



1931

Think This Through

North Dakota Law Review

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11. It disapproved an amendment to reduce the attorney's license fee to \$6.00 per year.

12. It recommended modification of the Jury System by making trials involving less than \$200 in District Court and less than \$50 in County Court triable to the Court unless a jury is demanded, but disapproved the proposal to charge the jury fees against the litigants.

13. It disapproved a recommendation to allow examination of jurors by the Court as in Federal practice.

14. It approved the recommendation to permit waiver of jury trial in criminal cases.

15. It approved changes in the Fee Schedule as follows: Collection charges to be 15% for the first \$500, 10% for the next \$500, and 5% on the amount over \$1,000; adopted the Lake Region District Schedule of \$1.00 deposit with every collection item, and 50c for reports, printed circulars bearing the signature of the Association to be distributed to attorneys.

16. It approved the recommendations of the Committee on Unauthorized Practice, enlarged the scope of the Committee to include the making of agreements with responsible organizations and associations, and authorized the appointment of a prosecuting committee to start prosecutions where negotiations fail. In furtherance of this recommendation, it approved an amendment to the Bar Board Act to make the license fees available for such prosecutions, and also approved an assessment of \$2.00 per member for the same purpose. (As Article 2 of the By-Laws provides that no assessment shall be for more than \$1.00, the additional \$1.00 will have to be in the nature of a voluntary contribution.)

Officers elected for the ensuing year were: W. H. Hutchinson, LaMoire, President; J. P. Cain, Dickinson, Vice President; R. E. Wenzel, Bismarck, Secretary. These officers, with the District Presidents, constitute the Executive Committee.

The attendance record for the past seven years is as follows:

Year	City	Lawyers	Ladies
1926	Bismarck	171
1927	Grand Forks	125	16
1928	Minot	118	39
1929	Valley City	114	22
1930	Devils Lake	90	34
1931	Jamestown	129	38
1932	Fargo	227	93

The larger cities of the state had the following registrations for this year: Fargo 61, Grand Forks 27, Bismarck 22, Valley City 9, Jamestown 8, Devils Lake 5, Minot 5, Moorhead (Minn.) 4.

THINK THIS THROUGH

The development of workmen's compensation legislation has brought to light some erroneous theories concerning it. Certain damage-law principles, theories of proximate cause, independent cause, foreseeable cause, unforeseeable cause, intervening cause, no other known cause, stationary existing condition, while elaborately logical in their applicability to cases in which negligence is the basis of the right, lose most of their applicability when we deal with cases of injury in the course of employment with the mere fact of injury as the basis of the right.

The original purpose and intent of compensation legislation was two-fold: 1. To reduce the number of industrial accidents; 2. To protect the workman or his dependents financially in case he was injured.

The first purpose has never been accomplished; in fact, the number of industrial accidents has increased by leaps and bounds with the application of the compensatory theory. The second purpose has been accomplished, and with such extraordinary, all-inclusive effect that there is grave danger that economic need and social welfare will replace accident insurance as the guiding medium, and eventually kill off these beneficial laws or bring reductions in benefit schedules to the extent of making the laws absurdities.

A workman is suffering from brain tumors. They have destroyed his vision to the extent of 50% in one eye and 16% in the other. He has an accident in the course of employment—a blow so light that it leaves no mark, abrasion or discoloration—but it lights up the action of the tumors, and he loses all sight in the course of a few months. "The immediate result of the active force is the proximate result" is the legal theory in damage cases, and correctly stated. The employer didn't strike the blow, the employment wasn't responsible for the presence of the tumors, but the judgment held industry responsible for the full result, permanent total disability.

A big, overgrown boy, carries his overweight for a number of years, then engages in one act of lifting, for wages, with other men. Then and there he discovers that he has flat-foot. Tests show that it is second-degree flat-foot, which, experts claim, does not constitute a disabling condition. The lifting is construed to be the proximate cause, and judgment is entered for a permanent disability amounting to 90%.

Two workmen, mentally normal and generally careful and reliable, are warned about certain dangerous conditions of the employment. The first is told that he must not go into a certain mine room. He disobeys instructions, is killed, and the family is awarded compensation. The second is told that he must not oil the machinery while it is in motion. One day he is late in getting started. To avoid further delay, he takes the chance, disobeys, and is maimed for life. Compensation protects him for his negligent act.

The point to be remembered is this: That, in ninety-nine out of a hundred compensation cases, the employer is NOT a wrong-doer, and the whole theory of workmen's compensation is payment for the result of accidents regardless of fault. Hence, the rules laid down for the law of torts have no application, and much more definiteness of proof must be required of claimants to show that the proximate cause of a claimed disability was an accident in the course of the employment. Chronic arthritis is the proximate cause of pain in most cases of strain or lifting. The incidents of straining or lifting are, usually, the means of discovering the presence of the arthritis. To hold the employer and his insurance carrier responsible by saying "the immediate result of the active force is the proximate result" will burden industry with such a host of permanent disability cases that it can not hope to meet the financial requirements.

ASSESSMENT NOTICE

The Association ordered an assessment of \$2.00 per member. You will aid by remitting without personal notice. The By-Laws limit assessments to \$1.00, hence the additional \$1.00 must be voluntary contribution.