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North Dakota Decisions

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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."