to give bond an irregularity, but whether or not the title as presented "is one that is free from reasonable doubt; one that a prudent person, with full knowledge of all the facts, would be willing to accept". If there are questions of law or fact which might subject the purchaser to the hazard of litigation, then the title is not marketable.

In making this statement, I am not overlooking the case of Clark vs. Rossier, 10 Ida. 348, and the verity which attaches to a confirmation of sale of the Probate Court as defined in that case.

UNSATISFIED MORTGAGE

Again, suppose the abstract shows an unsatisfied mortgage against which the statute of limitations has apparently run; can an attorney advise his client that such mortgage is not a lien? Upon first impression and without investigation he might give this advice, but suppose he investigates and finds "the plea of the statute of limitations is a personal one", Moulton vs. Williams, 6 Ida. 426, and "the statute of limitations does not mean that the debt has been paid, it is a personal privilege which the law gives to the debtor, whereby he may say that the debt is stale, and for that reason should not be enforced", Sterrett vs. Sweeney, 15 Ida. 416, and "the statute of limitations acts upon the remedy, and not upon the debt, and the running of the statute does not extinguish the debt", Kelly vs. Leachman, 3 Ida. 629. He may then have some misgivings as to the soundness of his first impression. He begins to feel that if the statute of limitations is a personal privilege given only to the debtor, that in order for a successor in interest of the mortgagor to plead the statute he must occupy the position of debtor. But suppose the property has been conveyed only "subject" to the mortgage and after the lapse of years subsequent deeds make no reference to the mortgage at all, as is often the case, then what would be the rights of a grantee to plead the statute? Is one who purchases "subject to a mortgage" a "debtor" within the meaning of these decisions? No judgment can be taken against him in a foreclosure, because he has assumed no obligation. If he is not a "debtor" against whom the obligation could be enforced, then he certainly is not a "debtor" who could plead "a personal privilege" under the statute.

But perhaps someone will say the mortgagee has lost his right to foreclose by lapse of time, even though the debtor does not plead the statute of limitations; that the mortgagee may still take a personal judgment on the note but cannot foreclose his lien. This would be sound logic if the note and mortgage were separate contracts, but the Supreme Court of this State held in the case of Clark vs. Paddock, 24 Ida. 142, that a note and mortgage given to secure its payment must be construed together as one contract and that the remedy for the enforcement of the conditions thereof is the one referred to in Compiled Statutes, Sec. 6949. The Court said:

> "In other words, under the statutes of this state, * * * no action can be maintained for the recovery on a promissory note secured by a mortgage unless the action be coupled with an action to foreclose the mortgage, except where it is shown that the security has become valueless."

By the time this point is reached in his investigation the attorney will doubtless have grave apprehension that the apparently peacefully slumbering outlawed mortgage may in fact be a bolshevik only awaiting an opportune time to practice sabotage against his well-established reputation as a careful and able examiner of titles.

Having been awakened by his day dream of security, the attorney pursues his investigation. Turning to the case of Moulton vs. Williams, 6 Ida 424, he finds that:

> "The mortgage is incident to the debt. It follows the debt, is collateral to it, and stands or falls with the debt. So long as the creditor is entitled to the judgment for the debt evidenced by his note so long he may, generally, be entitled to enforce the security given to secure its payment. (Kelly vs. Leachman, 3 Ida 629, 33 Pac. 44; Law vs. Spence, 5 Ida 244, 48 Pac. 282). If, by our statutes, the security was extinguished by the lapse of a time certain, its life limited by statute regardless of whether the remedy on the principal object was lost by reason of the bar of the statute or not, as is the case in California, the rule would be otherwise. The life of the mortgage is not limited in this state."

Again:

> "The original record of the mortgage gave the appellant bank constructive notice of its existence, and placed it upon inquiry as to the real facts. It was charged with notice that the debtor might waive the bar of the statute. Before levying upon and selling the mortgaged property, it should have inquired into the facts as to the running of the bar of the statute or waiver of the same. The lien of the mortgage exists in this case against the heirs and legal representatives of the deceased mortgagor, and, as the appellant bank has not shown any title by prescription to the mortgaged property, the lien exists against it."

If by this time the attorney's confidence in his first impression is not entirely destroyed, he should read Dighton vs. First Exchange National Bank, decided October 5th, 1920, by the Idaho Supreme Court, reported 192 Pac. 832 (advance sheet No. 6, November 22, 1920), in which the mortgagor sold and conveyed the mortgaged property and then removed from the State of Idaho, thus entirely suspending the operation of the statute of limitations, and he will at last realize that the assumption that an unsatisfied mortgage cannot be enforced is a grave and hazardous one.

PROBATE

Suppose an abstract shows, of probate proceedings, only a confirmation of sale and an administrator's deed or a decree of distribution. Is this sufficient? I think not. I think an abstract should show at least the following papers in full. In the event the deceased died intestate the abstract should show:

(a) Petition for appointment of administrator;
(b) Order appointing administrator;
(c) Oath and bond of administrator;
(d) Letters of administration;
(e) Decree of distribution or confirmation of sale and administrator's deed, as the case may be.

In the event the deceased died testate, there should be shown:

(a) Petition to admit will to probate;
(b) Order admitting will to probate, and appointment of executor;
(c) Oath and bond of executor.
(d) Letters testamentary;
(e) Copy of will in full;
(f) Confirmation of sale and executor's deed or decree of distribution, as the case may be.

I consider these papers are absolutely necessary to show the jurisdiction of the Probate Court and the validity of the acts of the legal representative. I should hesitate to pass a title as marketable where the probate proceedings failed to show that an administrator, or executor, had taken the oath and given bond as required by the statute, notwithstanding the case of Harris vs. Coates, 8 Ida. 491. It might be that if the question were squarely

presented our Court would hold that an administrator or executor who had not given the bond and taken the oath as required by statute was, nevertheless, authorized to administer the estate, if no one objected thereto, but the underlying objection, from an attorney's standpoint, is that he is not at liberty to speculate as to what the Court may or may not decide in connection with titles.

The petition for the appointment of an administrator or to admit a will to probate becomes of vital importance when the necessity therefor is considered in connection with the case of Glover vs. Brown, 32 Ida. 426. All the proceedings, including the petition for appointment of an administrator, might be regular, but the petition itself might fail to show the Probate Court had jurisdiction, and for this reason the entire proceedings be void.

A copy of a will in full is absolutely necessary that the attorney may determine whether the particular property has been devised; whether there are cash bequests which must be paid before residuary legatees have any interest; whether there are life estates, or limited estates for less than life, created by the will; and many other questions which will readily suggest themselves.

After the rendition of the opinion in Clark vs. Rossier, 10 Ida. 348, I think the Bar of this State was usually content, where a title was derived through a sale by an administrator, executor or guardian, simply to have the abstract show the confirmation of sale and deed of conveyance. Attorneys relied upon the fact that the confirmation of sale, being a decree of the Probate Court, could not be collaterally attacked, and if no appeal was taken within sixty days, it became final. But one can have no such feeling of security under the case of Glover vs. Brown, *supra*.

This discussion leads directly to another question of interest, which is this: Suppose "A" and "B" are husband and wife, and "B" has certain property standing on the records in her name and dies. By what method is it to be determined whether this is community property of "A" and "B" and whether "B" died intestate? And by what method, if community property, can the record title be transferred to "A"? If the property is community property and "B" dies intestate it belongs to "A". If separate property it goes to "B's" heirs, subject to the payment of her debts.

The method usually pursued prior to the case of Glover vs. Brown, *supra*, was to probate "B's" estate, show that the property was community property, that "B" died intestate, and thereupon the Probate Court decreed the property to "A". This course is no longer available and the only way seems to be an action to quiet title in "A" and such a course is subject to many dangers and is not only unsatisfactory but appears to be a useless expense.

This Association should suggest some legislation by which the record title can be transferred to "A" quickly and cheaply.

GUARDIAN AD LITEM

Suppose an abstract shows an action to quiet title against minors; that a guardian *ad litem* was properly appointed, that such a guardian filed an answer and disclaimer on behalf of his wards and thereupon a decree was entered quieting title. Query: Has a guardian *ad litem* authority to file a disclaimer on behalf of his wards? I think without question he has no such authority. Under the law he cannot bind his wards by admissions, waivers, or stipulations which affect their substantial rights. As said in 14 R. C. L., page 291, Par. 58:

> "He should put in issue, and require proof of every material allegation to the infant's prejudice, whether it be true or not, and to make no concessions on his own knowledge. * * * It has often been decided that no judgment can be rendered against an infant defendant by default, nor on the admissions of the answer."

To the same effect see Ralston vs. LaHee (Iowa), 74 Am. Dec. 295.

One of the leading Federal cases upon this question is White vs. Miller (U. S.), 39 L. Ed. 921, in which it is said:

> "Where there are infant defendants and it is necessary in order to entitle the complainant to the relief he prays that certain facts should be before the Court, such facts, although they might be the subject of admissions on the part of adults must be proven against the infants."

In note "B", 97 A. S. R., page 997, are collected a large number of cases upon this point.

I know of no carefully considered opinion of any court of final resort which holds that a guardian *ad litem* has authority to disclaim an interest on behalf of his ward. If he could, instead of exercising that watchful and protective care over the interests of his ward, which it is his duty to do, he might surrender them by stipulation, admissions or inaction.

CONVEYANCE TO MORTGAGEE

Again, suppose an abstract shows title vested in "B"; that "B" derived his title from "A"; that at the time of the conveyance from "A" to "B", "B" had a valid and subsisting mortgage on said property in which "A" was mortgagor and "B" mortgagee.

Is "B's" title marketable?

Prior to the decision of Johansen vs. Looney, 31 Ida. 754, I believe the Bar of this State, without exception, would have answered in the affirmative; that the mortgage title had been merged in the greater, and that if no other facts appeared of record to mitigate against the title that it was vested in "B" and marketable. No such feeling of security can now be had and no attorney would advise "B" that his title is not going to be called in question by "A", and if it is called in question he cannot advise as to the result, particularly when it is borne in mind that the burden of proof is upon "A" if he attacks the title, to show only the following facts: First, that the relation of mortgagor and mortgagee existed; secondly, that "A" executed a deed to "B"; thirdly, inadequate consideration for the deed.

The first two propositions can usually be proved by the record, the third is purely a matter of opinion, and I know of no subject upon which men differ more widely than that of the value of property.

When these three propositions have been established then the burden of proof shifts to "B" and it devolves upon him

> "to show there was no misrepresentations, coercion, oppression or undue influence and that the transaction between the parties was valid and voluntarily entered into."

That "B's" title may be called in question is hardly open to discussion, but the question of greater doubt is, suppose "B" should convey to "C", then could the conveyance from "A" to "B" be attacked upon the ground of fraud, and does "C" take with constructive notice, that "A" may have an interest in the property? I am not venturing an opinion as to this. I simply call attention to it in passing.

SEPARATE CONVEYANCE BY HUSBAND AND WIFE

Another interesting question arises where husband and wife have conveyed by separate instruments. The validity of such a conveyance has not been presented to our Supreme Court, but our statute causes an attorney to hesitate to advise that such a conveyance is valid.

While I express no opinion in regard to this matter, I desire to call your attention to the statute as it existed prior to 1913 and as it now exists affecting the right to convey community property:

Section 2686 of the Revised Codes of Idaho reads:

"The husband has the management and control of the community property, with the like absolute power of disposition (other than testamentary) as he has of his separate estate; but such power of disposition does not extend to the homestead or that part of the common property occupied or used by the hushand and wife as a residence."

Section 3106, Revised Codes of Idaho, reads:

"No estate in the homestead of a married person, or in any part of the community property occupied as a residence by a married person can be conveyed or encumbered by act of the party, unless both husband and wife join in the execution of the instrument by which it is so conveyed or encumbered, and it be acknowledged by the wife as provided in Chapter 3 of this title."

This section was omitted from the Compiled Statutes, but the substance thereof is contained in Section 5442 of the Compiled Statutes.

Section 2686, Revised Codes, was amended, Session Laws 1913, page 425, and was again amended Session Laws 1915, page 186. The latest amendmend being Compiled Statutes, Sec. 4666, which reads:

"The husband has the management and control of the community property, except the earnings of the wife for her personal services and the rents and profits of her separate estate. But he cannot sell, convey or encumber the community real estate unless the wife join with him in executing and acknowledging the deed or other instrument of conveyance, by which the real estate is sold, conveyed or encumbered."

Our Supreme Court construed the statutes in force prior to 1913 in the case of Witt-Keets-Poo vs. Rowton, 28 Ida. 193, and used this language:

"Thus under Sec. 2686, Rev. Codes, it was not necessary for the wife to join with the husband in the conveyance of their community property unless the same had been impressed with a declaration of homestead or was community property occupied or used by the husband and wife as a residence. But under the amendment of 1915, *supra*, while he still has the management and control of the community property, cannot sell, convey or encumber the same unless the wife join with him in executing and acknowledging the deed or other instrument of conveyance by which the real estate is sold, conveyed or encumbered, whether impressed with a homestead declaration or occupied as a home."

If it be true that the husband "cannot sell, convey or encumber the community real estate unless the wife join with him in executing and acknowledging *the deed or other instrument of conveyance* by which the real estate is sold, conveyed or encumbered", and the wife has not joined in *the deed or other conveyance*, but has executed a separate instrument from that which her husband executed, then the query arises: Does title pass by such conveyance?

I have called attention to this not because I desire to express any opinion in regard to it, but for the reason I believe it is a question which the bar should consider, because it frequently arises in the examination of titles.

In submitting this question I am not overlooking the principle of equitable estoppel against a married woman as applied in Grice vs. Woodworth, 10 Ida. 459. Neither can I overlook, nor soon forget, the opening words of the dissenting opinion by Mr. Justice Ailshie:

"The application of the doctrine adopted in this case to the facts it discloses, works an effectual rape of the statute in the name of that facile and beguiling progeny of equity called estoppel."

There are many other interesting questions, but to discuss them would extend this paper to unreasonable length. For instance, it would be interesting to discuss whether a married woman can give her husband a power of attorney; whether she can deed real property to her husband; whether husband and wife can by agreement divide their community property so as to deprive the court of jurisdiction of it in a divorce action, and many other similar questions, but I shall not continue.

In closing I desire to say I have not attempted in this paper to cover the whole field of the examination of abstracts, but only to call attention to a sufficient number of mooted questions to arouse deeper interest in the subject of titles and to impress upon attorneys the grave responsibility when giving opinions in connection therewith. If I have succeeded in accomplishing these objects, I am satisfied with the presentation of this subject.

INDEX