DIGESTS OF LEADING LAW REVIEW ARTICLES

FOREIGN ENFORCEMENT OF ACTIONS FOR WRONGFUL DEATH. By William H. Rose, 33 *Michigan Law Review* 545, February, 1935.

The English doctrine that there is no common-law action for wrongful death has been adopted by our courts. Early colonial legislation provided for recoveries against municipalities when deaths resulted from defects in highways or bridges; and some statutes and court decisions provided that fines levied in homicide cases should in part be distributed among the deceased's next of kin. Following Lord Campbell's Act in 1846, statutes were passed on the subject in all of our states.

American legal theory calls for a civil cause of action, created by the law of the place of the wrong. Foreign enforcement of such an action for death has at times been impeded by a doctrine that there must be substantial similarity between the statute at the locus of the wrong and the one at the forum. Also, where courts have not adopted the federal test for a penal law, state courts have occasionally rejected foreign death actions as being penal in nature.

Foreign enforcement is further affected when a statute at the place of wrong vests the right to sue in a personal representative of the estate. Some states require ancillary administration before a foreign administrator may sue. Statutes may permit such suits. Some states in absence of statute allow foreign administrators to sue for wrongful death, on the theory that in so doing they are not suing as administrators, for benefit of an estate.

States have attempted by statute to localize actions otherwise transitory, including death actions, which arise under their own law; but they have not succeeded. Rejection of foreign causes has been more successful. Injunction against foreign suit has not always been effective.

In view of the disparity in local doctrine, federal courts should be made more available for wrongful death actions, in order to furnish a forum where recovery will not depend upon the exigencies of local state policy.

A PSYCHOLOGICAL APPROACH TO PROCEDURAL REFORM. By Henry W. Fowler, 43 *Yale Law Journal* 1254, June, 1934.

The writer presents a treatise on psychological factors in reform which should be a help to all interested in progressive change. Reforms in procedure have met with varying destinies. Some good alternatives have never been adopted while others equally as meritorious have been well received.

The common law rule of "stare decisis" should never have applied to rules of procedure but the legal minds of a former era made no distinctions between procedural and substantive law. Rules of procedure were relieved by a resort to equity but this expedient failed to provide a new method for achieving old remedies.

Three case studies of procedural reform are presented: (1) England had a century of agitation for change. The bar yielded slowly to minor changes. The Judicature Act of 1873 was the summation of the movement in England. Regulation of details of practice are left to the discretion of the court. (2) New York had the common law system of procedure. With little advance discussion a reform bill was presented in 1842 which embodied changes more radical than England proposed. The bill, strongly opposed by the more conservative and older members of the bar, became law in 1848. Regulations of details became part of the legislation. Judges attempted to stifle the spirit of the new act by their rulings. Soon the new rules became as crystallized as the old. Subsequent revisions fared no better. (3) Virginia, in colonial times, worked out the forerunner of the "notice of motion proceeding," state officials invoking it against county sheriffs. Later sureties were allowed to proceed against absconding debtor in such fashion. In 1849 its use was further extended and in 1919 the use of such motion was extended to all actions at law. The bar always had the option of using the regular proceedings.

In establishing any innovation, the mental pattern of the group must be altered into different attitudes and behavior. The conservatism of the bar will force any change to be gradual if it is to be successful. Substantive law demands conservatism; in the procedural field the courts should keep pace with the social changes.

A general reform upsets a group of traditions which will seem to be affected little by specific change though it accomplish the results of the general reform. A campaign based on facts will go further than a campaign of philosophical propaganda which of course arouses contrary propaganda. An anonymous movement will not be held back by the ego of the reformer unless the personality of the reformer is strong

enough to surmount opposition raised by the pronoun "I."

Evolution produces a change in thought, patterns, and attitudes which will go far in making for success. Revolution causes strong opposition with a desire to nullify the alteration plus a strong reaction in favor of the old.

The Bar, as well as John Public, is affected by mass psychology. Why not use such principles in planning additional changes?

THE PUBLIC INFLUENCE OF THE BAR. By Harlan F. Stone, 48 *Harvard Law Review* 1, November, 1934.

At a time when the American social order is shaken, when our ideals and traditions are questioned, the Bar of the country stands at the crossroads. The public duties and responsibilities undertaken by the Bar of the previous centuries has become one of the accepted American traditions. Will the present Bar live up to the past records?

Lawyers as realists are accustomed to accept new fact situations. Government problems are more and more touching the law and require the lawyers' leadership. In our rapidly changing social order the common good must be promoted by the influential elements of society or we shall all suffer. Our change to a nation of complex industrial and commercial forces has found the Bar relatively unprepared. We must try to relate law to the social and economic forces which produce it. The specialization of the Bar in big business has hindered a philosophical approach to our present problems. To the public eye the law of business and finance seems tainted with an anti-social trend. The Bar has not helped society but has rather aided business and finance against society.

The increased specialization of lawyers prevents them from appraising the change or from a concerted attempt to relate the law to business and economic justice. The challenge of the new order is given to the law schools and the teachers of law. Let them turn from statements of doctrine and the relation of law to the social forces creating it. The law schools and teachers have made possible the reforms of the past. With the cooperation of the Bar they can give the law a more social trend. The curbing of anti-social business practices are as important to us as free speech was to the makers of the Constitution. The people look to the law asking for aid in their new problems.

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THE ECONOMIC ASPECTS OF INFLATION. By Leonard L. Watkins, 33 *Michigan Law Review* 153, December, 1934.

The word "inflation" is of present interest to observers of governmental and business policies. The federal government has as its aim the raising of commodity prices to a pre-depression level. Then "stabilization" is to be effected.

Inflation, a rise in prices or a cheapening in the value of money, is marked by a three-sided advance.

1. Commodity prices and services rise rapidly. Business and industry pick up. Credit is abundant, velocity of money increases, rate of production increases but fixed incomes lessen in worth, wages and salaries lessen in value.

2. Foreign moneys become higher with a disparity evident between internal and external value of money. The dollar devaluation caused a seventy per cent rise in gold currency of other nations; internal price advance was no more than thirty per cent. We gained a trade advantage until shut off by higher tariffs.

3. Gold and silver rise in price. The mere act of abandoning gold payment puts premium on precious metal. Foreign exchange shows the value of the inflated currency.

Major types of inflation are three: (1) increase in amount of precious metals, causing commodity advance as in 1849 and 1897. Decrease in precious metals may cause deflation; (2) Printing press inflation such as Germany experienced in the early twenties; (3) increase in amount of bank credits. This type of inflation happens quite often. The congressional advocates of printing press money are blinded to the possibilities of a bank-credit type of inflation.

Inflation is caused by (1) budgetary deficits incurred by war and the aftermath of war. Depression deficits at the present time cause the moderate inflation we are experiencing; (2) spontaneous factors such as unequal distribution of gold, the over-extension of credit by banks.

The government's devaluation was a deliberate act. The profit, if used as basis for additional currency, will be inflationary. Another billion of gold was attracted to this country because of our devaluation. We have a basis for expanding internal credit twenty billions.

Consequences of inflation are measured by the extent of the inflation. Germany is the modern example of extreme inflation. There is a frenzy of activity, a temporary stimulation of production, but the final balance is on the debit side.

Even moderate inflation gives undue profit to speculators and plung-

ers. Undue optimism, overinvestment are followed by hardships and losses. The economic structure receives new strains, the basis for another depression.

The United States is threatened by inflation (1) from the government if the spending continues until resort to the printing press is necessary; (2) from over-expansion of business credit in a recovery period which will cause definite inflation.

Public opinion can prevent the first from becoming a reality; careful bankers and businessmen are our protection from the second.

JOINDER OF PARTIES. By Donald Lobree, 23 *California Law Review* 320, March, 1935.

A particular mode of pleading is a means to an end rather than an end in itself. Rules of pleading are to make the administration of justice more efficient.

Common Law Pleading was strict. Equity pleading was based on broad rules of expendiency. The drafters of the first codes intended to adopt the Equity rules, but they failed to accomplish this result.

Recent changes in the California Code more nearly approach this result. The revised requirements for joinder of plaintiffs are: (1) interest in the subject of the action *or* the relief sought; (2) presence of common questions of law or fact; (3) joint, several, or alternative ownership of claims. At his discretion, considering the expediency of the situation, the judge may require separate trials. The sections relating to joinder of plaintiffs and defendants are interpreted together, and the effect is that any defendants may be joined against whom a right of relief exists (concerning the same subject matter) whether jointly, severally, or alternatively. Joinder of defendants is most often presented as a problem, and so it should be at least as liberal as joinder of plaintiffs.

The most important innovation is joinder in the alternative. If a cause of action exists for or against one of a group of persons, why should they not be joined to determine which has the right or liability?

Under the California Code, joinder will be permitted where the claims or defenses have sufficient in common to warrant trying the various questions in one trial. The judge, in the exercise of his discretion and considering the convenience and justice, decides whether joinder is justified.

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RENOVATION OF THE COMMON LAW THROUGH STARE DECISIS. By Albert Kocourek and Harold Koven, 29 *Illinois Law Review* 971, April, 1935.

The title of this article indicates the problem which the authors discuss, but a short quotation fro mthe article will specifically show it. "It generally has been accepted that through the application of the maxim of stare decisis, stability, if not also certainty, in the law will be the inevitable result, and that progress and change in the law are the exact antitheses of stare decisis and cannot coexist with it. . . . Hence all thinking about law has struggled to reconcile the conflicting demands of the need of stability and of change."

The history of the doctrine in both England and America is shown and the conclusion arrived at that the doctrine is strictly adhered to in England, but that its rigidity is to a great extent relaxed in America.

There are several theories involved in an understanding of this principle, the first being the declaratory theory. By it the judges do not under any circumstances make law, but reach out into the blue and grasp a principle, and then merely apply it. This theory inherently involves a retroactive aspect. The principle so applied pertains not only to the case at hand, but also to all previous cases. Naturally, courts are reluctant to abandon set principles under these circumstances, since it will seriously impair vested rights. So the courts made exceptions to the rule to take care of such cases.

Next there is the prospective theory, under which a decision is limited in its applicability to subsequent cases only, and does not involve the retroactive aspect. The defects of this theory are pointed out by the authors.

To the authors neither one of these theories is entirely satisfactory. They would combine the two, so as to include both facility of change and stability. "The argument presented leads to the simple conclusion that the rule of stare decisis is a sound rule governing the practice of the courts; that the practice of adhering to decisions should be rigidly followed; but that the declaratory theory should be stripped of its retroactive supplement, and that in no case of justifiable reliance should an overruling decision disturb transactions reasonably entered into on the faith of existing declarations of law."