

1943

Annual Meeting of South Dakota Bar

North Dakota State Bar Association

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DEMONSTRATIONS OF PRE-TRIAL PROCEDURE AT THE AMERICAN BAR ASSOCIATION MEETING

A feature of the American Bar Association meeting, on September 12, which it is believed will be of great interest to lawyers and judges, will consist of demonstrations of actual pre-trial hearings by federal and state court judges under the auspices of the Section of Judicial Administration and Judge John J. Parker's Committee on the Improvement of the Administration of Justice. Judge Alfred P. Murrah, of the United States Circuit Court of Appeals for the Tenth Circuit, who used pre-trial extensively during the time he was a district judge in Oklahoma, will conduct the first pre-trial. He will be followed by Judge Joseph A. Moynihan, of Detroit, Presiding Circuit Judge of Michigan, who has been an enthusiastic advocate of the procedure for many years and who was chairman of the Pre-trial Committee appointed by Judge Parker in 1938. Judge Bolitha J. Laws, of the United States District Court for the District of Columbia, who was the first pre-trial judge in the District, will follow and the last pre-trial session will be put on by Judge Harry M. Fisher, of Chicago, Judge of the Circuit Court of Cook County, where pre-trial has most recently demonstrated its efficiency in clearing a congested docket.

The meeting will be presided over by United States Circuit Judge Orrie L. Phillips, who is chairman of the Section of Judicial Administration, and the actual pre-trial demonstration will be preceded by a statement by Judge Parker, chairman of a committee of the Judicial Conference on this subject. Comment on the methods used will be made by Professor Edson R. Sunderland, of the University of Michigan, and there will be an opportunity for general discussion by those present.

While much has been written about pre-trial procedure since its inclusion in the Federal Rules of Civil Procedure, it is still a closed book to many lawyers. These pre-trials of actual cases, presided over by experienced trial judges and acted out by casts of lawyers, should be of great interest. It is planned to make the scripts available to any state or local bar associations which desire to use them at bar meetings.

ANNUAL MEETING OF SOUTH DAKOTA BAR

The Annual Meeting of the State Bar of South Dakota will be held at Huron, South Dakota, on August 10th and 11th, 1944. The meeting will convene at one p. m. on Thursday, August 10th, and adjourn at noon on Friday, August 11th. The meeting will be strictly "stream lined."

The program consists of an address on "Actual Practice Under the Soldiers and Sailors Civil Relief Act." One on "Probate Homesteads" and the final one on "Some of the Worries and Doubts of Chapters 175 and 176, Session Laws of 1943."

The banquet is to be held the first evening, Thursday, August 10th, and the speaker is Dean Albert J. Harno of the College of

Law, University of Illinois, who will speak on "The Evolution of the Lawyer."

NORTH DAKOTA ATTORNEYS WITH ARMED FORCES

At page fifteen of the Licensed Attorneys List for 1944 there appears the names and home addresses of seventy-eight members of the North Dakota Bar who are with the Armed Forces. This is nearly twenty per cent of the total membership of our association.

OUR SUPREME COURT HOLDS

In *Helena E. Cunningham, Admx. of the estate of William Burton Cunningham, Pltff., vs. G. N. Ry. Company, a corporation, Deft.*

That where the party against whom verdict has been rendered makes timely motion in the alternative for judgment notwithstanding a verdict or for a new trial, and it appears from the record that the evidence does not sustain the verdict and that the moving party was entitled to a verdict, that there is no reasonable probability that the defects in the proofs may be remedied upon another trial and that on the record as a whole the moving party is entitled to verdict and judgment as a matter of law, it is error for the trial court to deny a motion for judgment notwithstanding the verdict and order a new trial. Laws 1935, ch. 245.

That in actions under the Federal Employers' Liability Act, 45 USCA, Sections 51-59, 10A F C A title 45, Sections 51-59, wherever brought, the rights and obligations of the parties depend upon such Act and applicable principles of common law as interpreted and applied in the federal courts.

That negligence of the employer is the basis of recovery under the Federal Employers' Liability Act. Without negligence there is no right of action.

That in actions under the Federal Employers' Act, as in other actions at law for injury to employees, the burden is cast upon the plaintiff to show negligent conduct on the part of the employer constituting ground for recovery. The plaintiff must establish a breach of duty on the part of the defendant and show that such misconduct was in fact the proximate cause of his injury.

That the question of negligence is generally one of fact for the jury, it becomes a question of law only when the evidence is such that fair-minded men cannot reasonably draw different conclusions as to the facts or the inferences to be drawn therefrom. But when the state of the evidence is such that fair-minded men in the exercise of reason and judgment could not have reached the conclusion that the person whom the jury by its verdict found to have been negligent in fact had been negligent, then the verdict will be set aside.

That in the instant case it is held, for reasons stated in the opinion, that there is no evidence from which the inference may reasonably be drawn that the defendant was negligent, and that the injuries sustained by plaintiff's intestate were caused by any breach of duty of the defendant; and that upon the record as a whole the defendant is entitled to judgment as a matter of law.

Appeal from the District Court of Ramsey County, Kneeshaw, J. Action for damages for death of plaintiff's intestate. There was a verdict for plaintiff. Defendant moved in the alternative for judgment notwithstanding the verdict or for a new trial. The court denied the motion for judgment, and ordered a new trial. Both parties appeal. Reversed and action ordered dismissed. Opinion of the Court by Christianson, J.