



1911

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MATTHEW J. KANE

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Recommended Citation

MATTHEW J. KANE, *THE NEED OF REFORM IN OUR EMPLOYERS LIABILITY LAWS*, 20 *Yale L.J.* (1911).
Available at: <http://digitalcommons.law.yale.edu/ylj/vol20/iss5/2>

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THE NEED OF REFORM IN OUR EMPLOYERS LIABILITY LAWS.

By Justice Matthew J. Kane, of the Supreme Court of Oklahoma.

Last year the writer delivered a Lincoln Day address before the Pottawatomie County Bar Association of this State, wherein he dwelt upon the duty of the legal profession to be abreast of the times in the advocacy of needed reforms which particularly affect the administration of justice. Foremost among the reforms mentioned as offering opportunity for the performance of patriotic public service then crying for solution, were the necessity for expedition and certainty in judicial procedure, and certainty of relief for workingmen in dangerous employments. The first of these problems has been under consideration by the American Bar Association, and a good many of the State Associations, for several years, and progress toward its satisfactory solution is being made, but the movement for legislation to compensate workingmen for injury or death suffered by accident or negligence in the course of employment seems not to have received the attention from the bar its importance deserves. It is the purpose of this article, which affords an opportunity to reach a larger audience, to remind again the profession of its duty generally in matters pertaining to law advancement and in that regard to call particular attention to the necessity for a system of laws, just alike to the employer of labor and to the employee, to supersede that now in vogue in this country pertaining to the master's liability for servants' injuries.

It is admitted by all that the time is ripe for a change. The idea that the employer should be responsible for accidental injuries to the employee is the most important question of sociology to-day, and unless the lawyers of this country pay prompt attention to its legal aspects our profession will again justify the reproach that, "Law follows civilization, never leads." Whilst we may justly be subject to the criticism of over-conservatism in taking up and forwarding reforms, in the case in point our slowness may redound to our advantage by enabling us to take advantage of the work of our transatlantic brothers who are far in advance of us in this particular, and produce a composite work that will contain all the features of the older laws shown by experi-

ence to be good and such original ideas of our own as will make the whole well suited to our governmental and industrial conditions. In 1837, the legislature of Prussia passed a law which made the railways of that country liable for injuries to their employees, unless they could show that the accident was caused by the victim or by an act of God. This act became a part of the liability law of the German Empire, and in 1884, the burden of responsibility for injuries to workmen was imposed upon all employers of labor within that country. Since then Austria, Norway, Denmark, Italy, Sweden, Greece, England, France, Spain, Holland, and Switzerland have followed the example of Germany. I have not had an opportunity to examine the compensation laws of all these countries, but in all I have examined, the central idea seems to be the abolition of negligence as a basis of liability. Miss Crystal Eastman, of the New York Bar, who has given the question under discussion a great deal of careful thought, in a paper read before the New York Bar Association last January, stated her conclusions as to the general scope of such laws in this country as follows:

"However, we adapt these European laws to the solution of this problem in America, our new legislation should, I think, meet these requirements:

"1. It should make limited compensation for all accidents of employment (except those wilfully caused by the victim) compulsory upon employers.

"2. It should make that compensation sufficient in amount (a) to result in shifting a considerable share of each accident loss from the family immediately affected to the employer and thus to the whole body of consumers, and (b) to provide an effective incentive for the prevention of unnecessary accidents.

"3. It should reduce the possibilities of dispute to a minimum, and provide a speedy settlement of all questions remaining."

Grave doubts as to the constitutionality of this class of legislation entertained by a great many eminent lawyers in this country no doubt impeded somewhat its advocacy by the bar. It was realized that to be effective it must embody a principle heretofore unknown in the laws of the United States. Governor Hughes doubted the constitutionality of some of the features of the New York compensation act adopted last June, but signed it, concluding to leave the question to the courts. Since the adoption of the New York act, which in its main features follows closely the plan

advocated by Miss Eastman and is the pioneer in that class of legislation in this country, the courts have resolved the constitutional questions involved in favor of the laws, and there is now a clear field for activity along the lines best calculated to bring just and equitable results to the parties most interested—the laborer and his employer. The New York law was upheld in *Ives v. South Buffalo Ry. Co.*¹ A Factory Act based upon the same principle was sustained in *Casper v. Lewin*,² wherein it was held that, “The factory act falls within the legitimate scope of the police power of the State, and the remedy prescribed for its enforcement is not obnoxious to either the State or the federal constitution.” It was further held that:

“The factory act ignores the common-law duty resting on the factory owner or operator to exercise reasonable care to prevent foreseeable injuries that establishes a statutory measure of prudence, by making specific precautionary requirements relating to specified places, structures and appliances; and in an action founded on the act for damages consequent upon injuries to an employee acting in the scope of his duty, caused by the absence of a prescribed safeguard, it is no defense that the injury could not, with reasonable prudence, have been anticipated.”

The learned justice who delivered the opinion of the court used the following significant language:

“The liberty of the wage earner to contract for extra pay for extra hazard and to seek some other employment if he does not like his master’s methods, is a myth, or, as has been said, ‘a heartless mockery.’³ The man and the machine at which he works should be recognized as substantially one piece of mechanism, and mishaps to either ought to be repaired and charged to the cost of maintenance. The courts cannot abolish the old rules and adopt others which shall suit existing facts and remedy existing evils. That must be done by the legislature. But when tardy statutes are promulgated the courts should interpret them as favorably as their terms will allow, and not proceed to shackle them with the discredited common law manacles.”

By a Nebraska statute all railway companies within the State were made liable for all damages inflicted upon the person of passengers, except when the injury arose from the criminal negligence of the person injured. This law was upheld by the Supreme Court of Nebraska in the case of *C. R. I. & P. Ry. Co. v. Zer-*

¹ 124 N. Y. Supp., 920.

² 82 Kans., 604.

³ *Kilpatrick v. Grand Trunk Ry. Co.*, 74 Ver., 288, 301.

necke,⁴ upon the ground that such legislation was a proper exercise of the police power, and the Supreme Court of the United States affirmed the opinion on the same ground.⁵

Another very interesting case, indicating that compensation laws may be provided for under the police power of the State, arose in Oklahoma, and was recently decided by the federal Supreme Court. The *Noble State Bank v. C. N. Haskell et al.*, handed down this term, and not yet officially reported.⁶ The State Supreme Court held that an act of the legislature providing for the creation of a bank guarantee fund to insure depositors against loss when the bank becomes insolvent, by a compulsory assessment levied upon every bank existing under the laws of the State, was justified under the State's police power. The Supreme Court of the United States affirmed the State Court, and held the law constitutional upon the same ground. Discussing the police power generally, Mr. Justice Holmes, who delivered the opinion of the court, said:

"It may be said in a general way that the police power extends to all the great public needs.⁷ It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare."

It is not my purpose to write a thesis on compensation laws or make any particular suggestions as to the form this class of legislation should assume. I am convinced that the American system of employer's liability stands justly condemned, and I am anxious for the legal profession to be the foremost factor in rearing a more just and equitable structure in its stead. It is no more than simple justice that the workman engaged in employment particularly dangerous to life or limb who dies or is injured in the discharge of duty shall not be forced to leave those depending on him to the tender mercy of charity or a charge upon the State. And this measure of justice need not constitute an oppressive burden upon the employer. The liability incident to such laws should be treated as expense incident to the business, and I doubt not that with compensation laws equitably adjusted, the expense in the end will be no greater than under the present system.

⁴ 59 Nebr., 689, 82 N. W., 26.

⁵ *C., R. I. & P. Ry. Co. v. Zerneck*, 183 U. S., 582.

⁶ *Noble State Bank v. Haskell et al.*, 22 Okla., 48.

⁷ *Camfield v. United States*, 167 U. S., 518.

I am not one of those who are forever censuring the legal profession for neglect of duty in matters pertaining to the advancement of the law. In all ages the lawyers have been the foremost upholders of law and justice, and have done as much to improve the field to which they devote their lives and energies as the members of other learned professions. I know in the future they will not be remiss in the performance of patriotic public service.

Matthew J. Kane.