EDITORIAL NOTES

1. Division I of *Custody of Children in the Conflict of Laws*, 1 DRAKE L. REV. 19 (1951), was concerned with the jurisdiction of a court in an original proceeding to determine custody where some of the parties involved resided in different jurisdictions. The article noted that Iowa had been considered to follow the rule of RESTATEMENT, CONFLICTS § 117 that the state of the child's domicile has exclusive jurisdiction to determine its custody, but that the Iowa Court had not followed this rule in *Pelton v. Halverson*, 240 Iowa 184, 35 N.W.2d 759 (1949), and had granted custody to Iowa grandparents even though assuming the children's domicile to be that of their California father. The matter has again been presented to the Iowa court, in *In re Plucar's Guardianship*, 72 N.W.2d 455 (Iowa 1955), and in this case the court appears to apply the theory that it rejected in the Pelton case, but to do so in order to accomplish what it deems to be the best interest of the child.

The child involved had lived wih her Iowa grandparents since birth, her mother having died at the time. In her eighth year, her father induced the girl to enter his car, in Iowa, ostensibly to get ice cream, and took her to his home in Texas. There had been no previous adjudication as to the child's custody, although the father and the grandparents had signed a document which provided for the surrender of care, custody and control to the grandparents until the child should decide either to remain with the grandparents or to go to her father.

Although the child no longer was in Iowa, the grandparents commenced an action in the Iowa courts seeking to be appointed guardian and granted custody. The father appeared generally in this action, and the lower court denied relief. This action was reversed, and the court unanimously ordered the granting of the relief sought. [This should be contrasted with the attitude shown toward another lower court's decree awarding custody to grandparents, where grandparents, the child, and the father were all in Iowa, and the father was seeking custody by habeas corpus, in *Finken v. Porter*, 72 N.W.2d 445 (1955).]

The court, in reaching this result, cited RESTATEMENT § 117 which it had ignored in its *Pelton* decision, held that the father had abandoned the child and that she had acquired the domicile of her Iowa grandparents. It is obvious that the court felt that the welfare of the child was paramount, and that the best interests of the child would be served by awarding her custody to her grandparents.

As the child may still be in Texas, the grandparents would have to proceed in Texas courts to regain custody if the father does not voluntarily return her. But, by finding the domicile of the child to be in Iowa, in an action in which the father has ap-

peared, the court has made a finding as to domicile which would appear to be res judicata upon the Texas courts.

In view of the shift in jurisdictional theory between *Pelton* and *Plucar*, it is possible than an Iowa custody decree in a *Pelton*-type situation would not be considered res judicata by the court in the state in which the child was domiciled. Of course, if the court where the child is found places the same premium upon its consideration of the child's welfare as the Iowa court did in *Pelton*, it may seek ways to avoid treating a *Plucar*-type decision as res judicata upon it.

2. *Civil Remedies for Intoxication*, 2 DRAKE L. REV. 54 (1953), discussed the application of IOWA CODE § 129.2 (1954), which creates a statutory civil liability for injuries to certain named persons as the result of the illegal sale of intoxicating liquors. There have been no modern decisions under this statute, although subsequent to the article several actions have been commenced.

One question considered was whether beer would be treated as intoxicating liquor for the purposes of this section. Early actions had been founded on the assumption that it was. As was noted, however, § 125.2, adopted at the time of the repeal of prohibition, excluded beer and malt liquors containing less than 4% of alcohol by weight from the definition of intoxicating liquors. It was the opinion of the author of the article that this exclusion was for the purposes of Chapters 123 and 124 only, and that there was no intention on the part of the Iowa legislature to exclude beer from the definition of intoxicating liquor for the purposes of § 129.2.

The Minnesota court has recently dealt with a similar problem, in *Beck v. Groe*, 70 N.W.2d 886 (Minn. 1955), which involved the illegal sale of beer to a minor. It held that such sale did not constitute an illegal sale of intoxicating liquor under the Minnesota "dram shop act", reasoning that a 1933 act defining "intoxicating liquor" and excluding 3.2% beer from that definition was a complete and specific law regulating the business of licensing and selling 3.2% beer. The court concluded that the 1933 statute affected the definition of "intoxicating liquor" for purposes of the dram shop act as well, even though an unrepealed pre-prohibition statute defined intoxicating liquor to include malt liquor.

3. The article *Habeas Corpus in Iowa* appeared in 3 DRAKE L. REV. 30 (1953). Add the case of *Mahar v. Lainson*, 72 N.W.2d 516 (Iowa 1955) to notes 50 and 53; add the case of *Meeks v. Lainson*, 72 N.W.2d 446 (Iowa 1955), *Cert. denied*, 76 S. Ct. 145 (1955), to notes 50 and 58.

4. *Rights of Action for Prenatal Injuries*, 3 DRAKE L. Rev. 72 (1954), stated that while the majority of courts do not allow an action to be maintained on behalf of an unborn infant, the trend is toward allowing this action to be maintained. To the states

listed in note 17 as permitting maintenance of such action should be added Illinois and Connecticut. Two Illinois lower court decisions cited in note 18 as denying recovery were reversed on appeal. *Amann v. Faidy*, 415 Ill. 422, 114 N.E.2d 412 (1953); *Rodriquez v. Patti*, 415 Ill. 496, 114 N.E.2d 721 (1953). The Connecticut decision permitting recovery is *Tursi v. New England Windsor Co.*, 19 Conn. Sup. 242, 111 A.2d 14 (1955).

5. *Liability for Entrusting an Automobile to an Incompetent* was discussed in 4 DRAKE L. REV. 98 (1955). Add to notes 28 and 29 the case of *Medlock v. Barfield*, 90 Ga. App. 759, 84 S.E.2d 113 (1954), where the owner of a car was teaching a 16 year old boy to drive and gave the boy permission to "solo" around the block, the boy in fact drove 8 blocks away and there struck plaintiff's car, and defendant was held liable under the entrustment theory. Add to note 36, *F. B. Walker and Sons, Inc. v. Rose*, 78 So.2d 592 (Miss. 1955), where the car was entrusted to one who was widely known as a narcotics addict and who at the time of the accident was under the influence of narcotics, the court holding that it was a jury question whether defendant knew or should have known of the driver's habitual use of narcotics.

6. *Some Aspects of the 1953 Iowa School Reorganization Law*, 3 DRAKE L. REV. 57 (1954), discussed the requirements and problems of school district reorganization arising under IOWA CODE c. 275 (1954). The case of *State v. Klemme Community School District*, 72 N.W.2d 512 (Iowa 1955), pertains to a problem not discussed in that article. In that case, the court held that a county board does not have jurisdiction to fix boundaries and proceed with the formation of a reorganized district where a portion of said district was within the boundaries of another proposed reorganization which was already pending. The court admitted that the statute made no provision for this problem, and that there was no protection afforded by the statute to a reorganized district from having its territory immediately seized in a subsequent reorganization, once the first reorganization procedure has been completed.

Add to note 37, dealing with reduction of existing school district to an area of less than four sections of land, the case of *Liberty Consol. Sch. Dist. v. Schindler*, 70 N.W.2d 544 (Iowa 1955). This case holds that §§ 274.3 and 275.5 of the 1954 Code of Iowa are in irreconcilable conflict, and that the statute later enacted, § 275.5, must prevail. Therefore, it is permissible to reduce an existing consolidated school district to an area of less than sixteen sections of land.

Add to note 43, liberality of interpretation of the statutes and substantial compliance therewith, to note 44, whether the term "shall" when used in a statute means that a provision is mandatory or discretionary, and to note 56, cases establishing a precedent

relative to voting requirements and elections, the case of *State v. Miskimins*, 72 N.W.2d 571 (Iowa 1955). In this case the court held that where § 276.11 IOWA CODE (1950), provided that ". . . the county superintendent . . . shall call a special election in such proposed school corporation within thirty days from the date of the final determination of such boundaries . . .", that provision had been substantially complied with when the election involved was called four and one-half months after the expiration of the statutory thirty days, and that the requirement was directory and not mandatory.