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Workmen's Compensation

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FEDERAL OVERSIGHT AGAIN

Clarence N. Goodwin, former Justice of the Illinois Appellate Court, makes a plea for a National Judicial Commission, and, after following the various efforts of state organizations during the past few years, we are inclined to his point of view. We quote part of what he has said on the subject:

"For generations legislative commissions, bar association committees, various societies, law school professors, practitioners and judges have been turning out reports, papers and suggestions on one or more phases of judicial administration with remarkable dispatch and no little volume. I would not for a moment belittle what has been done. Some of it, of course, has been hasty and superficial, almost casual, but at the same time there are to be found papers and reports which show profound study and earnest consideration of the subject in hand. When, however, one attempts to get to the bottom of the subject, and to draw definite conclusions, he finds himself confronted with an almost boundless mass of material nearly as hard to digest as the annual output of judicial decisions. It was this situation that finally led me to believe that there ought to be some sort of clearing house where all this material could be systematically investigated and appraised, and an institution to which new suggestions could be addressed, and which, in short, would ardently devote itself to the task of finding out how our judicial institutions may be made adequate to our needs. It seemed to me also desirable that such a body should have an official character and be so constituted that its conclusions would carry the weight of great authority.

"Can it be reasonably doubted that a National Judicial Commission, created by Act of Congress, supplied with the necessary means and properly constituted, would be immensely helpful in the attainment of judicial efficiency?

"While it would, of course, analyze and digest the helpful suggestions that have already been made, it would, in addition, it may be hoped, present new suggestions of a very constructive value. We have pretty generally come to realize that new conditions sometimes require a modification of former legal concepts and probably the creation of some that are new. Such a National Judicial Commission ought not like those of Justinian merely to devote itself to the codification of an old and sterile jurisprudence, but rather, by its suggestions, to increase and expand the power of a living law. There seems to be no possible question as to the constitutional power of Congress to create such a commission for the purpose of investigating the administration of justice in both state and federal courts.

"These courts taken together constitute the means by which the judicial work of the nation is performed and in consequence the national government has a direct interest in promoting the efficiency of both systems. So far as the state courts are concerned each state must, of course, act for itself, but there is no reason why we should not consider and investigate the judicial problem as a nation."

WORKMEN'S COMPENSATION

The New York Compensation Act provides that whenever there are no persons entitled to compensation under the act for any injury resulting in death the employer, or his insurance carrier, shall pay the sum of \$500 each into two special funds—one for injured persons requiring rehabilitation and one for workmen incurring permanent total

disability after permanent partial disability. A workman was killed in the course of employment through the negligence of a third party (R. R. Co.). The dependents of the deceased sued the third party, recovering more than could have been recovered under the compensation act. The employer's insurer paid the two \$500 awards into the special funds, and then brought suit against the third party for these amounts. HELD: That the insurer was entitled to recover from the party causing the death. "It can not be said that in providing for the recovery of the loss sustained by the dependents or next of kin of a deceased, the State has exhausted its authority to provide redress for the wrong. The State may permit the recovery of punitive damages in an action by the representatives of the deceased in order to strike effectively at the evil to be prevented. . . The State might, also, if it saw fit, provide for a recovery by the employer for the loss sustained by him by reason of the wrongful act. The wrong may also be regarded as one against the State itself, in depriving the State of the benefit of the life of one owing it allegiance. For this wrong the State might impose a penalty. . . And it is well settled that the mode in which penalties shall be enforced, and the disposition of the amounts collected are matters of legislative discretion."

NORTH DAKOTA DECISIONS

McDonnell vs. Monteith: Plaintiff sustained a comminuted fracture of the radius, with bruises, lacerations, and burns from friction between a pulley and belt. He consulted defendant, a practicing physician. The latter took no X-ray, applied splints, treated the wounds, and gave directions for care. Testimony is in conflict as to whether plaintiff obeyed doctor's instructions. About three months later continuance of pain caused plaintiff to have X-rays taken, which disclosed non-union, and conditions requiring open operation. This was performed by another doctor, the final result being a crooked and stiff arm. Verdict for plaintiff, followed by entry of judgment notwithstanding. HELD: New trial granted. The causes for the final result are mere matters of conjecture, and verdict can not be sustained. While a physician is not an insurer of a correct diagnosis or correct treatment, the exercise of a reasonable degree of care and skill is required, particularly after the discovery of unusual conditions and symptoms. Failure to conform to all reasonable directions of the attending physician, or conduct contributing to the final result, nullify right of recovery. Sufficiency of defendant's subsequent care presented a question for the jury, likewise the contributory negligence of the plaintiff. A verdict must be based upon proof that is reasonably certain and definite. The calling of a physician by plaintiff waives the provisions of Section 7923, C. L. 1913.

THE PRACTICE OF LAW

Paul P. Ashley, of the Seattle Bar, has a fine article in the September issue of the American Bar Association Journal, on the "Unauthorized Practice of Law." In this he points out the inadequacy of many enactments that seek to define the practice of law, because "they are not limited so as to include only those acts and functions which are exclusively legal."