



1944

The Lawyer's Individual Responsibility

Edward T. Fairchild

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at 1423 Sixth av. S., while house-hunting. He plans to resume his law practice here.

C. J. Serkland, Fargo attorney, has been released from the navy at Great Lakes, Ill., naval separation center and is at home with his wife and three children at 1433 Ninth av. S. He served as a lieutenant with carrier air group 88 aboard the Yorktown, featured in the combat film, *Fighting Lady*. Serkland saw action in operations off the coast of Japan in the final months of the war and later served with occupation forces in Japan. He plans to re-open his law office in Fargo soon.

A recent AP item from Minot relates to the death of Peter A. Winter, 61, States Attorney of Sheridan County, in a Minot Hospital on November 19th. Mr. Winter who was admitted to practice in this state on June 5th, 1909, was a graduate of the Law College of the University of North Dakota, and had practiced in McCluskey since that time. He was Past Master of the McCluskey Masonic Lodge, Past President of the Lions Club, and president of the school board for many years.

Sidney E. Ellsworth of Jamestown, 83, died Wednesday, November 8th, 1945, at Trinity Hospital in that city. Judge Ellsworth was admitted to practice in this state on January 10th, 1893, and since 1894 had been engaged in the practice of law at Jamestown, with the exception of two years in 1909 and 1910 when he served as a member of the Supreme Court of North Dakota under an appointment of Governor Burke.

THE LAWYER'S INDIVIDUAL RESPONSIBILITY*

Perhaps, without wandering too far from the matter assigned I may, with propriety, for a moment emphasize somewhat our individual responsibility not only to our profession but more—our part in building public opinion.

If we are men, we will take account of ourselves, strengthening ourselves against our weaknesses, reduce our prejudices and standing on our own feet, strive to show forth as fair examples of manhood devoted to decency and right living. We will not permit winds to blow us toward the rocks. Nor will we permit a mastery to gusty temptations which play havoc with personal morals.

After all, the external condition of society depends on the internal nature of man. Each one of us casts a shadow. Each one by self restraint, patience and proper conduct may exert a helpful influence by unselfish devotion to the high ideals of our profession, by standing firmly against temptation in a determination to place before the youth coming into our ranks the best examples of good citizenship and individual manhood. Strong, reliable and stable, we may influence for the better service of mankind the broader

*From an address by Justice Edward T. Fairchild before a meeting of the Dane County Bar Association.

purposes of government and the general law as servants of the people, supreme within its proper field where it proceeds from necessity and not to carry out the will of a dictator.

The judicial position is one of consequence in a community. It is one of the potential forces tending to create public and private virtue, patience with public and private efforts, a just measurement of motives, plans and prospects. The judiciary does not command the facilities of the public press, but it has its consideration and help.—We are not spiritual advisers with the advantage of a pulpit, but we are coworkers for a common good. We can use with courage and understanding the tenets of our social and political establishment within our field to fix upon a firmer foundation our cherished freedoms. Not looking backward except for guidance nor holding overlong to tradition, but with realization, however, that our four freedoms rest upon the strength of our nation, upon its wisdom and virtue, that back of precedents are the basic judicial conceptions which are the postulates of judicial reasoning and further back are the habits of life, the institutions of society in which those conceptions have their origin.—Bulletin of the State Bar Association of Wisconsin, August, 1945.

OUR SUPREME COURT HOLDS

In the Matter of Application for a Writ of Habeas Corpus In Behalf of Ronald Rixen.

That where Juvenile Court, after a hearing, made its order continuing the custody of a minor in a parent during the good behavior of the minor, it was without jurisdiction to take the minor from the custody of the parent and commit such minor to the State Training School, because of an alleged violation of the conditions of the original order without a further hearing held pursuant to due notice to the interested parties.

Application for a Writ of Habeas Corpus in behalf of Ronald Rixen. Ronald Rixen discharged from custody. Opinion of the Court by Burke, J.

In Felix Raymond, Petnr. and Apple., vs. Mrs. John Gerving, Respt. and Applt.

That the right to the custody of a minor child may be determined in habeas corpus proceedings.

That the parents of a minor child are equally entitled to its custody and neither can transfer such custody to any other person without the written consent of the other except in case of death or desertion or abandonment. The dying statement or request of the mother that someone other than the father have the custody of the child does not deprive the father of his natural right to the custody of his minor child.

That the natural right of a parent to the custody of his minor child is to be enforced in the light of the child's best interest.

That before the natural right of the parent to the custody of his minor child will be set aside by the court it must appear that the best interest of the child will suffer if it remain in the custody of the parent.

That where the father of a minor child is shown to be entitled to the custody of his child he has the right to change his residence from this state unless such removal will prejudice the best interest of the child. Appeal from the District Court of Mercer County. Broderick, J. AFFIRMED. Opinion of the court by Burr, J.