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Review of Decisions

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higher schedule in regard to any of the persons whom I have last named, without at the same time increasing the schedules by like amounts to every person covered by the policy.

"No man should be allowed to use the public highway and provide high protection for himself and his friends, or for himself alone, unless he is willing to provide the same degree of protection for strangers who may be injured by his automobile. Furthermore, he should not be allowed to take his automobile on the highway unless he furnishes a minimum protection for every one whom it may injure except, perhaps, himself."

Under Mr. Bird's proposal all automobiles with foreign license plates would be subject to the law of his state, New Jersey.

REVIEW OF DECISIONS

Pearce vs. Hanlon et als: Plaintiff, a messenger, using motorcycle side car, while in performance of regular duties, was struck by truck of defendants, while such truck was passing another car on the street. The evidence was rather conflicting, hence, the most important part of the final decision deals with the examination of witnesses by the trial Court. HELD: The practice of trial Judges in asking questions "fairly calculated to elicit the facts and to make the testimony more definite" is not to be condemned, following *State vs. Hazlett,* 14 *N. D.* 490,105 *N. W.* 617.

Baird, Receiver vs. Keitzman et als: Note given by K. to M. Bank was transferred to B. Bank, which became insolvent. Defense was that note was without consideration, given to M. Bank as a temporary replacement and held as security while other notes were being collected, collection to be made by one of the defendants. The offer of proof was rejected, and judgment entered. HELD: Sufficient consideration is shown in the detriment suffered by M. Bank in the release of notes for collection. The Court quotes 5 *Wigmore on Evidence,* 2445, "An extrinsic agreement not to transfer an instrument payable 'to order' cannot be effective; for the term 'to order' imports negotiability, and there is no purpose which the term could serve if that element were discarded." Re the contention that this was a conditional delivery: If a delivery is a conditional delivery at all when it is to become effectual upon successful efforts to collect the amount from others, "such a condition cannot be shown for the same reason that no other agreement not embraced in the writing and qualifying that which is embraced therein can be shown. Obviously, if it were possible for one party to a contract, delivered for the purpose of taking effect, to establish an agreement outside the writing that upon the happening of a contingency the written terms of an obligation, absolute in form, were to be of no effect, the so-called parol evidence rule would lose much of its value. There is as much reason why such a condition subsequent, to be effective, should be contained in the writing as there is for requiring to be incorporated therein agreements or understandings qualifying the written obligations in other respects."

SUPREME COURT WRITES "FINIS" IN HANSON CASE

The most controversial embranglement ever to exercise a disturbing influence over the North Dakota Workmen's Compensation Bureau has been disposed of for the second time by the Supreme Court, and, every one ever connected with it hopes, "finally".

The claim was originally filed about ten years ago, and disallowed. The time for appeal was permitted to expire. Then an application for review was made, followed by several investigations and a denial of reopening. An appeal from an alleged order denying reopening brought a demurrer, which was sustained in 56 N. D. 525, 218 N. W. 215. This second appeal was from an order of the Bureau entered July 20, 1929.

During the years that have elapsed since the original injury nine commissioners of the Bureau have had an opportunity to pass judgment on the matter at various times: They were: McDonald, Hagen and Wehe; McDonald, Kitchen, Olsness, Spencer and Elliott; McDonald, Kitchen, Olsness, Elliott and Livdahl; McDonald, Kitchen, Olsness, Livdahl and Wenzel; McDonald, Kitchen, Olsness, Wenzel and Kiley.

Commissioner Wenzel was the only one of these nine who ever voted in favor of an award, but he did not participate in the case until the Supreme Court had disposed of the first appeal. During the years 1927 and 1928 discussions at Board meetings became rather acrimonious concerning this case, Commissioner Wenzel, at one time, charging careless investigation, misstatement of facts, suppression of evidence and changing of official records, his memorandum notations being later "expunged" by vote of the Board. A re-investigation was finally ordered.

L. J. Siljan, who preceded J. E. Kiley on the Board, was a member when the re-investigation was untertaken in 1928, but official action was held up until after his resignation from the Board, hence, he did not appear on the official "vote record."

The appeal just "determined" by the Supreme Court involved several interesting questions of law. First, Whether a second appeal would lie under the provisions of Section 17 (396a17) of the Act (the regular appeal provision); and, Secondly, Whether, upon the exercise of the powers granted by Section 18 (396a18) of the Act (the continuing jurisdiction provision), an appeal would lie.

The Supreme Court appears to have held as many opinions as there were Judges, but was evidently convinced in one particular, namely: that the merits of the case entitled the claimant to an award of some kind in the first instance. How to support such judgment, without violating every principle of interpretation, seems to have been the difficulty during the period of Judicial conferring on the case, and finally resulted in the entry of a per curiam opinion that offers nothing in the way of precedent, but affirms the guess of Commissioner Wenzel and the District Court in favor of an award.

The syllabus says: "An appeal lies from final action of the Workmen's Compensation Bureau denying a claim on the grounds stated in Section 396a17 of the Workmen's Compensation Law. It is held, for reasons stated in the opinion, that the passage of a motion denying a claim on the grounds stated constituted final action within such section."

COMMENDATION FOR A CHANGE

The editorial page of the Fargo Forum of December 21st, 1930, carried the following item:

"Officials, in the handling of this case (Bannon-Haven) are to be congratulated upon the fact that they stayed by it until they got the true facts, and the attorney for Bannon, Mr. A. J. Knox, of Williston,