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Administering Legislation

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are defiling it"; "The machinery is so rusty it creaks"; and so forth; each and all generalizations against the legal fraternity from a specific incident, which no one condones, and which appears to be chargeable to individual human weakness rather than to any group or system.

Why should men overlook these facts: That the Judge, who presides at a trial, is human; that the men and women, who compose the jury, are human; that the lawyers, who present the facts and the law, are human; that the men and women, who compose the public and watch every important trial, are human; and that the witnesses, who tell the story as it appeared to each of them, are human; that the Judge, the jury, the lawyers, the public, and the witnesses, all have some influence upon the ultimate result reached in any trial; and that, because all are human, and none infallible, no particular element in the chain of influence is properly chargeable with full responsibility for a specific incident, which might occur even if there were no "deplorable general condition."

Now, lawyers can and do promulgate codes of ethics for themselves. These codes lay down the fundamental principle that the lawyer is an officer of the Court, and that his first duty is to get at the truth. But does the public recognize the practitioner for the number of times he finds the truth, or for the number of lawsuits he wins? Do the parties concerned in a criminal action always present the attorney with a complete picture of the situation, or do they frequently give him the BEST picture of ONE side of the case? Do jurors analyze ALL of the evidence, and heed ALL of the instructions of the Court, or do they occasionally pick and choose, according to the knowledge, training and experience of the individual, and then compromise to get a general result? May not each and all, including the public, be thoroughly honest, upright, capable and conscientious in doing what they do, and yet the result be an occasional miscarriage of justice?

It may seem strange that the public, in its consideration of the legal profession, reverses its usual attitude of fairness, and even seeks to hold the group responsible for every single act that may appear to be unexplainable to a lay mind. A specific incident, involving no violation of any moral, legal or ethical code, is frequently found sufficient warrant for a general charge such as this: "That lawyers deliberately fill jury boxes with the worst material available." But the mere fact that the public is unfair in its attitude, and refuses, even, to give reasonable consideration to corrective legislation proposed by Bar Associations, does not justify the Bar in disregarding the public. It should all the more strenuously seek, by conduct and example, to remove suspicion. It should utilize every available means for educating the public as to the aims, ideals and purposes of the profession. It should design and exercise more strict disciplinary control over those who occasionally throw suspicion upon ALL by disgracing THEMSELVES.

ADMINISTERING LEGISLATION

Chapter 286 of the Session Laws for 1927 was a much argued measure. A majority of the Compensation Bureau vigorously opposed it. It passed, however, and became law.

During the discussions in the Legislature the view that seemed to be most generally accepted was that the sole intent and purpose of

the bill (S. B. 65) was to fix maximum limits at a more reasonable point, and that the term "loss", as applied to the table for specific benefits, was not to be confined to "loss by severance."

It became necessary to construe the amendment in a specific case recently, and the Bureau, by a divided vote, held that the term "loss" meant "loss by severance" only. The reasons given for such construction were: That the first part of paragraph E of Section 3 (though unchanged) related only to partial permanent disability of the body (although the words "of the body" have never been in the law); that the law, as it was prior to this amendment, gave the Bureau authority to fix the schedule of benefits, that, when the Bureau fixed such schedule by a Rule, it made provision for ankylosed (stiff) joints, and that the Legislature should, therefore, have incorporated the Rule or added to the word "loss" the words "or loss of use," if it intended the schedule to cover ankylosis.

The dissenting view, as expressed by Commissioner Wenzel, was: That the foregoing construction was technical rather than liberal; that it was questionable in the light of the "reasonable interpretation" enjoined by courts of last resort; that, in effect, it was saying that a stiff finger or hand was not lost, regardless of how useless it might be; that, if the theory were followed to its logical conclusion, voluntary submission to an amputation—if not actually required by and at the time of treatment of the injury—would not entitle the claimant to compensation for the permanent disability, because one could not be said to "lose" that which he voluntarily cut off; that the majority view expressed by the Legislature, though unrecorded, should govern on the question of "intent"; and that, if the Bureau felt justified in making a general rule before, it should apply the same standard of interpretation now.

GRADE CROSSING RULE

One G. was driving an automobile truck along a public highway at a rate of 10 to 12 miles per hour as he approached a railroad crossing with which he was familiar. It was daylight. About 40 feet from the crossing he cut this rate down to 5 or 6 miles per hour. View of the track was obscured by a section house on the left of the driver. This prevented a clear view of the whole track in that direction until a point about 20 feet from the first rail was reached. A train, coming from the left at a speed of about 60 miles per hour, hit the truck, G. being unable to stop the truck after he saw the train. G. was killed. The failure to stop was held to be contributory negligence, defeating the right to recover from the railroad company, Justice Holmes using the following language: "When a man goes upon a railroad track he knows that he goes to a place where he will be killed if a train comes upon him before he is clear of the track. He knows that he must stop for the train, not the train stop for him. In such circumstances it seems to us that if a driver cannot be sure otherwise whether a train is dangerously near he must stop and get out of his vehicle although obviously he will not often be required to do more than to stop and look. It seems to us that if he relies upon not hearing the train or any signal and takes no further precaution he does so at his own risk. If, at the last moment, G. found himself in an emergency it was his