EDITORIAL NOTES

Recent Cases

1. In *"Home Rule" For Iowa Cities And Towns,* 13 DRAKE L. REV. 53 (1963), the author, Mr. Leonard C. Abels, took the position that Chapter 235, 60th G. A., the so-called "home rule" amendment to Section 368.2 IOWA CODE (1962) was no more than a rule of liberal construction in favor of municipal corporations for application to power granting statutes and that it was not a substantive grant of power in and of itself. This position was expressly upheld in *Richardson v. City of Jefferson,* ...... Iowa ......, ... N.W.2d ...... (#51664, filed April 6, 1965). In that case the defendant city contended that by virtue of Chapter 235 alone it possessed the power to contract indebtedness, issue bonds and levy a tax of one mill per annum for the purpose of improving its swimming pool. In affirming the trial court's granting of an injunction, Justice Thornton, writing for a unanimous Court, suggested that the result might have been otherwise had it been urged that Chapter 235 when applied to Section 407.3 subsection 4, which authorizes cities and towns to incur indebtedness for establishing swimming pools, gave the city such power.

2. Iowa continues to hold fast to the interspousal immunity doctrine discussed in *Parental and Interspousal Immunity,* 13 DRAKE L. REV. 160 (1964). Recently in *Flogel v. Flogel,* ...... Iowa ......, 133 N.W.2d 907 (1965), the Iowa Supreme Court was invited to abandon the doctrine in a conflicts of laws setting. The case involved a wife suing her husband for damages for personal injuries sustained in an automobile accident in Wisconsin as a result of her husband's allegedly negligent operation of the automobile in which she was riding. The parties were Iowa residents. The wife contended that Wisconsin law which permits a wife to sue her husband for tort applied in Iowa and in the alternative that the Iowa doctrine of interspousal immunity should be abrogated. The Court disposed of the choice of law question by resting on its decision in *Fabricius v. Horgen,* ...... Iowa ......, 132 N.W.2d 410 (1965), which held that when an Iowa plaintiff sues an Iowa defendant in an Iowa court, the proper party to bring the action, for whom, and the measure of damages is determined by Iowa law. It concluded that Iowa law which does not permit a wife to sue her husband must therefore apply.

Finding no intent to abandon the interspousal immunity doctrine in the statutes allowing recovery for wrongful and negligent death of a woman and allowing a woman to recover for physician's services and hospital expenses [IOWA CODE § 613.11 (1962)] nor in those relating to actions by a wife for wages [IOWA CODE § 597.16 (1962)] or to obtain control of one spouse's property in the hands of the other [IOWA CODE § 597.3 (1962)] the wife's alternative contention was also rejected and the husband's motion for dismissal was affirmed.

Recent Legislation

3. H. F. 206, "An Act To Amend Chapter Six Hundred Nineteen (619), Code 1962, Relating To The Burden Of Proof Of Contributory Negligence In Civil Actions," enacted by the 61st G. A., removes from the plaintiff the

burden of pleading and proving his freedom from contributory negligence and places it on the defendant where the defendant relies on the negligence of the plaintiff as a complete defense or bar to the plaintiff's action for damages. Perhaps one of the collateral effects of this legislation will be the elimination of the "No Eyewitness" Rule in Iowa. The Rule and its resulting inference of care has been limited by the Iowa Supreme Court solely to the question of contributory negligence because of the desire by the Court to avoid what it feels is an injustice resulting from the operation of the doctrine that the plaintiff must plead and prove his freedom from contributory negligence. See 6 DRAKE L. REV. 101 (1957) and cases there cited. Thus H. F. 206 results in the elimination of the main reason for the existence of the Rule.

It does not necessarily follow, however, that the Rule will now be completely discarded. It is noted at page 109 of the *Drake* article that the state of Wisconsin, which adheres to the comparative negligence doctrine uses the "No Eyewitness" Rule as a procedural device in order to solve a stalemate caused by lack of evidence. While the Wisconsin court recognizes that human experience does not warrant a presumption of due care, it uses the Rule not as evidence but for the purpose of establishing a prima-facie case until the other party has gone forward with the evidence he has in his control.

4. *Possibility of Reverters in Iowa,* 12 DRAKE L. REV. 99 (1963) concludes that the Iowa Supreme Court's decisions have not been effective in limiting the duration of those future interests in land known as "possibility of reverter" and "right of re-entry"; that these interests are a blemish and an exception to the favored concept of free alienability.

H. F. 115, "An Act Relating to Limitations of Actions in Regard to Restrictions and Reversions on Real Estate," purports to limit the bringing of an action based upon a reversion, reverted interest or use restriction in and to land to a period of twenty-one years from the recording of the deed or conveyance (or the filing of the will in probate) which creates it. The period may be extended for successive twenty-one year periods by the filing with the county recorder in the county where the land is located of a verified claim by the interested party within the twenty-one year period. Such claims must state the nature of the interest and the time and manner in which such interest was acquired. If the deed was recorded more than twenty years prior to July 4, 1965 the claimant must file his claim on or before July 4, 1966.

It remains for the courts to determine whether this legislation will be effective in limiting the duration of this "feudalistic anachronism" which has become rooted in Iowa law.

5. *Liability of Public Bodies, Officers, and Employees — Governmental Immunity,* 11 DRAKE L. REV. 80 (1962), discusses the liability of a quasi-corporation engaged in a governmental function to one who is injured by its negligence. *Boyer v. Iowa High School Athletic Association,* ...... Iowa ......, 127 N.W.2d 606 (1964), upheld the doctrine of governmental immunity

generally, though not without the dissent of four members of the Court. In that case two spectators at a high school tournament basketball game brought law actions against the school district and the Iowa High School Athletic Association to recover for personal injuries suffered from the collapse of bleachers. The school district's motion to dismiss was sustained on the grounds of governmental immunity. On appeal, the prevailing opinion argued that although the doctrine of governmental immunity has been discredited and in many states abandoned and although it is judicial in origin, it has become entrenched in the law of the state, and the legislature by its acquiescence has recognized the doctrine as the policy of the state; matters of public policy are more appropriately left to the legislature. The non-prevailing opinion countered with, "We closed our courtroom doors without legislative help, and we can likewise open them."

The 61st General Assembly responded to the shove given it by the Court with the enactment of the Iowa Tort Claims Act, Senate File 322. It is not within the scope of this note to discuss the substance or the merits of the Act but it is suggested that it does not appear to open wide the courtroom doors but merely leaves them ajar. This suggestion is prompted by the definition of "claims" found in paragraph 5, section 2, and by the definition of "state agency" in paragraph 1, section 2, of the Act. Claims are defined as "any claim against the state of Iowa . . . ." and "state agency" is defined as including "all executive departments, agencies, boards, bureaus, and commissions of the state of Iowa, and corporations whose primary function is to act as, and while acting as, instrumentalities or agencies of the state of Iowa . . . ." The language of the Act seems to leave out school districts, municipal corporations, counties and other quasi-corporations. Another reason for the suggestion is the language found in paragraph 3, section 4, "The immunity of the state from suit and liability is waived to the extent provided by this Act." Does this mean that in a proper situation the employee may assert the immunity, thereby preventing the claimant from electing to sue the employee (see Section 8 which seems to imply an election) and can the negligent employee assert immunity against the state when it seeks indemnification from him. If so, does the Act run afoul of Section 1, Article VII of the Constitution of the state of Iowa which provides "and the State shall never assume, or become responsible for the debts or liabilities of any individual . . . unless incurred in time of war for the benefit of the State"? Does the Act conflict with Section 31, Article III of the state constitution which prohibits the appropriation of public money for private purposes?

No doubt these are but a few of the questions that will have to be resolved by the courts when and as they arise. But whatever the difficulties, the breaking away at last, in this modern age of comparative sociological enlightenment, from a doctrine which reputedly rests on nothing more sound that the medieval maxim, "the King can do no wrong" can be nothing but a step forward.