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THE SCIENCE OF LAW

Lawyers very appropriately are expected to inquire into the origin and nature of law and its functions in organized society, to analyze legal rights and obligations, to consider divers agencies by which the law is administered and developed, and to arrange in an orderly fashion the principles of the law with reference to those rights and obligations which it defines, practices and enforces. Yet for the most part they give their time and thought to what they deem the more practical aspects of the calling and so practice the profession much as an artisan practices his craft. No doubt they would on the whole serve their clients more effectively if they could see beyond the winning or losing of the cause in hand to the divers implications, historical, philosophical, sociological, political and scientific, which the facts and the law applicable to them truly involve. Yet it is hardly conceivable that lawyers as a whole should become legal scholars in the scientific sense. The demands of the modern practice are not conducive to the study of the history and science of jurisprudence and until recently materials for such study were not readily available. Now, however, books and theses written by scientific lawyers from the modern viewpoint make it possible for practitioners with little effort and at small expense to acquire a knowledge which penetrates beneath the superficial and the obviously practical phases of the law. Better appreciation of the law as a science will dignify the profession, increase the satisfaction which comes from its practice, and exalt its importance in public esteem.

REVIEW OF NORTH DAKOTA DECISIONS

State ex rel Howieson v. Fraser, Adjutant General. Relator applied for a writ of mandamus to compel the defendant to approve her claim for payment out of the "Returned Soldier's Fund." It is alleged that relator's son was mustered into the military service of the United States from this state in July, 1917, and was killed in action with the American Expeditionary Forces in France in October, 1918, leaving surviving him the relator, his wife and a minor child. That within a year after his death the minor child died, that shortly thereafter his widow re-married, without making application for payment of a "bonus" under the "Returned Soldier's Fund" act, that relator demanded payment of such bonus to her as the dependent mother of the deceased soldier, and that payment was refused. From a judgment commanding payment the defendant appeals. HELD: The "Returned Soldier's Fund" act vests in the Adjutant General power to pass upon all claims for compensation out of the fund. It makes no provision for an appeal from or a judicial review of the decisions of the Adjutant General in the allowance or rejection of claims. The decision involved is not subject to judicial review and the action of the Adjutant General may not be controlled by mandamus. (Opinion filed March 24th.)

Re: Blackey. In September, 1922, a minor under eighteen years of age, was adjudged a delinquent child under the Juvenile Court Act, and committed to the State Industrial School. The order of commitment was suspended, and the minor paroled and placed in custody of a juvenile officer, who permitted him to remain at home. In February, 1926, after the minor had attained the age of twenty years, the judge of the district court, for reasons stated in the order, revoked the suspension of sentence formerly passed, and directed the sentence to go into effect, and the minor to be committed to the State Industrial School. This application for a writ of habeas corpus was made in behalf of the minor. HELD: The district court acting under the juvenile court act has only such power as is given to it by that act. This act clearly makes delinquent, neglected and dependent children wards of the state, and subjects them to the care, guardianship and control of the juvenile court until they are eighteen years of age. A juvenile court has not authority to revive a sentence to the Industrial School which has been suspended for nearly four years, and to commit the delinquent child, who at the time of the attempted revival of sentence, was twenty years of age. (Opinion filed March 16th.)

Minneapolis Threshing Machine Company v. Hocking. An action to foreclose a chattel mortgage. The defendant signed a written order for a threshing machine manufactured by plaintiff. The order contained many stipulations in print, among which was one which expressly excludes and negatives all statutory and implied warranties excepting as to title. The contract provides that in no event shall the seller be subject to any other or further liability except such as may be expressly given

and provided for in the contract itself, and only on the conditions stipulated in the contract. The contract allows seven days after discovery of defects within which to give notice thereof by registered letter. It was claimed that the contract was against public policy and in violation of the uniform sales act, and that a rescission had been effected. HELD: Neither indifference nor carelessness in signing a written contract voluntarily is sufficient to absolve a party from the obligations thereof. A contract involving a legitimate subject matter, the terms of which do not inherently tend to be subversive of the public good, or contrary to good morals, will not, merely because its terms are harsh as to one of the parties, be declared void and unenforceable as contrary to public policy. Chapter 202, Session Laws of 1917, the uniform sales act, is not a restriction upon the rights of parties to contract, but is a statement of the rules applicable to the construction of such contracts as they may make. Any lawful term that the parties may desire in a written contract of sale may be included. The parties may exclude and negative all implied warranties which otherwise would arise and be available under the uniform sales act. The written contract of sale must be construed as though this act were incorporated in and made a part of it, and in case of conflict between the contract and the statute, the latter will prevail. The act gives the purchaser of machinery the right to rescind within a reasonable time after the discovery of its unfitness on the notice and in the manner therein prescribed, if the machinery is unfit for the purposes for which it was purchased, but it does not extend the authority of agents of the seller beyond that which they would possess were the statute not in force. (Opinion filed March 12th.)

City of Bismarck v. Hughes. Under Chapter 175, Laws of 1923, the City of Bismarck enacted a zoning ordinance. It divides the city into building districts and prescribes regulations applicable to each district. Among the regulations relating to "A" Residential District, are restrictions as to the distance a residence may be placed from the street. This action was brought to restrain the defendant from building a residence in violation of the provisions of the ordinance. HELD: The enactment of police regulations is a legislative function and the courts cannot question the reasonableness or the policy of a statute and cannot interfere unless the statute is clearly repugnant to some constitutional guaranty. Chapter 175, Laws of 1923, is a legitimate exercise of the police power and is not in conflict with the state nor the fourteenth amendment of the federal constitution. The ordinance enacted under the statute is authorized by it, operates equally and alike upon all residences of each district, and is not unreasonable or arbitrary but is clearly within the power granted to the city by the legislature. (Opinion filed March 16th.)

U. S. SUPREME COURT DECISIONS

The loan of stock and the return of borrowed stock to enable the completion of a "short" sale involve "transfers of legal title to shares of stock" within the terms of the Revenue Act and subject to tax.—Provost vs. U. S., 46 Sup. Ct. Rep. 152.

A defective car is still in use when it has been moved with the train from the main line to a siding, to be cut out and left so that the other cars may proceed on their journey; and a brakeman who goes between cars in order to adjust a defective coupler so that the train may proceed is engaged in work which brings him within the provisions of the Safety Appliance Act.—Soo Ry. Co., vs. Goneau, 46 Sup. Ct. Rep. 129.

Where a road improvement district is created under State Statute through mere petition of taxpayers and there is no legislative determination of the fact that the included property will be benefitted it is essential to due process of law that the property owners be given notice and opportunity to be heard on the question of benefits. No officer or tribunal having been empowered by the law to hear, consider or determine the question, the act is repugnant to the due process clause.—Browning vs. Cooper, 46 Sup. Ct. Rep. 141.

A resolution by the directors of an insolvent bank to give control of the affairs of the bank to the state superintendent of banks for purpose of liquidation amounts to a voluntary assignment or act of bankruptcy within the meaning of the Federal Statute which gives the U. S. priority. In this case the claim was represented by a deposit belonging to Indian Wards of the Government.—Bramwell vs. U. S. Fidelity & Guaranty Co., 46 Sup. Ct. Rep. 176. In a companion case the term "debt" as used in this statute was held to include income taxes due—Price vs. U. S., 46 Sup. Ct. Rep. 180.

Sentence of five years on each of three separate counts to run consecutively and not concurrently is a sentence for fifteen years and not five. The Court also said: "The constitutionality of the Anti-Narcotic Act, touching which this Court so sharply divided in U. S. vs. Doremus, 249, U. S. 86, was not raised below and has not again been considered. The doctrine approved in Hammer vs. Dagenhart, 247 U. S. 251; Child Labor Tax Case, 259 U. S. 20; Hill vs. Wallace, 259 U. S. 44, 67; and Linder vs. U. S., 268 U. S. 5; may necessitate a review of that question if hereafter properly presented."—U. S. vs. Daugherty, 46 Sup. Ct. Rep. 156.

WORKMEN'S COMPENSATION DECISIONS

The discovery of thrombus phlebitis while pushing wheelbarrow in customary manner, without bruise or hurt, not compensable.—Frank vs. C. M. & St. P. Ry., 207 N. W. 89 (S. Dak. Jan., 1926).

Theatre ticket seller injured by stranger for fancied personal grievance not entitled to award as being injured in course of employment.—Coope vs. Loew's Theatre, 213 N. Y. Supp. 254 (N.Y. Jan., 1926).

Widow of workman killed as a result of disagreement over methods of work by fellow employee, deceased not having been aggressor, is entit-

led to award for death of husband.—Farmers' Mfg. Co., vs. Warfel, 131 S. E. 240, (Va. Jan., 1926).

An employee, while in the course of his work, was shot by a third party. The shooting was accidental. Held that injury was in the course of employment and compensation awarded.—Boris Construction Co., vs. Haywood, 106 Southern, 799, (Ala. Dec., 1925).

An employee doing outside work occasionally went to employer's office to get his pay. While waiting a trespasser threw a wire into the room, injuring claimant's eye. HELD: not injured in course of employment.—Isabelle vs. Bode & Co., 213 N. Y. Supp. 185, (N. Y. Jan., 1926).

Workman injured while cranking his own automobile for use in employer's business, after strict instructions not to make use of automobiles owned by employees, held not entitled to award as for injury in course of employment.—Knickman vs. Zurich Co., 213 N. Y. Supp. 196, (N. Y. Jan., 1926).

Injured employee, working only part time, earned $1,317.95 during twelve months preceding injury. In absence of proof of earnings of other employees similarly engaged, wages should be fixed at this sum divided by 52.—Belliamo vs. Marlin-Rockwell Corp., 213 N. Y. Supp. 85, (N. Y. Jan., 1926).

Injury sustained on way to or from place of employment not compensable as sustained in the course of employment unless the employer regularly furnishes transportation. In this case the injured person jumped on the load of another employee and rode to a point near the injured's home.—Simonds vs. Riegel, 206 N. W. 717, (Minn. Jan., 1926).

Employee of a contractor was injured while working on premises of Mining Co., the injury being due to negligence of the Mining Co. The contractor was covered for Workmen's Compensation, and an award was made. Injured sued the Mining Co. HELD: that Mining Co., and contractor were engaged in accomplishment of related purposes and there could be no recovery.—Uotila vs. Oliver Mining Co., 206 N. W. 937, (Minn. Jan., 1926).

An applicant for compensation for disability due to occupational disease must show that the abnormal condition of body arose after the enactment of statute allowing compensation for occupational disease. If the disease existed before, and aggravation is claimed, such aggravation must be proved, and liability is only for the proportion of disability caused by such aggravation.—Dumbrowski vs. Jennings, 131 Atl. 745, (Conn. Jan., 1926).

An employee, injured in coal mine, the injuries consisting of a broken leg and further injuries to back, died in hospital while being treated for

these injuries. The Compensation Bureau determined, from the evidence, that death was caused by heart trouble and not related to the injury, and denied award for death. On appeal from judgment reversing this decision the Supreme Court held: that the findings of the Bureau were conclusive on the question of fact in the case unless there is entire absence of evidence to support them.—Furnace Coal Co., vs. Carroll, 278 S. W. 171, (Ky. Jan., 1926).

JUDGE MILLER ADDRESSES FARGO BAR

At the regular monthly luncheon of the Cass County Bar Association on April 1st, Hon. Andrew Miller, Judge of the United States District Court, addressed the meeting on the subject of Federal Practice and Procedure. He referred to the conformity clause of the federal statute providing that practice in the federal court shall be as nearly as may be like the practice in the state court. He stated that it is the practice of the federal judges to conform to the state practice so that attorneys may be familiar with it. The necessary exceptions are the following:

1st. Exceptions to adverse rulings must be made in the federal court.

2nd. It is the duty of the federal court, where evidence is legally insufficient, to direct a verdict.

3rd. The federal court has the right in proper cases to comment upon the evidence and the credibility of witnesses.

Judge Miller stated that this right is seldom exercised but in necessary cases serves to prevent a miscarriage of justice because it gives the jury the benefit of a judicial mind in a situation where the jury might otherwise be misled. "A law suit," said Judge Miller, "in the federal courts at least is an intelligent investigation of disputed questions of law and fact and not a battle between counsel and their clients. It is a trial before a judge and jury as distinguished from a trial or battle between two or more lawyers and a jury."

In the opinion of Judge Miller, the equity practice regulated by the eighty rules prepared by the supreme court of the United States is simple and there is no reason why a lawyer should feel that there is anything mysterious about the federal practice either on the law or equity side.

FEDERAL PRACTICE AND PROCEDURE

Chairman Conmy of Fargo reports the attitude of the Committee handling the above subject as follows:

It favors the passage of H. R. 419, granting to the U. S. Supreme Court power to prescribe rules of practice and procedure in actions at law, effective 6 months after promulgation. Sec. 2 of that Bill reads: "The court may at any time unite the general rules prescribed by it for cases in equity with those in actions at law so as to secure one form of civil action and procedure for both; provided, however, that in such union of rules the right of trial by jury as at common law and declared by the seventh amendment to the Constitution shall be preserved to the parties

inviolate. Such united rules shall not take effect until they shall have been reported to Congress by the Attorney General at the beginning of a regular session thereof and until after the close of such session."

It disapproves H. R. 7613, providing for drawing of jurors by the District court Judges as an unnecessary conferring of clerical duties upon them.

It commends the adoption of the Burtness Bill, H. R. 121, and very similar to the North Dakota Statute, providing for examination of adverse parties at the trial or conditionally, or upon commission.

It considers the passage of H. R. 479, providing for trial by jury in contempt cases, unwise, but the Committee's opposition seems to be confined to Section 2, which reads: "Such jury trial shall be presided over by a judge not connected in any way with the case, trial, motion, or other proceedings in which the contempt is charged."

It approves the adoption of the Declaratory Judgments Act, H. R. 5365.

OPTIMISM—IDIOTIC OR INTELLIGENT?

The latest pronouncement of the Communist Internationale, made through Monsieur Zinovieff, is as follows: "Our diagnosis of society remains the same, which is the death of capitalism and the dictatorship of the proletariat in a comparatively short time. We are convinced that the dictatorship of the proletariat is next in line of the historic development of society. Events so far have completely verified the correctness of our course and our staking everything on the proletarian revolution. We believe it will be the fate of our generation to live through the victory of the proletariat on a world scale. We were and we remain proletarian revolutionists."

UNIFORM STATE LAWS

Commissioners Sveinbjorn Johnson and H. A. Bronson, representing North Dakota, expect to attend the National Conference of Commissioners on Uniform State Laws to be held at Denver, Colorado, July 6-11, immediately preceding the annual meeting of the American Bar Association.

Consideration will be given at that time to uniform acts dealing with Motor Vehicles, Inheritance Taxes, and Sale and Disposition of Fire Arms.

NOTES

The Ramsey County, Minnesota, Bar Association, at its recent meeting adopted a resolution favoring capital punishment.

It is not generally known that the English theory of pleading has been in effect in the municipal court of Chicago for nearly two decades.

At the December Virginia bar examinations, a negro woman was admitted to the bar. She is the first negro woman to be admitted in the United States. Two other negro women failed to pass the examination.

The executive committee of the St. Paul Bar Association has unanimously adopted a resolution opposing the re-election of Municipal Judge John W. Finehout, on the ground that he is unfit for the office.

In Alabama, in which state the bar was recently organized by statute, the state bar association, in conjunction with the law department of the state university, has undertaken the publication of the Alabama Law Journal.

The Nebraska State Bar Association is sponsoring an essay contest among students of Nebraska colleges upon this subject: "What are the functions and duties of the states, and what are their limitations under the Federal Constitution."

In recent years legal clinics have been established in connection with many of the law schools in large cities. The cases assigned to students are furnished by legal aid societies which have come to render effective and helpful service to the poor. The work is done under the direction of practicing instructors.

Hon. George W. English, Judge of the United States District Court for the Eastern District of Illinois, has been impeached by the Federal House of Representatives for high crimes and misdemeanors consisting of the tyrannical disbarment of attorneys and corrupt practices in the disposal of bankruptcy cases or the funds involved. The last previous impeachment was that of Judge Archbald of Pennsylvania. Judge English was admitted to the bar of Illinois in 1891, and from 1914 to 1918 served as income tax attorney for the United States Treasury, from which office he resigned to accept the judgeship he now holds.

The Missouri Association for Criminal Justice which was organized in October, 1924, has already completed the statewide survey undertaken by it of the administration of criminal justice. Reports on the following subjects are nearing completion: Police Administration in the Large Cities; The Offices of Coroner and Sheriff; Preparation and Presentation of the State's Case; Judicial Administration; Ten Years of Supreme Court Decisions; A Statistical Interpretation of the Criminal Process; Necessary Changes in Criminal Procedure; Record Systems; Medical Relations; Pardons and Paroles; and Bail Bonds. It is planned now to arouse and mobilize public opinion in support of the legislation recommended by the Association.

ON TO DENVER

The meeting of the American Bar Association will be held at Denver on July 14th, 15th and 16th. A fare and a half will be offered by rail from North Dakota points. Denver is an ideal summer convention city. It is quite accessible from this state by automobile. A trip by way of the Black Hills would require not to exceed three days from any point in the state. It is another opportunity to attend at a nearby point. The meeting will be well worth the time and expense required. Many side trips from Denver are promised. The membership in the association from this state was greatly increased when the meeting was held in Minneapolis, and it is hoped that this year's meeting will induce a further increase.