BAR BRIEFS

PUBLISHED MONTHLY AT BISMARCK

—By—

STATE BAR ASSOCIATION
OF NORTH DAKOTA

Entered as Second Class Matter Jan. 15, 1925, at the Postoffice at Bismarck, North Dakota, Under the Act of August 24, 1912

Vol. II | DECEMBER, 1925 | No. 1

EFFICIENCY IN GOVERNMENT

The state governments of the United States in 1923 spent approximately $892,000,000. Though the budget system is in general use, it must make provision for offices and boards and commissions which could well be spared. The state of New York alone, it is said, has one hundred eighty-seven boards, Michigan one hundred sixteen, Delaware one hundred, Massachusetts over two hundred, and the state of North Dakota has approximately sixty. Not all of these call for all-time service of their members, but they nevertheless constitute a part of the state's administrative machinery. While government is not strictly speaking a business, its problems are akin to those of private enterprise. Yet there are no standards by which to determine whether its administration succeeds or fails. If a private business does not succeed, its affairs are wound up. If an administration fails, it increases taxes. The prime consideration in private business is the efficiency which assures success. A prime consideration in the administration of state affairs is that political expediency which will perpetuate control of the administration forces, and the greater the number of boards and commissions and bureaus the better the opportunity to develop and maintain political power. In some states there has been agitation for effective administrative re-organization. Illinois, Nebraska, Washington, Ohio and a few other states, have made some definite improvements in their administrative schemes. Yet wherever attempt at reform has been made, the problem has been complicated by political considerations. When it is remembered that legislatures concern themselves for the most part with administrative problems, local and state, there is little wonder that our statute books are cluttered with measures which under more effective administrative organization would be avoided. The very inefficiency of the administrative machinery contributes mightily to legislative inefficiency, and the two combined increase, more than is commonly appreciated, the burdens placed upon the courts. There is much concern over the need for judicial reform. Whatever may be the defects in our judicial system, they cannot be fully remedied until our government in all of its branches is concerned primarily with the public welfare rather than party fortunes. Effective reform in one branch is inextricably interwoven with reform in all branches. And it means more than a change in machinery or procedure; it calls for a new attitude in and toward government.

REVIEW OF COURT DECISIONS

By C. L. YOUNG

State Ex Rel Neville v. Overby, as Sheriff: Petition for writ of habeas corpus. Certain minors were arrested on a charge of grand larceny, given a preliminary examination before a police magistrate and bound over to the district court. In district court they were arraigned, pleaded guilty and committed to the state training school. The parents were present in both the police and district courts and the minors were at all times represented by an attorney. A writ of habeas corpus was petitioned for on the ground that the chief of police and police magistrate at the time of the preliminary examination knew the defendants to be under eighteen years of age, and that the state's attorney and judge of the district court were aware of the facts and that all of the proceedings should have been had in juvenile court. No issue was made in either court, as to the age of defendant. HELD: The jurisdiction of the juvenile court is cumulative as to all law, except as administered in justice and police courts. The district court has jurisdiction of all criminal offences and exclusive original jurisdiction over all felonies and persons charged therewith. A delinquent child may be prosecuted according to the laws covering the commission of crime. It is the duty of an officer making an arrest of a child under eighteen years of age to give the same in to the care of a juvenile officer, and of the justice of the peace or police magistrate issuing a warrant for the commission of crime to make an order giving the care and custody of a child under eighteen years of age to a juvenile officer. If there is doubt about the age, this should first be determined by the justice or police magistrate, and if found under the age of eighteen years further proceedings should be suspended. The district court had jurisdiction here and relief is denied.

Michelsen v. North American National Insurance Company: Plaintiff was in possession of a section of school land, as assignee of a lease. On this land were three buildings, a house, a barn and a granary, owned by the plaintiff. He gave a chattel mortgage of the buildings, and certain live stock, to a bank, which transferred the indebtedness, and security, to another. After giving the mortgage, plaintiff made application for insurance upon the buildings, through the local agent of the defendant company, who was also cashier of the bank which took the chattel mortgage. The agent at the time knew the character of the plaintiff's interest in the land upon which the buildings were situated. The policy of insurance contained a loss payable clause in favor of the mortgagee and stipulated that unless otherwise provided by agreement endorsed thereon, or added thereto, the policy should be void if the subject of insurance be a building on ground not owned by the insured in fee simple. It was argued that under the facts the policy was void. HELD: That the application was transmitted by the cashier of the bank for the

insured; that under Section 4959, Compiled Laws of 1913, the cashier by virtue of such fact became the agent of the insurance company to all intents and purposes, and that since he had knowledge that the interest of the insured in the real property was that of a lessee and that the buildings were personalty, this knowledge was chargeable to the insurance company; and that therefore it must be held to have waived the stipulation which otherwise would have voided the policy.

Hendrickson v. Stewart: Land was sold at foreclosure sale on April 21, 1924. In the fall of 1924, defendant, with knowledge of the foreclosure, but expecting the mortgagor to redeem, made an oral lease with the mortgagor to plow and crop the land in 1925. In good faith, he sowed crops of winter rye and spring wheat, the wheat being sown three weeks before the period of redemption expired, and prior to seeding he was informed by the plaintiff that if no redemption was made, plaintiff would crop the land. A sheriff's deed was issued April 25, 1925, and an action was brought by the owner thereunder to quiet title. HELD: That the lessee from the mortgagor acquired greater right in the premises than the lessor held and that since the crops did not mature until after the issuance of the sheriff's deed, the lessee is not the owner thereof as against the holder of the deed. The holder of the deed immediately after it was acquired had all the rights of an owner.

U. S. SUPREME COURT DECISIONS

The Federal Court which decrees a foreclosure of a mortgage of railroad property retains jurisdiction of an ancillary suit brought by the mortgagee against third parties to determine the validity of an alleged contract by which a previous owner had obligated itself forever to maintain its general offices and shops in Anderson County.—Central Union Trust Co. vs. Anderson County, 45 Sup. Ct. Rep. 427.

* * * *

In a suit to foreclose a lien on water rights of particular purchasers under a contract to reclaim land segregated from the public domain, by virtue of the Carey Act, where the project has failed for insufficient water, the holders of other water rights under the contract are necessary parties to the suit and must be included.—Commonwealth Trust Co. vs. Smith. 45 Sup. Ct. Rep. 26.

* * * *

In a suit by a fraternal organization against individual members to enjoin the collection of claims having a single origin, and which are alleged to have been brought pursuant to a conspiracy to injure the plaintiff, the amount in controversy for purposes of determining federal jurisdiction is the aggregate amount of the claims.—Woodmen of the World vs. O'Neill, 45 Sup. Ct. Rep. 49.

In an action to recover damages for breach of contract to buy goods valued at more than $3,000, federal jurisdiction is not defeated by the fact that the plaintiff, after rescinding the contract, sold the goods at a price which reduced his actual loss below $3,000.—Stein vs Tip-Top Baking Co., 45 Sup. Ct. Rep——.

* * * *

The statute denying jurisdiction to the district court in an action to recover upon any chose in action in favor of an assignee unless such suit might have been there prosecuted if no assignment had been made, includes a suit by an assignee for specific performance of covenants in a lease, and for additional relief. Realty Holding Co. vs. Donaldson, 45 Sup. Ct. Rep. 521.

* * * *

The assignee clause does not exclude the district court from jurisdiction in cases where the sole ground of federal jurisdiction is that the suit arises under the laws of the United States.—Sowell vs. Federal Reserve Bank, 45 Sup. Ct. Rep. 528.

* * * *

The provision in the Criminal Appeals Act, which says: "No writ of error shall be taken or allowed the U. S. in any case where there has been a verdict in favor of the defendant," applies where the Court announced that the indictment was invalid and that, therefore, no valid conviction could be had, and directed a verdict for the defendant before any evidence had been taken.—U. S. vs. Weissman, 45 Sup. Ct. Rep. 135.

* * * *

The arrest, by a U. S. Court, of a person who is passing through the jurisdiction on his way to stand trial under an indictment found against him in the federal court of another State, does not violate the due process clause of the Fifth Amendment. The decision of a third federal district which had previously discharged the defendant on habeas corpus proceedings, brought after removal proceedings by the State making the arrest, is not res judicata of the sufficiency of the indictment of the Court making the arrest.—Morse vs. U. S., 45 Sup. Ct. Rep.——.

* * * *

The discharge by a U. S. Commissioner in a habeas corpus proceeding of one in custody for removal to another district for trial, is not a bar to a proceeding before a federal district judge for the same purpose. The Commissioner's decision is persuasive, but not controlling.—U. S. vs. Levy, 45 Sup. Ct. Rep. 513.

* * * *

The sufficiency of an indictment for failure to allege venue cannot be called in question in habeas corpus proceedings.—Knewell vs. Egan, 45 Sup. Ct. Rep. 522.

COMPENSATION DECISIONS

The findings of the Industrial Accident Commission in matters of award stand on the same footing as the findings of a Judge, or verdict of a jury, and will not be set aside, if there is any substantial evidence upon which it may rest.—Berman vs. Industrial Commission, 238 Pac. 1052, (Cal.).

The findings of fact made by the Commission within its power are, in the absence of fraud, conclusive.—Maryland Casualty Co. vs. England, 129, S. E. 75, (Georgia).

* * * *

An award under the Workmen's Compensation Law cannot be said to be conjectural, or unsupported by evidence, merely because evidence on which based might have justified different findings.—Standard Oil Co., vs. Sullivan, 237 Pac. 253, (Wyoming).

COMPENSATION COSTS

The report of the Workmen's Compensation Bureau just filed with the Governor included a tabulation of the cost of fatal accident cases, in order that the public might be advised of the number, nature, extent and average of the awards in such cases. The tabulation covers all fatal and permanent disability cases from July 1, 1919, to June 30, 1925, since which time there have been awards made in five other death cases that are not shown by the tabulations because they were made subsequent to the period covered by the report. It will be observed that the awards vary considerably with the number and nature of the dependency, the largest award in any case being $25,819.32. The tabulation can not be given in detail here, the total and average only being listed:

No. Cases	Type	Total Award	Average
9	Permanent Totals	$160,300.60	$17,811.18
1	Mother, Brothers and Sisters	5,266.31	5,266.31
2	Brothers and Sisters	2,590.76	1,295.38
4	Parents	5,862.96	1,465.74
24	Widow and Children	247,468.28	10,311.18
1	Children Only	5,322.10	5,322.10
13	Widow Only	68,395.33	5,261.18
54	Total with Dependents	$495,206.34	$ 9,170.49
16	No Dependents	9,526.75	595.42
70	TOTAL ALL CASES	$504,733.09	$ 7,210.47

THE BAR'S RELATION TO GOVERNMENT

"The bewildering maze and labyrinth of constitutional law is something new in the world. It has supplanted the divine right of kings. It has arisen from the American dual sovereignty and is the guardian of that dual sovereignty. It has piloted the two ships of state, state and federal; otherwise they would have collided and sunk. It is at once a vindication of the American bar and a challenge to it to live up to its principles. It has no occasion for smugness. It is a call to combat. It is an alarm bell that any decadence in the profession imperils the public safety. It is a summons to the American Bar to put itself in order and keep itself in order. It demands character, learning and business ethics—ethics to temper the industrialism of the age. And the courts will do their part. They are the finished product of the bar, elevated to the bench to personify the law. * * * *

"The power of the American Bar is unorganized and unseen, but upon it depends the continuity of constitutional government and the perpetuity of the republic itself. Bacon said 'I hold every man a debtor to his profession; from the which as men of course do seek to receive countenance and profit, so ought they of duty to endeavor themselves by way of amends to be a help and ornament thereunto.' "—William W. Cook.

MISSOURI SPEAKS

The Missouri Bar Association's Committee on Legal Education and Admission to the Bar, in its 1925 report, replies to the contention that the disesteem into which the Bar is said to have fallen is due to the "ambulance chaser" and "other unethical practitioners" and that the remedy is expulsion of such men rather than the raising of educational requirements, by means of the following pronouncement: "In the first place, it is by no means certain that a lawyer can be disbarred for a mere violation of the canon against soliciting business. Secondly, as a practical matter it is extremely difficult, in most cases utterly impossible, to secure evidence sufficient to warrant disbarment for mere unethical practices. Finally, while one lawyer is being disbarred, a dozen equally as bad have been admitted into the profession to take his place. The remedy is not disbarment after admission but raising the standards for entrance before admission." The Committee's conclusion is that "adequate preparation means an added moral guarantee to the profession and the public."

The "poor-boy" argument against higher standards is answered by the Committee, after suggesting that no one has any vested right to practice law, by the presentation of statistics that tend to show that higher standards would mean the exclusion of but few of those whose financial standing is rather limited. It says: "Last year there were enrolled at the Universities of Illinois, Kansas, Chicago, Yale and Princeton, 31,386

boys, of whom 9,956, or about 45%, were earning their way in whole or substantial part. Moreover, in practically every section of Missouri there is either a University, a Normal School, a College or a Junior College, where a student can get two years of college work; and last year there were 10,083 boys in attendance at these institutions throughout the State, of whom 4,037, or 40%, were earning their way in whole or substantial part."

OUR FATHERS OF TERRITORY DAYS

The Territory of Dakota enacted the following statute in 1883: "Every person convicted of murder shall suffer death or imprisonment at hard labor in the territorial penitentiary for life, at the discretion of the jury.

"Upon trial of an indictment for murder, the jury, if they find the defendant guilty, must designate in their verdict whether he shall be punished by death, or imprisonment for life at hard labor, and the judgment of the court shal be in accordance therewith."

In 1885 the Territorial Legislature further amended the law by providing that "upon plea of guilty, the court shall determine the same." This law became effective on March 13th, 1885.

In January, 1885, one Miller killed his employer's wife and child. The defendant entered a plea of guilty. His counsel contended that the law of 1885 was, as to defendant, ex post facto, and that there was no provision of law for trial by jury upon a plea of guilty; that by pleading guilty, therefore, defendant was entitled to absolute immunity from punishment. This was part of counsel's argument:

"The defendant, when he committed this act might, in contemplation of law, have said: 'I will murder this woman, and may do so with perfect safety, because, if I am indicted for it, I will plead guilty, and in that case no penalty can be inflicted.' "

The Court, however, impaneled a jury, had the case presented, and upon a verdict of the death penalty by the jury, sentenced the defendant. The matter was taken to the Territorial Supreme Court, the conviction and sentence sustained, and the Court took occasion to make the following statement in its opinion:

"We cannot, however, refrain from pointing out, what is so well illustrated in this case, how much labor and anxiety might be avoided by a little more care on the part of the framers of statutes—a little more attention to the provisions of existing laws, and to the terms and phraseology of those by which it is sought to modify them. It is greatly to be regretted that the rule which imputes to the Legislature the design which it has expressed in words is founded rather in necessity than in fact.

Too many of our laws bear evidence of a lack of that attention to details which is essential to a wise system of legislation."

Those who are inclined to blush for the framers of our territorial legislation need only recall more recent legislation or else refer to the case upon which the Territorial Court relied for precedent to prevent this miscarriage of justice; and, by the way, the case that presented the precedent (12 Allen 155) corrected as bad a blunder by the Legislature of Massachusetts, "Where the Lowells speak only to the Cabots, and the Cabots speak only to God," or, as the late President Wilson once said (after a foreigner with an unpronounceable name had changed it to Cabot): "The land of the bean and the cod, where the Lowells do not speak to the Cabots, for the Cabots do not speak English, begob."

A bill just introduced in the Washington Legislature provides that the failure of the moving party to pay the incidental fee on change of venue in justice court within three days after such change is ordered shall constitute a waiver of such change.

"THERE OUGHT TO BE A LAW"

By Strickland Gillilan

A fellow out in Steamboat Rock fell down and barked his shin.
He nursed it and he cursed it with a grim and grisly grin,
Then wrote and told his congressman about the stump that tripped him,
And voiced the indignation that incontinently gripped him.
The congressman got busy with a ream of legal-cap,
(Though few of us had known that Steamboat Rock was on the map)
He framed a law forbidding leaving stumps six inches high—
It passed; and now 'tis one of those we all are governed by.

Full many a little citizen grows "all het up" and vocal
O'er something superpiffling and superlatively local,
And drives his representative (who yearns for reelection)
To make a nation's law about some localized affection.
We break a law an hour, on an average, I guess,
For multitudes of laws produce a law-ignoring mess.
Our country's bulky statute-books contain a million laws
That, if enforced, would place us in constabulary claws.

'Tis safe to say that each of us, without one lone exception,
Breaks every day a dozen laws of which he's no conception.
There's scarcely any human deed that's natural or pleasant
But that one day that self-same act has peeved some paltry peasant
Who promptly got his congressman to pass a law about it,
That you and I in innocence or ignorance might flout it.
For broth is not the only thing spoiled by too many cooks—
'Twould do our country worlds of good to "thin" our statute books!