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Commendation for a Change

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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 undertaken 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,

for the splendid service that he rendered the cause of justice, is entitled to the commendation of all. So many times the legal fraternity is unjustly accused of seeking to defend the known guilty that the case of Mr. Knox stands forth in bold relief as an instance of real service, an instance of loyalty to his oath that redounds to the credit not of himself alone, but to the law profession as a whole."

May we be pardoned for directing attention to two phrases in this editorial, to-wit: "So many times the legal fraternity is unjustly accused" and "the case . . . stands forth in bold relief as an instance of real service"; and to suggest, not too boisterously, and with due respect, that it is primarily because the legal fraternity is so frequently unjustly accused that a case like this stands out in bold relief to those accustomed to accuse.

The legal fraternity does not claim to possess the sum total of human virtues, but it has always been convinced that its component human parts possessed a very reasonable proportion of those virtues, and could never understand why Mr. Average Citizen should speak in derogatory terms of the fraternity because, occasionally, individuals were found who did not measure up to the general standard. The explanation may lie in the fact that the very nature of the service rendered by attorneys continually places them in the limelight, which makes the single flaw conspicuous against a background of innumerable good deeds.

BAR BOARD REFERENDUM

The Bar Association has just completed the most successful referendum in its history. Seventy-seven per cent of the lawyers of the state exercised the privilege of balloting for names to be presented to the Supreme Court in recommendation of appointment to the Bar Board. In view of past records, this is a most satisfactory showing, but one wonders why all of the lawyers of the state did not mark and return the ballots.

An incidental record made on this referendum is not so complimentary, either. Some thirty of the ballots returned, over 6 per cent, were defective. Notwithstanding the fact that the official ballot contained the notation: "Vote for three names only", the stated number voted for four or more names on the ballot.

The canvassing committee appointed by President Traynor consisted of the following: F. E. McCurdy, Katherine Morris and L. J. Wehe, all of Bismarck. They reported the recorded vote to be:

DePuy, H. C., Grafton	164
Murphy, C. J., Grand Forks	254
Palda, L. J., Jr., Minot	188
Sinness, Torger, Devils Lake	203
Weeks, J. J., Bottineau	119
Wyckoff, F. F., Stanley	117
Knauf, John, Jamestown	196

The recommendations that went to the Supreme Court, on the basis of this referendum ballot, therefore, were: C. J. Murphy, Grand Forks; Torger Sinness, Devils Lake; John Knauf, Jamestown. The Supreme Court announced the appointment of Mr. Murphy on January 10th.