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The Plague of Judicial Opinions

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"THE PLAGUE OF JUDICIAL OPINIONS"

Our attention has been called to an article published under the above heading in the Spring 1935 issue of "Case and Comment" wherein Associate Judge Joseph N. Ulman, of the Supreme Bench of Baltimore City discusses and deplores the practice of writing and publishing lengthy opinions in all cases coming before the appellate courts of many states. The article is too lengthy to be set forth here, but we quote the following extract:

"It is well known that the common law is primarily a system of precedents; yet I am sure few laymen realize the extent to which that system has buried itself in a mass of printed pages that obscures thought, stifles initiative, and stultifies its practitioners.

"If all the judicial opinions written and printed in a single year in the United States were laid end to end they would reach from confusion to futility. Judicial Logorrhea has become a disease that will soon call for psychiatric treatment if the legal profession itself does not seek and find a cure for it. * * *

"If the constitution of your State compels you to file a written opinion in every case, see to it that the constitution is amended. That simple remedy ought not to be impossible of achievement. The American people really do believe in the mental and moral integrity of its judges and would accept decisions of its high courts even if they were not backed up by confused and confusing opinions."

Judge Ulman is not the first to observe and comment on this situation. In the President's address to the Association published in the December, 1931 Bar Briefs, we find that Mr. Fred J. Traynor, then President of the Association, discussed the subject in much the same terms. We quote:

"Our state constitution provides that when the supreme court makes a decision, 'every point fairly arising upon the record of the case shall be considered and decided, and the reasons therefor shall be concisely stated in writing.'

"While the supreme court has held such provision 'not to require a literal compliance therewith,' it is the practice to comply rather literally, almost slavishly, therewith. Such practice conforms to that in other states. The result is a great mass of judicial opinions in the United States, the cost of publication of which runs into great figures, and is borne by the legal profession. It is becoming an unbearable financial burden.

"Does it result in clarifying the law? Does it result in the enunciation of definite, unequivocal statement of basic principles of law upon which the profession and the public can rely with confidence for future guidance? I think not. On the contrary, the result is a hodge podge of conflicting, inconsistent pronouncements, made worse by learned attempts to draw nice legal distinctions which oftentimes do not exist; and the practitioner finds himself in a sea of uncertainty, utterly unable to harmonize the varying statements of law by the same court on an identical subject. Supreme courts, as a rule, are too crowded with this work to give to the merits the careful consideration to which they are entitled or to write carefully worded opinions.

"One law publishing company has sought to meet this problem by the selective case system. So long, however, as appellate courts pub-

lish written opinions in all cases, no selective system is effective. The remedy lies at the source. Curtail the output at the door of the court.

"What we need is an amendment eliminating from our constitutional provision, the words—'the reasons therefor shall be concisely stated in writing,'—and leaving to the court's discretion the cases in which to publish written opinions. This would result in publication, only in exceptional cases, of carefully prepared written opinions involving the pronouncement of fundamental rules of law.

"It would seem that the makers of our constitution had a fear that the court might be dishonest and that the written opinion was a necessary protection to the litigants and the public. Such fear is wholly unwarranted. Certainly the members of the supreme court in this state are of unimpeachable integrity. Their written opinions are sometimes criticized—the loser is never satisfied no matter what 'reasons' are given in the court's opinion—but their honesty or fairness of purpose is never questioned."

NORTH DAKOTA DECISIONS

Anderson v. Olson: The grantor in a warranty deed covenanted that he was the owner of the premises in fee simple and had good right to convey the same. It appeared that at that time there was outstanding an interest in the premises of which the said grantor was not the owner. HELD, That the covenant of seizen was broken at the time of the execution of the deed. However, the grantee had gone into and retained possession of the premises, was not evicted by the assertion of a superior title and did not suffer any actual loss, since he lost the premises through foreclosure of a mortgage executed by himself. HELD, That the grantee was not entitled to recover damages from the grantor who had warranted the title. Opinion by Burr, J.

State vs. Mabel Dinger: A witness upon the trial of a criminal case may, for the purpose of affecting his credibility, be cross examined concerning collateral matters which tend to disgrace, degrade or incriminate him, but questions must be so framed as to permit of categorical answers.

Objections to questions tending to disgrace, degrade or incriminate a witness are properly sustained when such questions are framed in a suggestive or inferential manner, and the trial court properly limited cross examination by sustaining objections to questions which were framed in a suggestive or inferential manner. Opinion by Morris, J.

State ex rel. Coan vs. Plaza Equity Elevator Company, et al.: In a case where there is no answer the relief granted to the plaintiff cannot exceed that which is demanded in the complaint; but in any other case the court may grant plaintiff "relief consistent with the case made by the complaint and embraced within the issue." (Sec. 7680 C. L. 1913).

A judgment rendered against the principal obligor on a grain warehouseman's bond, that was recovered for acts of commission or omission constituting a breach of the condition of the bond is *prima facie* evidence of plaintiff's right to recover against the surety and of the amount of such recovery. Opinion by Christianson, J.