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The Police View

North Dakota Law Review Associate Editors

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THE MINIMUM WAGE LAW

We are pleased to note that the Supreme Court of this State is to be given an opportunity to pass upon the constitutionality of our Minimum Wage Law, a case having been started in Cass county to recover for the difference between the wages paid and the wages set up under the law.

We trust it is not too presumptive, nor an invasion of the province of the Court, to suggest that the ten-year period since the Supreme Court of the United States rendered its decision (five to three) in the case of *Adkins vs. Children's Hospital*, 261 U. S. 525, 24 A. L. R. 1238, the dissenting voice of Justice Holmes has lost none of its original force, in fact, it has been given a new cadence and a new virility by the developments in the economic structure of the nation. We quote a part of what Justice Holmes said:

“ . . . the power of Congress seems absolutely free from doubt. The end, to remove conditions leading to ill health, immorality and the deterioration of the race, no one would deny to be within the scope of constitutional legislation. The means are means that have the approval of Congress, of many States and of those governments from which we have learned our greatest lessons. When so many intelligent persons, who have studied the matter more than any of us can, have thought that the means are effective and are worth the price it seems to me impossible to deny that the belief reasonably may be held by reasonable men.”

Whatever the decision of our Court in the matter, one thing is certain. It will eliminate as a basis for criticism of the North Dakota law the contention that it is not, and cannot be, enforced in all communities. An unfavorable decision will make it unnecessary to enforce it. A favorable decision will make it possible to enforce it.

THE POLICE VIEW

Mr. O. W. Wilson, Chief of Police of the City of Wichita, Kansas, quotes with approval the following from the pen of General Tiley L. Ford, whose particular designation or location is unknown to the Editor:

“It is an unpleasant thing to say, but it is true, and the bar knows it to be true, that however honest our trial judges may be, a majority of them, particularly in our most populous centers, are neither able nor fearless. Too many of our trial judges have reached the bench through skillfully conducted campaigns, with appeals to the popular local sentiment of the day, and in entire disregard of those sterling qualities and qualifications that go to make up the able and fearless judge. Most of the judges of whom we are now speaking made a rather poor fist of practicing law, and they look forward with dread to political defeat and a return to a reliance upon their own meager abilities. With the recall stalking beside them and election day looming ahead, these judges give their waking thoughts over largely to avoiding the one and successfully meeting the other. Their judicial labors become secondary and subordinate to their political activities. Such judges are more concerned with the effect their judicial conduct may have upon their political fortunes than they are with the expedition of criminal trials. I know

this sounds harsh, and I wish it were not true. But if we are to apply an efficacious remedy we must have a correct diagnosis based on facts."

Mr. Wilson then concludes, "that until we can find and adopt some practicable and effective method of securing able and fearless judges to preside over our trial courts, we shall continue to suffer from the inefficient administration of our criminal courts," and argues for the appointment of judges for life, from lists of recognized leaders of the bar, proposed by the bar association.

OUR NEED

"What we lawyers need is not another committee, or another survey. We have too many unexecuted plans. We need action—political and administrative—which may not be had by filing reports of bar associations with the legislature, or by passing resolutions. It is time to tell the legislatures, the local authorities, the chiefs of police, the district attorneys and the judges themselves, what must be done, and done promptly, if the people are to be safe in their homes and have justice in their courts."—Judge Thatcher of the Boston Bar.

To which may we be permitted to add, courage is not only a fine attribute and a commendable virtue but the very essential that so many people lack, or having, hide away. What's the use of letting those briny tears continually trickle into our beer? The stallers, the fence climbers, the politically-minded, 50-50, pacifists, who are "Johnnie" to everybody, never make progress. It may take courage to face duty in the consciousness of overhanging political and personal annihilation, but there must be courage, fearlessness, independence of speech and action, before there can be progress.

You are right, Judge Thatcher, we need action, and we should get it. Hope in that direction was enlivened in us during the past five or six weeks. During that time the Editor interviewed several thousand people—people in nearly all walks of life—and the only separate and distinct group that seemed a unit in courage, and never raised the specter of "I don't dare to for fear X will find out" was the lawyer group. We, therefore, decided to write a eulogy on the legal profession.

BUT—and we write it in capital letters—at that particular moment we were compelled to cast our eyes in another direction. There we saw this picture: Touhy, kidnaper and racketeer, convicted and on his way to an Illinois jail. The same issue of the newspaper that carried the story of that conviction, however, also gave prominent space to another bit of news. That news pointed the way of escape for Touhy, for it told us that the Illinois Supreme Court had declared illegal the jury session which found true bills in a number of cases, including that of Touhy—declared it illegal because the grand jury panel had included more than the required statutory twenty-three good men and true.

And so, with Lindbergh kidnapers undiscovered, Dillinger gunmen escaping by means of a show of force, and Touhy racketeers about to be released through the medium of technicalities, notwithstanding the fairness of the trial or the justice of the trial jury's verdict, we have been, and shall continue to be confronted with and confounded by the outbursts from an irate lay citizenry. There is, indeed, need for action.

Gentlemen of the North Dakota Bar, if you were to accomplish nothing else in this State during the next year or two, you would be remembered if you gave further evidence of that courage, for the