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A Complaint - A Statement - An Exhortation

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one eye. The blow was not sufficient to cause an abrasion or a discoloration. Expert surgeons found that the tumor had existed for some time, that it was not caused by the blow, but that the activity of the tumor was accelerated by the blow, thus hastening the process which the tumor had started, and which would, in all probability, have produced the same final result, without an injury. The judgment was for total loss of sight of both eyes.

The course of the decisions in these "acceleration of pre-existing disease" cases, which run back to times prior to compensation laws, has been in opposite directions. One line has denied liability. The other has allowed for full liability. From the standpoint of legal theory, either line of decisions may be justified.

From the standpoint of economic justice, both lines of decisions might be questioned. The one which denies compensation (or damages) to the injured person appears to be unfair to the workman. The one which grants full compensation appears to be unfair to industry. In this case, for example, industry did not produce or have anything to do with the origin of the tumor. The partial blindness existed at the time of the injury. Should industry, therefore, be responsible for more than its share in the final result?

Industry can guard against most accidents, even those caused by negligence of workmen, for it can formulate rules. Industry, however, can not guard against pre-existing disease. From the economic standpoint, therefore, should not the middle ground, that of apportioning the responsibility of the disease and of the accident, and compensating accordingly, be the reasonable and equitable solution?

If that should be the general verdict, then the question arises as to whether that can be done in this State without an amendment of the law. It appears to us that the Pfeiffer case goes far enough to establish that this may not be done in North Dakota without an amendment of the Compensation Act, authorizing the Bureau to thus apportion the responsibility in pre-existing disease cases.

Three courses of action are open to the people of this State. 1. Acceptance of the court decision as an expression of the ideal intent and purpose of the principle of such acts; which means the payment of losses in accordance with that viewpoint, and the collection of necessary premiums to meet them. 2. Individual employers may require physical examination of all workmen, which might result in unemployment for many who need employment. 3. Amendment of the law might be made as has been done in several states, which is bound to raise many difficult but not unsurmountable problems of practical administration.

A COMPLAINT—A STATEMENT—AN EXHORTATION

"A man of some position and reasonable means is arrested on a serious charge, of which he is probably guilty, for instance, driving while intoxicated. He is approached in jail by policemen and 'advised' to get a certain attorney. Bearing in mind his guilt, his family and his health, he follows the advice and calls for the favored attorney, who arranges for a fee — say $1,500 or more — and shortly the charge against the accused is reduced to a lesser offense carrying a light fine, or is dropped altogether. Under present conditions it appears almost impossible for

courts to protect themselves and the public against such acts. . . . A fraction of one per cent of the attorneys and, I believe, a very small percentage of the police, bring condemnation upon our system of law."

This is not the ranting of some Bolshevik, nor the vaporing of a social idealist, nor even the criticism of a disgruntled layman who has just lost a case. It comes from the President of a bar association of some standing in the country, who directs attention to the matter involved because, as he puts it, "The office of President opens one's eyes to many things which the average practicing lawyer gives no thought to," and because, "There is a real necessity for intimate study of and contact with the actual and practical administration of criminal law."

"Many of us," continues the statement, "have never attended a municipal court session, know nothing of the various departments, or the manner in which that court handles its criminal work. It is in connection with those courts, largely, that the general public gains its conception of law as administered in this country."

It must be conceded that anything which even remotely tends to the establishment of practices that convey to the public the thought that there is one law for the rich and another for the poor, is to be condemned —and not only condemned, but guarded against with all of the ingenuity, power and prestige of an organized Bar.

Most of the illustrative cases cited are found, as in this instance, to come from congested centers, and we have the boldness to suggest that the very large majority of them would not prove to be "typical examples" of conditions in our own commonwealth. Judged by the character of the complaints that have been made against North Dakota attorneys during the past five years, at any rate, our State is to be congratulated upon the rather high standards maintained by the profession. However, it is to be remembered that a Code is just a Code. It does not and can not enforce itself. Hence, a frequent reading and a sincere personal application of Rule XXII of our Code of Professional Ethics would not be amiss; at least, it should not be overlooked, if we expect to retain our position upon that high plane.

BUSINESS WITH A PUBLIC INTEREST

In the March, 1928, issue of Bar Briefs we reviewed some of the cases dealing with questions relating to business when affected with a public interest. The Supreme Court of the United States has, since *Tyson vs. Banton*, 47 *Sup. St.* 426, again dealt with the subject in *Williams vs. Standard Oil Co.*, *Adv. Op.* 141.

The case relates to a Tennessee statute regulating the price at which gasoline was to be sold in that State, and the Court says:

"By repeated decisions of this Court, beginning with *Munn vs. Illinois*, . . . that phrase, (affected with a public interest) however it may be characterized, has become the established test by which the legislative power to fix prices of commodities, use of property, or services must be measured. As applied in particular instances, its meaning may be considered both from an affirmative and a negative point of view. Affirmatively, it means that a business or property, in order to be affected with a public interest, must be such or be so employed as to justify the con-