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Compulsory Auto Insurance

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sideration of all the circumstances connected with the transaction. . . . While the transaction involved in this case was a business transaction, so far as the defendant was concerned it was largely colored by sentiment. On the other hand, the plaintiff was experienced in business. . . . So it cannot be said that the parties were dealing wholly at arms lengths, each on an equality in a business way with the other."

COMPULSORY AUTO INSURANCE

The November issue of the American Bar Association Journal carries two very important discussions of the question raised by the proposals to require compulsory insurance against motor vehicle accidents. The first, by Fred M. Wilcox, of the Industrial Commission of Wisconsin, will be found on page 753 of the Journal. In it Mr. Wilcox argues very forcefully in favor of compensation insurance, regardless of fault. The second, by Austin J. Lilly, General Counsel of the Maryland Casualty Co., will be found on page 756. In it Mr. Lilly argues, with equal effectiveness that the enactment of such a proposal would be an economic and social error, a step backward rather than a step in advance. It will be recalled that the 1930 annual meeting of the Association went on record in favor of a licensing system and opposed to compulsory insurance.

We quote Mr. Wilcox: "It goes without saying that the owner of every motor vehicle included in the state system should be required to insure his risk, subject perhaps to the right of exemption to those who establish their financial ability to discharge all obligations under the law, the same as now obtains under workmen's compensation in a majority of the states. License of the vehicle to use the streets and highways should not issue until proof of insurance coverage is made. And such policy should by law be declared to be non-cancellable and non-revocable except upon adequate notice to public authority. A good live experience rating system of debits and credits should be adopted as an adjunct to the insurance plan, and perhaps a schedule rating system to encourage use of non-shatterable glass, good brake and light equipment. Process by which licenses may be revoked, cars impounded, and other restraining influences secured should be made easily available to administrative authority to protect the public and the insurer against those who abuse their privilege in the streets. Anyone who has had experience in the administration of workmen's compensation will sense many other obstacles to be met in applying such a plan to the adjustment of liability for the road and street injury. The wage basis, the child who has not yet arrived at earning age, the elderly person already past productive earning years, the pedestrian and other street users and many other problems will appear to trouble the development of a workable plan. Difficult as will be the meeting of these and other obstacles they are not insurmountable. They will be solved by intensive, interested, far-seeing consideration."

Mr. Lilly replies: "In complete contrast (to workmen's compensation systems) is the situation which exists under the compensation plan when it is applied to motor vehicle injuries. There is no privity of contract between the parties to a motor vehicle compensation case. There is no fixed and established relationship between them, as there is in industry. The controversy is not between different classes, definitely established, but in large part between members of the same class: motorists are also pedestrians, and pedestrians motor-

ists. The workman never injures the employer. If he does, compensation does not govern. Whereas the motorist is in the position of being a putative victim as well as a putative offender. The accident does not, like so many of the industrial accidents, arise out of a general inherent and unavoidable condition. On the contrary, it in the last analysis usually arises out of a temporary condition which is created by one or both of the parties to it. Unlike the average industrial accident, the element of personal blame, fault or negligence is generally a factor. Further, a motorist becomes liable to compensate for injuries caused by the fault of others (the claimants), over whom he has never even the shadow of control. No distribution of costs can be made except as between individual motorists, for there is nothing analogous to industry by which cost, as such, can be ratably absorbed. . . . The wage-earning employee who loses 40 per cent of his wages during disability is interested in returning to work as promptly as possible. The wage-earning victim of a motor vehicle accident may be in the same class. But there are hundreds of thousands (approximately 50% or more) of motor vehicle victims who are not wage-earners or who are self-employed, with no automatic check upon their earnings. Such conditions will inevitably result in malingering, exaggeration of disability, exaggeration of dependency and kindred evils, with consequent increase in controversy, in cost of investigation and litigation and in the cost represented by excess payments of compensation benefits."

SOME UNRELATED THOUGHTS

"So long as lawyers persist in an attitude of juristic pessimism—so long as they decry the doing of things by laymen and do nothing themselves—we must expect the public to strike out blindly in the endeavor to do the best they may, when bad situations arise and are suffered to continue."—ROSCOE POUND.

"A poor judge is perhaps the most wasteful indulgence of the community. You can refuse to patronize a merchant who does not carry a good stock but you have no recourse if you are haled before a judge whose mental or moral goods are inferior. Good intention is no substitute for adequate knowledge."—CHARES EVANS HUGHES.

"Judicial business needs an annual stock-taking just as much as any financial or mercantile business. Many of the projects for remedial legislation would disappear if actual, comprehensive facts could be known. Continental countries have had judicial statistics for nearly half a century. They are a prerequisite to sane progress in the administration of justice in this country."—MASS. BAR ASS'N. COMMITTEE ON LEGISLATION.

"The United Mine Workers have so created their organization that if some member should advance a worth while idea for the benefit of the Union on Saturday night in some little mining hamlet, on Monday morning that idea would be in type at the national headquarters of the Union and during the following week would be disseminated to every branch throughout the United States. That is effective organization."—HARRY S. KNIGHT, General Council A. B. A., Pennsylvania.

"Lawyers and judges of this generation have been kept so busy seeking to ascertain the laws transmitted to us by former generations—laws that have grown out of conditions, customs and traditions of former generations, that we have not had time to study and determine