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Review of North Dakota Decisions

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he fails to do that which he could do to aid in the enforcement of the prohibition law. On the other hand, I doubt if there is anyone who if he had become aware of the fact that his neighbor had robbed a bank but what would immediately divulge the facts to the proper authorities, but when it comes to a violation of the prohibition law their whole attitude is changed.

"Another weak link in law enforcement is the fact that when one's friends are in office one is inclined to take things for granted and believe that everything is all right, but when one's enemies are in office they are prone to blame the lack of law enforcement upon them, much more readily than if their friends had been in power. Another bar to the enforcement of the prohibition law is the fact that juries very often, in part at least, are composed of men who themselves are not in favor of the law and as a result frequent acquittals are had. Attorneys also in making their pleas to the jury will sometimes resort to unpatriotic and un-American utterances, which if made in time of war would sound seditious and frequently an attorney in his plea to the jury will ask how long they are going to stand for this infringement of their personal rights or their rights to make private contracts, and very often the jury is led to believe that the defendant has been wrongfully accused.

"Another reason for the lack of enforcement of the prohibition law is the fact that it is a new law upon our statute books and will and has changed the mode of living of a large number of our people, and to have all the people do that within a short space of time is almost impossible. I have no doubt, however, that within the next ten or twenty years, with proper education of the people, that a great improvement in the enforcement of this law will be made; and I am convinced, from my nine years experience on the bench in this state, that by continuing, if only as we have been doing, within the next ten or twenty years a large majority of the people who are at this time opposed to the prohibition law will have by that time become reconciled and adapted to it and that they and their families will obey the law and be favorable toward its enforcement. The fact that the American people are in favor of continuing the prohibition law upon the statute books was, I believe, proven beyond a doubt from the result of our last election."—JUDGE F. T. LEMBKE.

REVIEW OF NORTH DAKOTA DECISIONS

State vs. Keller: Defendant appealed from denial of new trial, alleging his trial counsel was so intoxicated that he failed to put on any witnesses or argue the cause to the jury. Trial court acknowledged that facts stated by defendant were correct, but held it province of Supreme Court to pass on attorney's qualification. HELD: Defendants are ordinarily bound by the course of action of their attorneys; here, however, defendant was ignorant of his rights and unacquainted with procedure, so that he did not know trial was concluded until jury left the court room. He had no counsel, and was prejudiced without apparent fault. "It is inconceivable why the trial of the cause was permitted to continue when his attorney was in such a condition of intoxication as the showing of the defendant established. It is clear that under such a state of facts it was at least the duty of the trial court to advise the defendant as to his right to select other counsel and to afford him reasonable opportunity to do so if he wished. Certainly it was the duty of the court to see that he had a fair trial. Every defendant is entitled to such a trial and the requirement is not satisfied with one which is a farce and a travesty on justice."

State vs. Blum: Defendant was out on bail, undertaking including the following provision: "and will at all times hold himself amenable to the orders and process of the court, and if convicted, will appear for judgment, and render himself in execution thereof, or, if he fails to perform either of these conditions, that he will pay to the State the sum of .... Dollars." Defendant entered plea of guilty. Sentence was postponed to end of term, at which time a number of prisoners were sentenced. While the sheriff was at the jail with others, the Court sentenced defendant, then motioned him to the ante room where the sheriff was presumed to be. No commitment had been executed. The sureties on the bond were present in court. The defendant walked into the ante room, and not finding the sheriff there, continued on his way, and is still at large. Judgment against the bondsmen. HELD: Defendant was in custody of the sureties. It was for them to see that defendant did what was required of him. In failing to see that he reported to the sheriff in execution of the sentence, they defaulted on their bond.

Clark vs. Feldman: Personal injury action against owner of truck, Defendant's delivery truck, while operated by employee of defendant, struck, and seriously injured plaintiff. The driver observed plaintiff when plaintiff, aged about 80, was three feet from the truck, and attempted to stop, raising questions of negligence and contributory negligence for jury; but the driver, at the time of accident, was on business of his own, using truck to take his personal letters to the train. Court's charge to the jury did not direct jury's attention to duties imposed by Sec. 18, Par. (c) of Chap. 162, 1927 Laws, upon drivers and pedestrians. HELD: Failure to give such charge was prejudicial, as it gave jury no adequate basis upon which to determine the reasonableness of the conduct of the parties. Jury should also have been charged that plaintiff's fault or negligence would affect recovery only if it *proximately* contributed to the injury. Question as to whether employee was in course of employment was for the jury. New trial granted.

Wehe vs. Snyder: Involves right of garnishees to amend disclosure after time has expired. Garnishment summons was served November 5, 1926. November 17 the county auditor made disclosure of liability, and on December 1 the county auditor amended to show that the county owed defendant. Judgment in main action was entered March 3, 1927, after jury verdict. March 5, 1927, county sought to amend disclosure by showing defendant's interest had been assigned prior to service of garnishment summons. No application was made to the court for permission to serve such amended disclosure. HELD: Failure to make application to the district court for leave to file amended disclosure at such a late date was fatal. Such amended disclosure was not part of the record, and the trial court correctly refused to consider the same.

SPECIAL COMMITTEE

President Lewis announces the appointment of the following special committee on Automobile Safety Regulations and Insurance: C. H. Starke, Chairman, Dickinson; P. W. Lanier, Vice Chairman, Jamestown; Wm. Lemke, Fargo; A. W. Cupler, Fargo; Herbert G. Nilles, Fargo; Chas. J. Vogel, Fargo; Philip R. Bangs, Grand Forks; Fred T. Cuthbert, Devils Lake; E. R. Sinkler, Minot; N. J. Bothne, New Rockford; F. J. Graham, Ellendale; Horace Bagley, Towner.