North Dakota Law Review

Volume 4 | Number 3 Article 5

1927

A Canadian View of the Sacco-Vanzetti Case/Wills

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A CANADIAN VIEW OF THE SACCO-VANZETTI CASE

Several phrases employed by Prof. Fowler V. Harper of the University of North Dakota, in his review of the Felix Frankfurter book, (Dakota Law Review for October, 1927) brought such a shock to some of our North Dakota attorneys, and appeared to be so completely out of harmony with the conclusions reached by those who had given the matter the fullest consideration, that we direct attention once again to that now famous case by quoting the summary presented by the Honorable William Renwick Riddell, LL.D., D. C. L., of the Ontario Bar. Justice Riddell's analysis will be found in the December number of the American Bar Association Journal, the summarization of the conclusion being as follows:

"1. That no evidence was wrongly excluded or admitted; 2. That the evidence which is considered to be so fatal to the accused was given by themselves in their defense against the advice of the Trial Judge; 3. That neither Judge nor prosecuting counsel was guilty of misconduct before the jury; 4. That there was a fair trial; 5. That there was ample evidence upon which a jury might convict; 6. That there is nothing but subsequent declamation and vituperation to suggest prejudice or failure to perform their duty on the part of the jury; 7. That the refusal of the motions for a new trial cannot be held erroneous; 8. That the great delay in executing the sentence was due to the motions made by the condemned men and the extraordinary tenderness of the law of Massachusetts in respect of one convicted of crime applying to her courts for protection from injustice; 9. If the accused should not have been convicted, the error is that of the jury and not of the court or its officers."

WILLS

Mr. Sumner Kenner, Judge of the Indiana Circuit Court, discusses Non-Contesting Clauses in Wills in the January issue of the Indiana Law Journal, and submits the following summarization of principles from conflicting authorities:

1. Conditions annexed to legacies and devises, providing for forfeiture in case the will is contested, are valid.

2. In case of a legacy, it is best to provide for a gift over of the subject matter of the legacy in case of a breach of the condition.

3. Where the will is contested on behalf of an infant legatee or devisee, the forfeiture will not be decreed, irrespective of whether there was a gift over or not.

4. In the preparation of the clause against contest, it is advisable, if practicable, to make the condition precedent so that the gift will not vest until the condition is performed, or in other words, make the bequests upon the condition that the legatees acquiesce in the provisions of the will.

5. Probable cause exceptions should be recognized as it comes most nearly approximating justice in all cases, both from the standpoint of public policy and from the probable intention of the testator. It would give effect to the intentions of a rational testator in so far as it would prevent the perpetration of such fraud and at the same time exclude vexatious contests brought in bad faith without probable cause, and which the testator probably wanted to guard against.