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Writs of Error Abolished

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The most enthusiastic, however, admit that the good faith of the contracting parties is the sole basis of the effectiveness of all such theories. Is good faith sufficient?

Now, most thinking people hope that a substitute for war may be found, and some insist that a reasonable plan of action seeking that end should not only be proposed but attempted in practice. But, knowing that individuals are still intolerant and unreasonable and require a power higher than the individual to compel the performance of obligations, they frequently ask the questions, "Are nations, composed of individuals, any different? Will they ever be different? Unless and until we can supply an affirmative answer to those two questions, isn't there considerable justification for the belief that there can be no "law that is above and superior to and binding upon the State" without some power greater than the State, possessing the ability to enforce that law, if need be? And if there is, isn't there also justification for American hesitancy in attempting the practical application of various theories that are suggested to make their hope reality?

COMPARISONS AND DISTINCTIONS

In the December issue we made note of the construction placed by the majority of the Commissioners of the Workmen's Compensation Bureau on the 1927 amendments to the law as applied to liability for stiff fingers, etc., under the term "loss."

In another case, determined last month, the term "loss of sight" was construed to mean "total loss of sight," compensation being denied the claimant for a permanent partial disability amounting to a 10 per cent loss of vision.

About the same time this situation arose: A workman injured his thumb. Treatment by his physician for some five weeks resulted in healing of the wounds, but the thumb was stiff and in the way. One month after healing was complete, the claimant requested that the thumb be amputated. The Bureau paid for the amputation, and then allowed for the "loss" of the thumb. Previous to amputation the majority again held the thumb was not lost.

The Supreme Court of Iowa also rendered a decision during this period, *Mochel vs. Traveling Men's Association,* 213 *N. W.* 259, construing the term "train wreck" in a double indemnity insurance policy, holding that the term does not contemplate or intend total destruction of a train of cars, or even of one of the cars constituting a part of the train in order to make the double indemnity provision operative.

WRITS OF ERROR ABOLISHED

S. B. 1801 has been signed by President Coolidge. Its provisions are:

"That the writ of error in cases, civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal. That in all cases where an appeal may be taken as of right it shall be taken by serving upon the adverse

party or his attorney of record, and by filing in the office of the clerk with whom the order appealed from is entered, a written notice to the effect that the appellant appeals from the judgment or order or from a specified part thereof. No petition of appeal or allowance of an appeal shall be required; provided, however, that the review of judgments of State courts of last resort shall be petitioned for and allowed in the same form as now provided by law for writs of error to such courts."

THIRD PARTY LIABILITY

Considerable interest has been manifested in the decision of our Supreme Court in the case of *Tandsetter vs. Oscarson,* reviewed in February issue of Bar Briefs, with particular emphasis on an apparent conflict with Wisconsin decisions. Attention is therefore called to the case of *Martell vs. Kutcher,* 216 *N. W.* 522, (*Wis.*), which quotes the material parts of the Wisconsin statute, to-wit: "The failure of the employer . . . to pursue his remedy against the third party within ninety days after written demand by a compensation beneficiary, shall entitle such beneficiary . . . to enforce liability in his own name, accounting of the proceeds to be made on the basis above provided." The quoted portion is not a part of Section 20 of the North Dakota Compensation Act.

AVERAGE WEEKLY EARNINGS

In determining average earnings of an employee for the purpose of ascertaining proper compensation for permanent injuries the average wages at time of injury must be based on such sum as will reasonably represent the injured person's earning capacity if he were forced to compete in an open labor market, and it is improper to make such determination upon his actual wages received, where it appears that, through generosity, the employer kept him on the pay roll at a higher rate than he was actually able to earn.—*Ford Motor Co. vs. Industrial Commission,* 261 *Pac.* 466. (*Cal.*).

FIFTY - FIFTY

The State Bar Association of Kansas, at its recent annual meeting, rejected the proposal to follow the lead of North Dakota, California and Alabama for incorporation of the Bar. The Nevada Association, at the January, 1928, meeting, resolved in favor of such incorporation. The necessary legislation was subsequently passed, and, at last report, was before the Governor for signature.

WE LOVE TO TALK

More than twenty pages of the Congressional Record for February 27, 1928, were taken up with the debate on a bill locating a farmers' produce market in the City of Washington. Verily, we are a de (g) liberative people.