North Dakota Law Review

Volume 6 | Number 10 Article 7

1929

The Practice of Law

North Dakota Law Review

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."

"It cannot be denied," he says, "that many acts and functions proper to the lawyer's office—and for the doing of which he is especially trained—are also proper to other offices. We cannot successfully demand that the realtor refuse to answer every question involving legal knowledge; that the insurance expert refrain from explaining the legal significance of an insurance trust. The accountant will continue to prepare tax returns, and explain the law to his client. Corporations and natural persons not legally trained are doing, and apparently will continue to do, many things properly done in a law office. It would be tilting at a mill to seek to make exclusively ours those functions which though properly ours are enjoyed by us as tenants in common with others. Yet it seems that this overlapping of legitimate fields of endeavor is often ignored. Lawyers search for protective barriers without realizing that they may be attempting to inclose common ground. Definitions actually used in efforts to stifle the unauthorized practice of law show this tendency. . . And so we need a general acceptance of a new type of definition. We need a delineation of the field which is exclusively legal; a definition which excludes the activities of bankers, realtors, tax advisers, insurance experts, accountants, investment counsel, ad infinitum. We need a definition comprehending all matters which should be ours exclusively, yet not including activities which are ours—competitively. More important, the public needs such a delineation for its guidance and protection. . . Legislatures, which have balked at omnibus definitions, might enact a more restrained definition—and give teeth for its enforcement."

AIR LAW JOURNAL

We are in receipt of Volume 1 Number 1 of The Journal of Air Law, which appears to be the joint effort of Northwestern University School of Law, University of Southern California School of Law, Washington University (St. Louis) School of Law, and The Air Law Institute.

The more interesting articles in the first number are: Germany and the Aerial Navigation Convention at Paris, Carriage of Passengers by Air, Public Utility Air Rights, and The Certificate of Convenience and Necessity Applied to Air.

Editorially, Professor Wigmore, of Northwestern, points out that the publication is intended to supply a central organ, a clearing-house for exchange of experiences, in the hope that the era of settled air law may be brought about more speedily, and without the fumbling which accompanied the definition of legal rights in other fields.

NEGLIGENCE OF STATE EMPLOYEES

We quote the following from the July issue of the Los Angeles Bar Association Bulletin: "In Heron vs. Riley, 79 Cal. Dec. 487, decided May 31, 1930, the Supreme Court passed upon the constitutionality of the new Section 1714½ of the Civil Code, which provides that the State, and Counties, cities, and other political subdivisions, shall be responsible for the negligence of their officers, agents, or employees in the operation of motor vehicles. The Supreme Court upheld the constitutionality of this section, thus making it proper for the State to be sued in such cases."