North Dakota Law Review

Volume 16 | Number 7 Article 5

1939

# Frazier-Lemke Act

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The Bar Board is asking the Courts of the state to refuse to recognize any attorney whose name does not appear in the published list, unless he is able to produce a license for the current year, hence delinquents should pay up and secure a license.

## LAW SCHOOL NEWS

The University of North Dakota School of Law completed its forty-first school year on June 11, 1940. Sixteen graduating students were awarded their law degrees. They were as follows:

Edwin M. Barbie of Bismarck, Mary Lou DeMoully of Flasher, Earl C. Erickson of Garrison, Larry R. Forest of Brinsmade, Alice T. Fox of Grand Forks, Lyle E. Huseby of Grand Forks, James Edward Leo of Grand Forks, Jim V. Miller of Minot, Harry O. Mowery of Napoleon, Dale M. Nordquist of Underwood, Donald E. Roney of Oakes, Alex W. Skoropat of Wilton, Francis C. Swanke of Kulm, William W. Swinland of Lakota, Roland B. Weiss of Sheldon and Leo A. Wikenheiser of Strasburg.

Like former graduates, the present graduates realize that practice is not the only field in which they may make use of their knowledge and skill. The records show that out of the 663 law graduates, some obtained positions as adjusters with insurance companies; others secured work with the state or federal government for which their legal training qualified them; some became teachers; few of them became law editors; and several entered business. However, a majority of them entered upon the practice of law. The members of the Class of 1940 will likewise prove worthy of their training by adapting themselves to changing conditions. If a member of the North Dakota Bar or any of the alumni in North Dakota or elsewhere are considering adding men to their firm or know of any opening, they can do a good turn to themselves and our new graduates by letting the School of Law know of these opportunities.

## FRAZIER - LEMKE ACT

Farmer mortgagor, unable to effect composition with creditors, applied to be adjudged a bankrupt under 49 Stat. 242, subsection s, (1935); Chandler Act of 1935; 11 U.S.C.A. 203, subsection s; and be allowed to retain possession of his farm for three years. The District Court refused application on grounds that debtor would be unable to rehabiliatate himself within three years and lacked requisite "good faith" as required by subsection i. On appeal to United States Supreme Court, Held, if debtor has compiled with statutory proceedings, the district court must suspend for three years all proceedings to seize his property. Only test is that debtor must pay a reasonable rental semi-annually. The "good faith" of subsection i. refers to secret advantages to favored creditors or other improper or fraudulent conduct and does not refer to probability to financially rehabilitate himself. John Hancock Mutual Life Insurance Co. v. Bartels 60 S. Ct. 21, 84 L.Ed. 154, 307 U.S. 617; (1939).

Congress passed the original Frazier-Lemke act in response to the demands of farmers that their indebtedness be decreased to correspond to the decreased value of their farm lands. The Act of 1933 was declared unconstitutional in Louisville, on grounds that secured creditors property rights were not protected and were taken without just compensation. Joint Stock Bank v. Radford, 295 U. S. 555, 55 S. Ct. 854, 79 L. Ed. 1593; (1935).

The Act of 1935 was framed to meet the court's objections and was held valid in Wright v. Vinton Branch 300 U.S. 400, 57 S.CT. 55; (1937).

Under the new Act the district court allowed relief only if the debtor could show reasonable probability of repaying existing indebtedness at the end of the three year moratorium. Relief was refused on grounds that section 75 i required "good faith" which courts interpreted as showing debtor could pay off indebtedness and was not using Act as a subterfuge to temporarily evade payment. In re Eastman, 29 F. Supp. 954 (1939); In re Van Vliet, 28 F. Supp. 594 (1939); In re Putman 27 F. Supp. 813 1939. Last December in the Bartel case the United States Supreme Court held "good faith" meant lack of secret agreements with creditors, that farmer need not show ability to repay within three years, and that the only test was the paying of a reasonable rental.

In one of the two district court cases up to this time the debtor had neither probability of rehabiliating himself nor of paying a reasonable rental. Yet the court held that proceedings should be allowed under subsections, that a reasonable rental be fixed, and that debtor be allowed to remain in possession. In re Byrenius, 30 F. Supp. 241, (1939). In the other district court case it was held that the mere fact that value of the real estate is less than the security does not warrant stopping proceedings under subsection s. In re Lysinger et al, 31 F. Supp. 431; (1940).

However, if the test in the Bartel case of paying a reasonable rental is applied, it seems likely that the district court will order sale of the property when the rental cannot be paid. Paradise Land & Livestock Co. v. Federal Land Bank, 108 F. (2d) 832, (1939). Three Circuit Court cases have been decided since the principal case. In the first case an abbreviated decision without facts reversed lower court dismissal of farmers petition on the ground that the lower court labored under misapprehension prevalent at the time of the decision, but which was corrected by the Bartel Case. McCook v. Federal Land Bank of Columbia 108 F. (2d) 185, (1939).

In another case the Circuit Court merely repeated parts of the Bartel decision and held that debtor with small probability of financial rehabilitating himself could proceed under subsection s. Union Oil Co. of California v. American Bitumuls Co. 109 F. (2d) 140, (1940).

An appraisal of the land and a reasonable rental had been fixed under the terms of subsection s, but the district court upon

creditors petition dismissed the proceedings on the ground that there was no probability of rehabilitation, even though the debtor had offered to pay in cash the rent as determined. The Circuit Court stressed the necessity of safeguarding rights of creditors as well as of debtors, but reversed lower court and ordered further proceedings. However, the court stated that after administration had started, it was up to the district court to determine how long debtor should be allowed to retain possession. Paradise Land & Livestock Co. v. Federal Bank 108 F. (2d) 832 (1939).

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## JUSTICE PIERCE BUTLER

Recently in Kansas City, memorial services were held for the late Justice Pierce Butler of the United States Supreme Court by the United States Court of Appeals for the Eighth Circuit.

Chief Justice Kimbrough Stone, of the Eighth Circuit Court of Appeals, made the principal address.

It follows:

Were this an occasion when those things which are essentially personal should be said, I would try to voice something of my estimate of this man for whom I held a genuine affection and whom it was my precious privilege to have had as a friend. However, I may say that as I deeply valued that friendship during his life, so shall the memory of that association be to me a benediction always. What I wish now is to try, from the more impersonal position of an American judge and citizen, to point out one meaning of his loss as a justice of our supreme tribunal.

The death of Justice Butler would have been a pronounced loss to the Nation at any time. It would have signified always the passing of a great man from important public service. But such loss is far accentuated by his passing when he did; and, therefore, his high worth is brought out in clearer outline. This arises from the situation in the Court at that time and his relation thereto.

The situation has to do with the attitudes of the members of the Court toward decisions involving social or economic matters coming before it. For convenience in stating these attitudes, I employ the indefinite and changeful terms of "conservative" and "liberal."

A few years after Justice Butler became a member of the Court, it came about that there were, as to decisions on social and economic matters, four members who might be regarded as conservative; two who were liberal; and three who were not definitely either. The result was, generally speaking, that such decisions of the Court were conservative, as that term is now understood. Shift in personnel exactly reversed that situation before Justice Butler died. There were then two conservatives, four liberals, and the same three intermediates.