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Compensation and Liability Acts

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posed to prevent such restoration. It is with the view, then, of more definitely searching out the opinion of our own Bar that we offer the following expressions from rather authoritative sources:

Professor Dicey, in his "Law of the Constitution," page 389, says: "Trial by jury is open to much criticism; a distinguished French thinker may be right in holding that the habit of submitting difficult problems of fact to the decision of twelve men of not more than average intelligence will in the near future be considered an absurdity as patent as ordeal by battle. Its success in England is wholly due to, and is the most extraordinary sign of, popular confidence in the judicial bench. A judge is the colleague and readily accepted guide of the jurors."

Senate Bill No. 1094, 70th Congress, offered by Senator Caraway, of Arkansas, seeks to prevent federal judges from making such comments, the Senator's argument being: That judicial comment on evidence and the credibility of witnesses constitutes "a clear invasion of the province of the jury and, therefore, a flagrant usurpation of the prerogative of the jury to weigh the evidence;" and that it improperly influences the jury, the jurymen being inclined meekly and blindly to accept the views indicated by the judge.

Chief Justice Taney, in *Mitchell vs. Harmony*, 13 Howard 115, makes this terse comment: "Nor can it be objected to upon the ground that the reasoning and opinion of the court upon the evidence may have an undue and improper influence on the minds and judgment of the jury. For an objection of that kind questions their intelligence and independence, qualities which cannot be brought into doubt without taking from that tribunal the confidence and respect which so justly belong to it, in questions of fact."

Justice Holmes, in *Graham vs. U. S.*, 231 U. S. 474, also answers the objection in these words: "Universal distrust creates universal incompetence. In the courts of the United States the judge and jury are assumed to be competent to play the parts that have always belonged to them in the country in which the modern jury trial had its birth."

Dean Pound, in his "Spirit of the Common Law," also refers to the subject, and says: "In particular it may be shown that legislation restricting the charge of the court has grown out of the desire of eloquent counsel, of a type so dear to the pioneer community, to deprive not merely the trial judge but the law of all influence upon trials and to leave everything to be disposed of on the arguments."

To the same point spoke Professor Sunderland before the American Bar Association meeting at Detroit in 1925: "A few weeks spent in watching jury cases tried in England will convince one that the summing up does more to secure a verdict on the merits than all the rules of evidence which legal ingenuity has devised. . . . Naturally his presentation (the judge's) will have weight with the jury, as it ought to have, for there can hardly be any doubt about the immense value of a nonpartisan summary after counsel have urged their antithetical views upon the jury."

COMPENSATION AND LIABILITY ACTS

Two recent decisions of the U. S. Supreme Court bring out some of the points of distinction between compensation acts and the Federal Employers' Liability Act.

The first, that of *Atlantic Coast Line Ry. Co. vs. Driggers*, 49 *Sup. Ct. Rep.* 490, held the claimant not entitled to recover by reason of his own negligence in stepping off the footboard of a switch engine, striking a locomotive passing on an adjacent track, paying no attention to the signal of the conductor, which, ordinarily, indicated that the switch train was to back up.

The other, *Mpls., St. Paul & Sault Ste. Marie Ry. vs. Rock*, 49 *Sup. Ct. Rep.* 363, held there was no liability for death by accident where the workman, who had been refused employment by reason of his physical condition, later obtained such employment by having another person impersonate him at the physical examination. The Court said: "While his physical condition was not the cause of his injuries, it did have direct relation to the propriety of admitting him to such employment. It was his duty. . . . to disclose his identity and physical condition. . . . his concealment. . . . was a fraud upon the petitioner, and a peril to its patrons and its other employees. Right to recover may not justly or reasonably be rested on a foundation so abhorrent to public policy."

THIRD DISTRICT ORGANIZED

The first response to our request for information concerning local organizations brings the information that the Third District, comprising Dickey, Emmons, La Moure, Logan, Ransom, Richland and Sargent counties, has had an efficient organization for several years. The present officers are: A. M. Kvello, Lisbon, president, and C. G. Mead, Lisbon, secretary. County vice presidents are: T. L. Brouillard, Ellendale; Chas. Coventry, Linton; E. F. Coyne, La Moure; A. B. Atkins, Napoleon; C. S. Ego, Lisbon; Max Lauder, Wahpeton; C. O. Stockstad, Forman.

Two meetings, both boasting better than a 50% attendance, have been held this year, the first as guests of the Enderlin Bar and the second as guests of the La Moure Bar. A third meeting is advertised as a "duck dinner" at Ellendale on the 19th of this month. Invitations have been extended to the president and secretary of the State Association, and H. L. Williamson, Esq., of Aberdeen, S. D., is slated as the principal speaker.

WORD FROM BRAATELIEN

Responding to the kindly greetings of the Association at its annual meeting, H. W. Braateliën, who is now sojourning at Albuquerque, New Mexico, in search of better health, expresses his appreciation of the thoughtfulness of the Association members assembled, and said in part: "Will you kindly, through Bar Briefs, extend my thanks to the Association for this little act of kindness, and assure them that the land of 'O'Henry,' justifies itself, when it comes to being good as a health country."

In a postscript he added: "The desire to be with the Association became stronger after I noted that we homely men have equal chances with the beauties, when it comes to being elected president. No offense meant, Mr. Bagley, but this is added to lend encouragement to those of us who lost hope when Young, McIntyre, Lawrence and Lewis were elected."