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Third Party Liability/Average Weekly Earnings/Fifty-Fifty/We Love To Talk

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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.