



1933

## North Dakota Decisions

North Dakota Law Review Associate Editors

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## COMPENSATION LIABILITIES

Defendant was a Tennessee corporation. One Tidwell was employed by it in Tennessee, but it was also agreed that he should serve in other states. Defendant shipped a tank, fabricated in Tennessee, to Ohio, where Tidwell and others were to erect it. Tidwell, who had accepted the provisions of the Tennessee act, was killed while so at work. The Tennessee act provides: "when an accident happens while the employe is elsewhere than in this State, which would entitle him or his dependents to compensation had it happened in this State, the employe or his dependents shall be entitled to compensation under this act if the contract of employment was made in this State, unless otherwise expressly provided by said contract. . . the rights and remedies herein granted to an employe subject to this act on account of personal injury or death by accident shall exclude other rights and remedies of such employe, his personal representative, dependents or next of kin, at common law or otherwise." The defendant had no place of business in Ohio, had not qualified to do business there, and carried no insurance in the Ohio Fund. After the injury, causing death, the widow filed her claim with the Ohio Commission, later filing claim in Tennessee. The Tennessee claim was dismissed on the ground that the widow had elected to make claim in Ohio. The Ohio act provides that where an uninsured employer fails to pay an award against him the amount shall be paid out of the Fund. Payment was so made, and then action started against the employer in Tennessee. Distinguishing this case from the case of *Bradford vs. Clapper*, 286 U. S. 145, Justice Brandeis says: "In the Clapper case it was held that the Vermont Workmen's Compensation Act was a defense to an action brought in New Hampshire under the New Hampshire Act to recover for the death in that State of a Vermont resident who had been employed by a Vermont Company, pursuant to a contract made in Vermont; because 'It clearly was the purpose of the Vermont Act to preclude any recovery by proceedings brought in another State for injuries received in the course of a Vermont employment.' As construed and applied by the highest court of Tennessee, the (Tennessee) statute does not preclude recovery under the law of another State. And the full faith and credit clause does not require that greater effect be given the Tennessee statute elsewhere than is given in the courts of that State." Judgment in favor of the Ohio Fund and against the employer was sustained.—*Ohio vs. Chattanooga Boiler & Tank Co.*, 53 Sup. Ct. Rep. 663.

## NORTH DAKOTA DECISIONS

*State ex rel Larkin vs. Wheat Growers*: Defendant warehouse company executed its bond "in the respective penal sums set forth herein as to each warehouse listed below" (36 being listed at \$5,000 each) for the faithful discharge of the duties of public warehousemen. Action was subsequently brought for a shortage at one of the warehouses listed against the surety, such surety contending that the assets of all the warehouses listed had to be marshalled under Chapter 156 of 1927 Laws; that Chapter 155 of 1927 Laws requires coverage of all elevators listed "as a whole"; that, when so marshalled, the total deficit under the bond was \$10,557.94, against which overages of \$7,790.88 should be charged; and that the statutory provision for one bond for any line of elevators is mandatory and exclusive. The bond, however, did not cover all of

the company's elevators, another group being covered by other sureties. HELD: The mandatory character of a statute is to be determined from its language, but construed in the light of the purpose and intent of the legislature. Even where mandatory language is used, it may be merely directory; and where "the statute does not, in express terms, require the thing to be done, and the act provided for is merely incidental or subsidiary to the chief purpose of the law, and not designed for the protection of third persons, and the statute does not declare the consequences of a failure to compliance, the statute will ordinarily be construed as directory and not fatal to rights granted." These bonds are given for the protection of holders of warehouse receipts. The Commission "is the holder of the receipt for the purpose of enforcing the storage contract and has all the rights and privileges of the party to whom the receipt was issued. Should a surplus develop in the trust fund in the end the right of the sureties thereto can be determined, after claims of receipt holders are satisfied.

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### ROSTER LOCAL ORGANIZATIONS

Accepting the responses to our last publication, some of which were in the nature of threats of damage suits, we again publish the list of local organizations. With a little further assistance, it should become complete and prevent the threatened drain upon our bank deficit.

First District—President, D. S. Ritchie, Valley City; Secretary, Leland J. Smith, Fargo.

Lake Region District—President, R. J. Roberts, Lakota; Secretary, O. M. Thorson, Lakota.

Third District—President, Charles Coventry, Linton; Secretary, Clarence G. Mead, Lisbon.

N. W. District—President, H. L. Halvorson, Minot; Secretary, C. E. Brace, Minot.

Capital District—President, N. J. Bothne, New Rockford; Secretary, Edgar P. Mattson, New Rockford.

S. W. District—President M. L. McBride, Dickinson; Secretary, M. S. Byrne, Bowman.

Burleigh County—President, A. H. Helgeson, Bismarck; Secretary, Geo. S. Register, Bismarck.

Cass County—President, George A. Soule, Fargo; Secretary, M. A. Hildreth, Fargo.

Grand Forks County—President, Tracy R. Bangs, Grand Forks; Secretary, T. A. Toner, Grand Forks.

Stark County—President, G. R. Brainard, Dickinson; Secretary, Theo. Kellogg, Dickinson.

Ward County—President, John H. Lewis, Minot; Secretary, H. E. Dickinson, Minot.

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### LAWLESSNESS

The Chief of Police of a large city is credited with the statement: "If I have to violate my oath of office or violate the Constitution, I'll violate the Constitution."