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Report of Committee on Jurisprudence and Law Reform

Minn. L. Rev. Editorial Board

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REPORT OF COMMITTEE ON JURISPRUDENCE AND LAW REFORM

To the Minnesota State Bar Association:

RECOMMENDATIONS

The Committee recommends:

1. That this Association reaffirm its approval of proposed legislation embodying the principles of comparative negligence and third party practice.

2. That this Association register its support of a bill containing the provisions of House File No. 890 introduced at the 1943 session of the legislature.

3. That the president be instructed to appoint a special committee to study the question of retirement of justices and judges and report its recommendations at the 1945 annual meeting of the Association.

4. That the president be instructed to appoint a special committee consisting of one member from each district to conduct a program of education and survey with regard to the Judiciary Reorganization Plan proposed by the Judicial Council Committee and report at the 1945 annual meeting of the Association the results of the survey concerning the attitude of the various district associations as to the plan.

5. That this Association delegate to the Committee on Legislation and the Executive Committee jointly the authority and responsibility to determine which of the bills recommended by the Association shall be sponsored before the next legislature.

6. That upon the election of the president, the Committee on Legislation be appointed and confirmed at the first meeting of the Board of Governors on July 14, 1944.

REPORT

At the last annual meeting of the Association, a resolution was adopted referring to the Committee on Jurisprudence and Law Reform all proposed legislation which had previously received the endorsement of the Association, to be reviewed by the Committee and, if deemed advisable by it, to be resubmitted to the Association. It was quite apparent that the endorsed reforms have been too numerous for any practical program of action. The Committee has analyzed the various proposals with the utmost diligence and care and presents herein the results of its efforts.

1. COMPARATIVE NEGLIGENCE AND THIRD PARTY PRACTICE

Negligence cases have constituted a large part of the litigation in our courts. While they have decreased in number during the war, they will undoubtedly multiply following the removal of restrictions upon automobile travel and transportation after the termination of hostilities. Public interest requires that the law keep step with the times. This Association has taken a definite stand in favor of abolishing the old rule of contributory negligence as a complete defense in tort actions and applying the principles of comparative negligence and third party practice in such cases. In the opinion of the Committee, the proposed legislation designed to bring about the
change, a copy of which is hereto attached, meets the needs of the modern age and deserves the continued support of the Association.

2. PRE-TRIAL PRACTICE IN THE STATE COURTS

The Federal Court rules now in force provide for pre-trial procedure. A similar procedure can be established in the state courts by court rules without the sanction of the legislature. Four years ago, the Association adopted a recommendation to the judges of the District Court that they establish pre-trial practice, and last year it passed a resolution that the District Judges Association be requested to communicate its views on the previous recommendation of the state bar association as to the adoption of pre-trial practice in conformity with that which prevails in the District Courts of the United States. This Committee has called the matter to the attention of Honorable Kenneth G. Brill, president of the District Judges Association, and Honorable W W Bardwell, chairman of the Program Committee thereof. Arrangements have been made for Honorable Gunnar H. Nordbye to address the District Judges Association at its meeting this summer on "Pre-trial Practice in Federal Court." It is hoped that the requested expression of the views of the judges will be forthcoming at the 1944 annual meeting of the state bar association.

3. NEW CIVIL PRACTICE ACT IN LIEU OF OLD PREROGATIVE WRITS

In the 1943 session of the Legislature, House File Number 890 was introduced, but not passed. The Bill aims to abolish writs and orders of certiorari to review, mandamus and prohibition and to provide a new and simple procedure for obtaining the relief now available under these writs and orders. It has received the endorsement of William B. Henderson, Revisor of Statutes. The Committee feels that the Association should register its support of the Bill.

Complete text of the Bill will be found as Bill Number 3, attached to the Report of the Committee on Administrative Law, supra page 8.

4. RETIREMENT OF JUSTICES AND JUDGES

Notwithstanding various attempts on the part of the Association to secure the enactment of a permanent plan for the retirement of Justices of the Supreme Court and Judges of the District Court, the legislature has failed to adopt a bill of general application. Special laws have been passed on different occasions to meet specific emergencies, but the legislature has not been receptive to any suggestions regarding a statute sufficiently broad in scope to satisfy future needs. Laws of 1943, c. 595, providing for the retirement of Justices of the Supreme Court only is an example of the legislature's reluctance to accept the viewpoint of the Association. This Committee believes that a special committee should be appointed to study the subject in the light of past experience for the purpose of working out a practical solution of the problem and to report its conclusions and recommendations at the 1945 annual meeting of the Association.

5. JUDICIARY REORGANIZATION PLAN PROPOSED BY THE JUDICIAL COUNCIL COMMITTEE

Pursuant to a request of the Board of Governors, the Committee has circulated the presidents of the District Associations asking them to ascertain the views of their members as to the proposed plan and to report them to the Committee. Replies indicating endorsement of the plan have been received from the Twelfth Judicial District Bar Association, the Douglas County Bar, and the Milaca County Bar. At a meeting of the Bar Association of the Eleventh Judicial District, the plan was discussed and a motion to table the matter was carried. Four out of eight lawyers at Detroit Lakes have expressed their approval of the plan. The Otter Tail County Bar Association has reported that more time for study and analysis of the
proposed plan should be given before it takes final action thereon. A number of the local associations have found it difficult to hold representative meetings on account of gas rationing and the absence of many of their members who are in the armed forces and governmental agencies. Other local associations have committees which have not completed their study of the plan.

The Committee favors the proposed plan, but is of the opinion that the bar of the state is not fully informed on it at this time and that before final action thereon is taken at an annual meeting, the Association should undertake the task of furnishing the lawyers with adequate information and then obtaining an expression from them as to whether or not the plan should be adopted. The Committee believes that this work can be done most effectively through a special committee consisting of one member from each district, and that such a committee should be able to complete its state-wide survey before the 1945 annual meeting of the Association and make a report at that meeting.

6. BILLS BEFORE THE LEGISLATURE

The Committee gave serious consideration to the reasons for the failure of the legislature to enact many of the bills sponsored by the Association. It came to the conclusion that the policy of attempting to secure the adoption of all recommended legislation is too rigid and impractical. Conditions before the legislature and its committees must be confronted at the time they arise and a course of action must be determined promptly as well as wisely. In the opinion of the Committee, the essential flexibility can be achieved by entrusting the Committee on Legislation and the Executive Committee jointly with the power and duty of deciding which of the bills endorsed by the Association should be presented to the legislature at any particular session thereof.

The Committee is also of the opinion that the success of any legislative program depends very largely upon plans made in advance of a session of the legislature for securing the support of the members thereof. Since the Committee on Legislation has the chief responsibility for working out such plans and putting them into operation, the Committee believes that the president should appoint the Committee on Legislation immediately after his election and submit it for confirmation to the new Board of Governors at its first meeting on July 14, 1944.

Respectfully submitted,

PAUL JAROSCAK, Chairman
PAUL S. CARROLL
C. A. DAHLER
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MILTON I. HOLST

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A BILL

FOR AN ACT REGULATING THE RIGHT AND REMEDY TO RECOVER DAMAGES FOR NEGLIGENCE, OR WANTON, WILFUL, OR WRONGFUL ACT, RESULTING IN THE LOSS OF HUMAN LIFE OR INJURY TO PERSON OR PROPERTY, MODIFYING THE COMMON LAW RULE OF CONTRIBUTORY NEGLIGENCE, AND REGULATING THIRD-PARTY PRACTICE IN CIVIL ACTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA.

SEC. 1. Contributory negligence as a complete defense to a claim in tort for damages is hereby abolished and contributory negligence henceforth only diminishes the recovery of such a claim according to the comparative fault of the parties thereto.

SEC. 2. In any action founded upon negligence, including any claim