North Dakota Law Review

Volume 6 | Number 9 Article 7

1929

Report of Committee on Jurisprudence and Law Reform

John O. Hanchett

regarding the process of legislation, the subjects demanding attention and the currents of public opinion suggesting the same.

Respectfully submitted,
A. G. BURR, Chairman,
E. J. TAYLOR,
W. H. STUTSMAN.

REPORT OF COMMITTEE ON JURISPRUDENCE AND LAW REFORM.

The fundamental principles of jurisprudence are practically the same now as in the days of Justinian. Yet law reform has been an important subject for discussion both by the profession and the people during the intervening years.

At times there has been a great popular clamor for a reform of some branch or phase of our law. Yet on the whole the important reforms in our jurisprudence have originated with our legal profession and have been sponsored and carried through by it.

It is true that on occasion it has taken a Shakespeare or a Dickens to lampoon the Bench and the Bar in order that needed reforms might be made and I think we will have to admit that two of the greatest reforms in recent years have originated and been carried through by the people without much assistance from our profession. I refer to the Child Labor Laws and the Workmen's Compensation Acts of the various states.

Still the general rule holds good that it is up to our profession to take note of changing conditions calling for new laws or changes in the old to properly meet such conditions.

In order to get some idea as to what should be covered by the report of this committee I read over the reports made by this committee at the Grand Forks meeting in 1927 by G. F. Dullum, Chairman, at the Minot meeting in 1928 by Judge Bagley, Chairman, and at the Valley City meeting in 1929 by Judge Wartner, Chairman.

There were many good recommendations in those reports and some of them have already borne fruit.

The question of what crimes involve moral turpitude within the meaning of our habitual criminal act touched upon by Mr. Dullum in his 1927 report has been clarified to some extent by a recent decision of our Supreme Court holding that a violation of our intoxicating liquor laws is such a crime, thereby making it possible for an offender under those laws to get a "life for a pint."

The question of the finality of administrative decisions by our various boards and bureaus stressed by Mr. Dullum in his 1927 report, and taken up again by Judge Bagley in his 1928 report, continues to remain as it did without legislative action.

As I recall several laws have been introduced in our legislative assembly purporting to give the courts full power of review both upon questions of law and of fact on appeal from decisions of these administrative boards but so far they have failed of passage. The prevailing opinion of our legislative assembly so far has been that such a law would increase the business of the courts to an alarming extent and would be unwise and that as long as these boards keep within the limits

of their jurisdiction that their decisions should not be reviewed or disturbed by the courts except in accordance with existing law.

An appeal to the District Court has always been allowed both upon questions of law and fact under the Workmen's Compensation Act from the final decision of the Bureau, but as our Supreme Court has forcibly pointed out in one case, "an appeal can only be taken by the claimant when he is denied entirely the right to participate at all in the fund." If the Bureau allows him one dollar compensation for a claimed serious injury he has no right of appeal.

I refer to the case of Crandall vs. North Dakota Workmen's Compensation Bureau, 207 N. W. 551, decided by our Supreme Court in 1925. In that case the claimant, a deputy sheriff of Richland County, made a claim for a permanent injury. The Bureau denied his claim for permanent injury but did allow an item of $4.50 for medical expenses. The claimant appealed to the District Court where he recovered a judgment for $6,934.72 to be paid at the rate of $16.67 per week. On appeal to the Supreme Court by the Bureau our Supreme Court held that the decision of the Bureau having allowed the claimant to participate in the fund to the extent of $4.50 to cover medical expenses, he had no right of appeal and dismissed the action leaving the claimant without further recourse.

No criticism can be made of the decision of our Supreme Court as the language of the statute governing an appeal from the Bureau was very clear and as Judge Christianson pointed out in his opinion in that case the right of appeal is granted only when the final action of the board denies the right of the claimant to participate at all in the fund. Our Supreme Court simply followed the plain language of the statute in that case.

It is apparent that the Workmen's Compensation Bureau, if it should choose to do so, could defeat any just claim for a permanent injury by allowing the claimant a nominal sum for medical expenses or otherwise and the claimant would have no right of appeal and no redress.

As I have stated before, this decision was rendered in 1925. There have been two sessions of our legislative assembly since that time and at each session some amendments to our Workmen's Compensation law have been introduced and passed, but I find no amendment to this provision of our statute regulating appeals and it would seem to me that it was high time that some action be taken by this association upon the subject. As a part of this report your committee recommends that the Legislative Committee prepare and present to the next legislative assembly an appropriate amendment allowing a claimant in all cases who feels aggrieved by the decision of the Bureau either upon a denial of his claim or upon the matter of the amount allowed to him by its final decision, should have a right of appeal to the District Court.

Mr. Wartner in his 1929 report stressed the urgent need of a new revision of our code resulting in the appointment of a special committee whose report will be submitted at this meeting, and will no doubt receive appropriate action by this association at the proper time.

One of the most important questions which should have attention without further delay is a code of laws of this state with reference to aeronautics, or the navigation of the air. Many of the eastern states

have such statutes at this time but so far as I have been able to find, we have no statutes in this state upon the subject.

It has also been the subject of legislation by Congress for a number of years insofar as same relates to the matter of interstate and foreign commerce finally culminating in the Air Commerce Act of 1926.

These various acts do not attempt to establish air commerce either interstate or intrastate but recognize the fact that such a thing exists and that there should be proper regulations concerning the same both by the Congress of the United States under its power to regulate interstate and foreign commerce and by the legislatures of the various states under the police power of the state.

In the July number of our American Bar Association Journal there is an interesting article on the matter of transportation by air written by William M. Allen of the Seattle Bar in which he discusses principally that phase of the matter relating to accidents and injuries to pilots and passengers on the aircraft or to people upon the surface who may be injured by a falling plane and considers the question of whether the doctrine of *res ipsa loquitur* should or should not apply. I trust many of the members of this Association have read the article.

It can readily be seen that many legal questions may arise and undoubtedly will arise in this state as well as in other states within the next few years concerning this important subject of the navigation of the air and that we should have statutory provisions regulative of this new method of transportation.

What right does an aviator have to fly over his neighbor's farm? Is he a trespasser if he does so without the consent of the owner of the land? Is the noise created by the propeller of his machine a nuisance subject to be suppressed or enjoined by the courts upon the complaint of adjoining residents?

Some of us, when we went to the law school and studied our Blackstones, were taught that the ownership of land covered not only the surface but extended to the center of the earth and to the "top of the sky." And that the doctrine of ancient rights, recognized in England at one time, was never recognized in the United States, and that the right to look across another's land could not be acquired by prescription.

Can the right to fly across it without the consent of the owner of the land be acquired by prescription or by the statutes of the state or of the United States?

The recent case of Smith vs. New England Aircraft Company, 170 N. E. 387, decided by the Supreme Court of Massachusetts on March 4, 1930, is most interesting and illustrative upon this subject and any person at all interested should get and read the decision in that case.

It was an action brought by the owner of a country estate to obtain an injunction against various parties and corporations owning and operating an air field adjoining plaintiff's property from continuing to fly aircraft over the land and buildings of the plaintiff. The Supreme Court of Massachusetts states the plaintiff's contention as follows:

> "The plaintiffs assert that the defendants have no right to fly their aircraft through the air space above their premises, or any part thereof, at any height and especially to fly at low altitude;" and, again, as follows: "The plaintiffs rest mainly

on this proposition: 'The air space which is now used, or which in the future may be used, in the development of the underlying land is the private property of the land owner to which he is entitled to the exclusive use and control'."

In that case it appeared from the evidence that planes taking off and landing from the defendant's air field passed over plaintiff's property between the heights of 100 and 1000 feet and it was claimed by the plaintiff that this was a trespass and also a nuisance and should be enjoyed by a court of equity upon those grounds.

The court, however, held that the regulation by the Secretary of Commerce under the United States Air Commerce Act of 1926 and the provision of the statute of the State of Massachusetts fixing 500 feet as a minimum altitude of flight by aircraft and allowing a free flight above that altitude to be a proper regulation both by Congress under the interstate commerce clause and by the state legislature of Massachusetts under the police power, and that such acts were not unconstitutional as depriving the owner of the land, of his property without due process of law either under the federal or state constitution.

The court further held that the flight of airplanes at lower altitude in order to reach or take off from the airport necessitating flight over the land of an adjoining property owner at altitudes of less than 500 feet and as low as 100 feet was a trespass upon the premises of the owner of such adjoining land but under the evidence in the case held not to be such a trespass as to warrant injunctional relief.

In view of the fact that there will be no further meeting of this Association until after the next session of our Legislature, your Committee recommends that this subject be given due consideration by our Legislative Committee before the convening of the legislative session next winter, and that after such study and investigation as they may deem proper, that such Committee prepare a North Dakota Air Commerce Act and submit same to the Executive Committee of this Association; and that in case same shall be approved by the Executive Committee, that such proposed Act be submitted to the next legislative assembly for passage.

Respectfully submitted,

JOHN O. HANCHETT, Chairman.

BAR ASSOCIATION APPOINTMENTS

The annual meeting of the Association will have for its consideration the following matters of appointment:

First, Selection of three members of the Bar for recommendation to the Supreme Court as candidates for appointment to the Bar Board, the term of John Knauf, of Jamestown, expiring in January, 1931.

Secondly, Selection of five members of the Bar to represent the Association on the Judicial Council, the terms of all present members expiring in January, 1931.

The Executive Committee desires to direct attention to the fact that no provision is made in the Association's Constitution or By-Laws for the method of selecting those to be presented to the consideration of the Supreme Court for the Bar Board appointment. Several methods have been employed in the past. One was the general referendum