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COMMITTEE ACTIVITIES

We are well on the way toward our next annual meeting. For the most part committee reports at our annual meetings have been hastily prepared during the days immediately preceding the meetings and often they have been one man reports. Each committee has entrusted to it matters worthy of the attention and consideration of the entire bar association. To secure adequate consideration it is necessary to delegate to a small group the responsibility of making needed investigation and presenting to the association the conclusions growing therefrom. It is doubtful if within the lifetime of those now active in the profession there has been such general interest as now prevails in all phases of legal and judicial reform. Much of the discussion is superficial. It therefore is our duty as an association to make our professional consideration thorough and as scientific as possible. It is urged that the committee chairmen organize their work at once. This can be done effectively by correspondence, and all members of committees are asked to favor their respective chairmen with their views, so that every committee report may express a composite judgment deliberately reached.

"If we do our duty by the common law of the 20th Century, we must make it a living system of doing justice for the society of today and tomorrow, as the formers of our policy made of the traditional materials of their generation an instrument of justice for that time and for ours.

"And chiefly the responsibility for doing this will rest upon preachers and writers.

"Laws are not self-enforcing, and the very life of law is in its enforcement. But except as a vigorous despot may put rules in force by the might of his arms, enforcement depends on the general will."

—Dean Roscoe Pound.

REVIEW OF N. D. DECISIONS

State ex rel Olsness v. McCarthy, County Auditor. This is a proceeding in mandamus. The questions presented are: 1. Must a county auditor, at the time of the annual tax sale held in December of each year, include hail indemnity taxes in the amount of delinquent taxes listed against each tract of land and sell each tract for one sum, including both the general real estate taxes and the hail indemnity taxes and issue only one certificate in evidence of the sale? 2. Is the county auditor inhibited from entering transfer of a deed, patent or final decree of distribution unless all delinquent hail indemnity taxes are paid? HELD: 1. The county auditor must include in the notice of tax sale all delinquent hail indemnity taxes and must sell any lands advertised for the aggregate amount of general real estate taxes and hail indemnity taxes in one sum, and issue one certificate of sale. This does not, however, transform the hail indemnity tax into a tax within the legal meaning of that term, nor give to the certificate of sale, insofar as it represents hail indemnity taxes, any greater effect than if issued upon a sale for hail indemnity taxes alone. Insofar as the certificate represents hail indemnity taxes it confers upon the holder only such rights as he would have if the lien of the hail indemnity tax were foreclosed. 2. A county auditor may enter the transfer of a deed, patent or final decree of distribution without regard to delinquent hail indemnity taxes.

Jarski v. Farmers' & Merchants' Bank. This is a suit to recover the purchase price of certain land in South Dakota which plaintiff claims he sold to the defendant. Though the purchase is denied, it appears if it was made that it does not tend to attain and accomplish the objects and purposes for which the defendant was organized as a banking corporation, but for speculative purposes. HELD: The transaction falls within the inhibitions of Sections 5151, 5152 and 5187, as amended by Chapter 54 Session Laws of 1915, and therefore is unlawful and void. For this reason the court will not lend its aid to compel performance.

Kuiper v. Miller. This is an action in conversion in which it is alleged in the complaint that the owner of land executed a mortgage to the plaintiff on March 1st, 1919; that the mortgage was foreclosed and a sheriff's certificate issued on January 23, 1925; that the mortgagor rented the land for the year 1924 under an agreement whereby he was to receive one-third of all grains sown, grown and raised upon the land during said season; and that the lessee delivered the grain to the defendant, a dealer in grain. The defendant demurred to the complaint and this appeal is from an order overruling the demurrer. HELD: Rent is compensation for the use of land. It is yearly profit issued out of land and may consist of money, provisions, chattels or labor, and is not

the equivalent of the value of the use and occupation of the land. Under Section 7762, Compiled Laws 1913, the holder of a sheriff's certificate of sale is entitled to receive from the tenant in possession the rents of the property sold, or the value of the use and occupation thereof during the period of redemption and may maintain an action in conversion against the purchaser of that portion of the crop raised during the year of redemption which the mortgagor and the renter agreed should be delivered as rent. If he seeks to recover a portion of the crop raised during such period, or its value in a conversion action, he must show that the crop was rent of the premises within the meaning of Section 7762. When the sheriff's certificate has been recorded, a third party dealing with the lessee of the mortgagor of premises sold under foreclosure is charged with notice of the foreclosure proceedings, and the rights of such holder of the certificate, under Section 7762.

Hanson v. Blum. Plaintiff made a loan which was secured by a mortgage on a threshing outfit. The mortgagors also became indebted to a bank and gave a mortgage on the same threshing outfit. Though plaintiff's debt was not paid, he failed to renew his mortgage at the end of three years from the date of filing, as required by Section 6772, Compiled Laws 1913. Thereafter defendant took a mortgage on the same property covering the debt of the mortgagors to the bank, all of which was incurred within three years after the mortgage to plaintiff was filed, and in addition a further indebtedness incurred subsequent to the three year period. On default, the defendant declared his debt due, seized the property and purchased the same at foreclosure sale. Thereafter plaintiff asserted a right thereto under his mortgage and demanded the property. Upon defendant's refusal to deliver it, this action in replevin was commenced. HELD: Section 6762, Compiled Laws 1913, was supplementary to Section 6758. The purpose of the latter is to give notice of the existence of mortgage liens and of the former to clear the record by raising the presumption of payment where there is no renewal within three years from the date of filing on which those dealing with the mortgagors, without notice to the contrary, may rely. A creditor within the meaning of Section 6762 is one who without notice that the debt secured by an unrenewed chattel mortgage is unpaid subsequently extends credit, or alters his position as to his debtor to his detriment as subsequent encumbrancer in good faith, is a creditor taking security for his debt. His character as an encumbrancer is determined by the notice he has when the credit is extended rather than when the security is taken. The defendant was not a subsequent encumbrancer in good faith insofar as his mortgage secured indebtedness incurred within three years after plaintiff's mortgage was filed, and that he is such encumbrancer only as to indebtedness incurred after the expiration of such three year period for credit extended by him to his detriment prior to the time that he received notice that plaintiff's mortgage was still unpaid.

U. S. SUPREME COURT DECISIONS

The Fourth Amendment to the Constitution prohibits the search of a dwelling without a search warrant except as an incident to a lawful arrest therein.—Agnello vs. U. S., 46 Sup. Ct. Rep. 4.

The power of a Federal Court to issue writ of habeas corpus for relief from arrest under process of a State Court of first instance is not to be exerted except in cases of unusual urgency.—U. S. vs. Tyler, 46 Sup. Ct. Rep. 1.

Sec. 4 of the "Act to Regulate Commerce" provides: "It shall be unlawful for any common carrier subject to the provisions of this Act to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to the provisions of this Act." Under an amendment which required railroads to make application to the I. C. C. for the introduction of a different rate, such application was brought, but was undetermined. Shippers brought suit for the recovery of $30,000 alleged to have been illegally exacted. And it was held, Justice Brandeis delivering the opinion, that the I. C. C. had power to deal with the matter, and the shippers could not recover where adequate and timely application had been made by the carriers, though undetermined. —Patterson vs. Ry. Co., 46 Sup. Ct. Rep. 8.

A debt due in German marks is to be valued at the value of the mark on the date when the account was stated and the debt due. Interest for the period of the war was included.—Hicks vs. Guinness, 46 Sup. Ct. Rep. 46.

The construction and delivery of materials to a subcontractor by a foreign corporation which has a contract to erect a bridge within the state is held to be doing business within the state, and the failure to comply with certain prerequisites required by the state statutes before doing such business constitutes a violation and makes such corporation subject to fine.—Kansas City Structural Steel Co. vs. Arkansas, 46 Sup. Ct. Rep. 59.

The statutory provision which inhibits an attorney from accepting more than three dollars for services performed in the collection of claims against the Bureau of War Risk Insurance is valid, and does not relate solely to the clerical work of filling out the necessary papers. "The only compensation which it permits a claim agent or attorney to receive where no legal proceeding has been commenced is three dollars for assistance in preparation and execution of necessary papers. And the history of the enactment indicates plainly enough that Congress did not fail to choose apt language to express its purpose," said Justice Reynolds in writing the opinion.—Margolin vs. U. S., 46 Sup. Ct. Rep. 64.

WORKMEN'S COMPENSATION DECISIONS

Injuries suffered by stevedore, while loading ship in navigable waters, not compensable under Workmen's Compensation Law of State, the matter being wholly within admiralty jurisdiction.—Jordan vs. Leyland & Co., 7 Fed. Rep. 386, (La.).

Where a third party is liable for an injury sustained by a workman, he must elect whether he desires to take under the act or to seek his remedy against the third party. If he elects to take under the act, the state alone can sue for the benefit of the accident fund.—Holmes vs. Jennings & Sons, 7 Fed. Rep. 231, (Ore.).

The findings of the Industrial Accident Commission on conflicting evidence is final and conclusive on Supreme Court.—Standard Varnish Works vs. Accident Commission, 239 Pac. 1067, (Cal.). To same effect is Pierce vs. Barker, 205 N. W. 496, (Wis.).

The findings of the Industrial Accident Commission are subject to review only insofar as they have been made without any evidence whatever in support thereof.—Stacey Bros. vs. Accident Commission, 239 Pac. 1072, (Cal.).

A lineman, while in the employ of his original master and as a member of a lineman's crew, was directed to dismantle a derrick erected by the master at the request of a contractor, and who was at all times during the course of the work under the direction and control of the original master, through its foreman, is not an employe of the contractor, but of the original master.—Stacey Bros. vs. Accident Commission, 239 Pac. 1072, (Cal.).

The burden of proving that the disability claimed is due to an injury sustained in the course of employment and not to something else is upon the claimant.—Simpson Construction Co. vs. Industrial Commission, 240 Pac. 58, (Cal.). To same effect is Curtis-Warner vs. Gorman, 130 Atl. 538, (N. J.).

A contractor who holds a contract to deliver U. S. mail along a star route, and who hires employes to deliver the mail, is subject to the State Workmen's Compensation Act, notwithstanding the employe, while delivering such mail, is engaged in a public function. .. .. Generally an employe who is injured while on his way to or from work is not entitled to compensation, in the absence of special circumstances bringing the accident within the scope of the employment.—Comstock vs. Bivens, 239 Pac. 869, (Colo.).

The provision of the Compensation Act granting a 50% increase of the award made in claims against employers who have failed to comply

with the Act is not unconstitutional as in violation of the article forbidding excessive fines, nor is it class legislation.—Flick vs. Industrial Commission, 239 Pac. 1022, (Colo.). (Note—this is contra to the decision of the North Dakota Court in a similar case.)

In a claim for death of employe it was found that a path over tracks was used as an approach to the plant; that the employer had never objected to such use; and it was, therefore, held that the use of such path represented a risk annexed by the conduct of the parties as an incident to the employment, and the injury was in the course of employment.—Corvi vs. Stiles & Reynolds, 130 Atl. 674, (Conn.).

Services of a wife in nursing an injured workman, who was removed from hospital to his home because surgeon believed recovery would thereby be hastened, are held to be reasonably expected without compensation from affectionate wife who is physically able to render such services.—Galway vs. Steel Erecting Co., 130 Atl. 705, (Conn.).

Where the question of dependency arises in death claims, the existence of such dependency as of the time of the accident must be proved. —Maryland Casualty Co. vs. Campbell, 129 S. E. 447, (Ga.).

A mine examiner, who left the place where his duties required him to go, and went to a motor shed, where he was not supposed to go, and undertook to operate dangerous machinery, which the rules and instructions of the employer forbade him to use or attempt to operate, voluntarily went outside the reasonable sphere of his employment and put himself beyond the protection of the Compensation Act.—Lumaghi Coal Co. vs. Industrial Commission, 149 N. E. 11, (Ill.).

A night watchman, whose place of duty was on premises of employer, cannot fairly be said to have been injured in the course of employment where injury occurred on street after he had left the premises to go two blocks away for lunch.—Dreyfus vs. Meade, 129 S. E. 336, (Va.).

A LEGAL MYTH

We accept as a fact that, under our system of legal procedure, the jury is the final judge of all facts in criminal cases. Whenever, therefore, an appellate tribunal has brought before it problems of the admission or exclusion of testimony that might have had a bearing upon the result attained by the jury, cases are sent back for a new trial in order that another jury may determine the case upon the basis of the proof that was actually admissible in evidence. We have had a number of such cases in this state as well as elsewhere.

There are those who call such errors "technical errors," and advocate the determination of such cases by the appellate court upon the basis of the general result achieved by the jury, regardless of these technical errors. The reply of others, voiced at the annual meeting by Mr. John

H. Lewis of Minot, in his address on the English system, for instance, is that this represents a change in our system and should be recognized as such, if adopted.

As a matter of actual fact, is it a change of our system? Are not ninety per cent of the verdicts of juries, whether in civil or criminal cases, the result of compromise, rather than the result of strict consideration of evidence?

We have in mind a recent term of a District Court during which three successive cases came to our attention, two criminal and one civil, in none of which the jury arrived at a determination that was in accord with the evidence. One in particular, resulting in a criminal conviction for a lesser charge than that brought, was quite clearly not in accord with the actual facts presented—yet the expressions of disinterested bystanders, and the private acknowledgment of the Court itself, was to the effect that the verdict represented substantial justice.

Let us suppose now that in this particular case evidence was admitted or excluded that might have had a bearing upon the judgment of the jury. Should such a case be sent back for a new trial just for that reason? If we accept as actual fact the theory that, under our system, the jury is the body to determine every issue of fact, and does so determine it upon all of the evidence presented, without resort to compromise or consideration for what is termed "substantial justice," the answer should, undoubtedly, be yes. But, if we acknowledge and accept what we know to be the actual facts underlying all—or the great percentage—of jury verdicts, then why not recognize the theory for what it is, a myth, and govern our appellate pronouncements accordingly, namely, by paying very slight attention to errors in the admission or exclusion of evidence?

NEWS ITEMS

Dean Pound's discussion of "The Crisis in American Law" in the current Harper's is causing wide comment in the press.

A constitutional amendment adopted by the state of New York at the last election permits the reduction of state departments from more than one hundred sixty to not more than twenty. Another amendment adopted at the same time is calculated to make the judicial machinery more efficient.

The committee on Jurisprduence and Law Reform of the American Bar Association is urging bills before Congress providing for declaratory judgments and for simplifying procedure on appeals in the federal courts, and is opposing the Carroway bill calculated to limit the powers of federal judges upon the trial of jury cases.

The comprehensive survey recently undertaken by the Missouri Association for Criminal Justice contemplates thorough scientific research as a basis for reform. Its results will be awaited with interest.

It is expected from pledges made by senators and representatives that congress will pass the measure giving the supreme court power to make rules on the law side as well as the equity side of federal courts.

It appears that the movement for more rigid requirements for admission to the bar is rapidly gaining favor in states in which only two or three years ago it had scant support among the members of the profession.

Our state association now has a committee on Cooperation with the Press whose function it will be to enlist the interest and service of the press in improving the administration of justice and to assure the dissemination of accurate information regarding judicial matters.

The first report of the judicial council of Massachusetts was filed recently.

A primer for jurors has been prepared by Judge William B. Carswell of the New York Supreme Court. The practice of giving formal instructions to jurors regarding their powers and duties as officers of the court should become general.

Thos. W. Shelton, one of the organizers of the Judicial Section of the American Bar Association, is preparing a book on the practical operation of the English Courts. He was granted special favors by the English Bar to enable him to make a personal study of the procedure there.

The Governor of Minnesota has ordered an investigation of the entire machinery of law enforcement of that state and has appointed a group of twenty-five prominent citizens to conduct the inquiry. The action was prompted by the general crime situation and calls for suggestions as to changes in law and court rules and the machinery of justice to secure more adequate results.

The United States Chamber of Commerce has distributed a pamphlet which in a few pages sets out clearly the substance and meaning of the Locarno Treaties.

The mid-winter examinations for admission to the bar will open on January 12th, at Bismarck. There are fourteen applicants for admission.

The bar examiners of Vermont at their last examination used a research test in connection with the subject of common law pleading, with a view to judging the ability of applicants in using the authorities, each applicant having access to a library.