North Dakota Law Review

Volume 4 | Number 4 Article 3

1927

Business - Public Interest

North Dakota Law Review

claim. Defendants contended that the injury did not occur in the course of employment, and the evidence disclosed that the injured employee had been forbidden to work in the particular room where the accident occurred and that mining operations had been completed there the day before. HELD: When an employee is injured while doing work he was employed to do, the fact that he was working at a place where he was forbidden to work is not fatal to a claim for compensation and it can not be said as a matter of law that the injury was not in the course of employment. Case distinguished from *Shoffler vs. Lehigh Valley Coal Co.*, 139 *Atl.* 192, and others cited in opinion.

BUSINESS — PUBLIC INTEREST

Prof. H. E. Willis, of the Indiana University Law School, and formerly Dean of the North Dakota Law School, discusses the question: "When is a business affected with a public interest?" in the February issue of the Indiana Law Journal.

The test of public calling is characterized as follows through various periods: In the early *Strict Period,* Prof. Willis contends, all businesses were common callings, and the fact that a business was pursued made it such. The second period, defined as the *Period of Equity,* found a division being made between public and private businesses, and the law of common callings became the law of public callings, the public control, however, to be explained on the theory of public grant of franchises, power of eminent domain, exclusive privileges or financial aid on condition of public service. The third period, designated as the *Period of Maturity,* was marked by the retirement of the law of public callings to the background, being supplanted by declarations of freedom of contract, laissez faire, competition and individualism. The fourth or modern period, *Period of Socialization,* marks the period of revival, with development traceable in the following decisions of the U. S. Supreme Court:

Munn vs. Illinois, 94 *U. S.* 113 (1876), a grain elevator case, in which charges were held to be subject to public regulation by reason of a virtual monopoly; *Budd vs. New York,* 143 *U. S.* 517 (1892), another grain elevator case, in which the operative facts — nature and extent of business, existence of virtual monopoly, business rendered possible by canal built at public expense, and similar facts — modified the test of virtual monopoly; *Brass vs. North Dakota,* 153 *U. S.* 391 (1894), also a grain elevator case, which almost abandoned the test of virtual monopoly and accepted that of legislative declaration, the high mark of state declaration being reached in *Green vs. Frazier,* 253 *U. S.* 233 (1920).

German Alliance Insurance Company vs. Lewis, 233 *U. S.* 389 (1914), an insurance case, though not overruling *Brass vs. N. D.,* made the test that of indispensable service and virtual monopoly; that test was also applied in the case of *Block vs. Hirsch,* 256 *U. S.* 135 (1921), which held the business of housing to be a public calling, at least in time of emergency.

Wolff Packing Company vs. Court of Industrial Relations of Kansas 262 *U. S.* 522 (1922), indirectly overruled *Brass vs. North Dakota,* holding that a business, in order to be affected with a public

interest, must (1) be carried on under a grant of privileges which expressly or impliedly imposes the affirmative duty of rendering a public service, or (2) be an occupation which has survived the period when all trades and callings were regulated, or (3) have a peculiar relation to the public because of the indispensable nature of its service and the exorbitant charges and arbitrary control to which it might subject the public.

The last case, *Tyson vs. Banton, 47 Sup. Ct. 426* (1927), involving the question of whether amusements were sufficiently clothed with a public interest to justify regulation of maximum admission prices, did not clear up the uncertainties or give final answer, according to Mr. Willis; it held that the question came under the third part of the test set forth in *Wolff Packing Co. vs. Industrial Court,* if at all, but failed in meeting that test because theatres do not render an indispensable service but are purely private enterprises; and, as a result of this decision, Mr. Willis concludes that we are embarking on an uncharted sea so far as the judicial determination of such questions as the following is concerned: Is there any economic pattern into which public interest enterprises can be fitted? Can we delimit the field of business activity? Are Giant Power, the coal industry and the steel industry affected with a public interest? Are other trusts and monopolies public callings?

UNIFORM STATE LAWS

The following statement of the Chairman of the Association's Committee on Uniform State Laws is presented in this issue in the hope that it may accomplish, in part at least, the desire of that Committee:

"The Uniform State Law Committee of the North Dakota Bar Association must secure the assistance and cooperation of the members of the Bar of North Dakota. We must educate the public generally and the Legislature in particular on the character and nature of this work and upon its importance. To do this requires publicity and the cooperation of the press. We are assured the press will give us this publicity, if we furnish it. The committee regards articles and talks by the local members as of more value than coming from the committee and its members. Many members indicate a lack of sufficient familiarity to write the articles or give the talks. To secure this familiarity is the problem of the committee.

"A few days ago we selected in each county two or three members requesting them to do this work and furnished them a copy of a popular statement of the Motor Vehicle Act. One or two prepared some articles. In one or two places they had the Motor Vehicle Act published. Practically all signified a willingness to cooperate. This Motor Vehicle Act was published by one paper in Minot as a whole and another paper published parts of it, running through a series. The article was designed to give some information of the work of the Conference and Commissioners, and to be used by local members in preparing their own publicity.

"The committee now proposes to have published in Bar Briefs each month a short article by various members of the Committee, with a view to informing the members of the Bar on this work, and with a