Denver Law Review

Volume 31 | Issue 1 Article 6

June 2021

My Father's Mistress

Everett E. Smith

From a casual inspection of these various sections which were repealed, I found nothing objectionable.

I might mention the change made by the Revisor in Section 79 of Chapter 90. Section 79 is the section of the statute authorizing the appropriation of water for storage. The construction of this section was involved in the case of *People v. Hinderlider*, 90 Colo. 505, in which the Court held that a proper construction of this section included the insertion of the word, "thereafter," in the statute. Consequently, although the statute originally read, "Persons desirous to construct and maintain reservoirs for the purpose of storing water, shall have the right to store therein any of the unappropriated waters of the state not needed for immediate use for domestic or irrigating purposes," the Supreme Court stated that it should read, "the right to store therein any of the unappropriated waters of the state not *thereafter* needed for immediate use." Consequently, the Revisor of Statutes re-wrote the section to include the word "thereafter" in accordance with the Supreme Court's construction. This change, together with a few changes in combining sections, appear to be the most radical changes in the revision, and from my own inspection of the changes I do not feel that the revision has changed the substance or meaning of the statutes as they existed prior to the revision.

However, I can conceive that some one or more of you, when studying a particular problem under particular facts and circumstances, may come to the conclusion that some one or more of these changes has changed the substance of one or more of these statutes. Let me say, however, that it is my own opinion that the Revisor has done a most excellent and painstaking job in attempting to comply with the Legislature's mandate insofar as the water and irrigation statutes are concerned. Assuming that the same thought and attention was given to all of the statutes, and I am sure it was, the Revisor and his Committee have accomplished a monumental task.

MY FATHER'S MISTRESS

EVERETT E. SMITH

Every lawyer, single or married, has a mistress—his profession. As people say, the law is a jealous mistress. I have occasion to know. My father was a lawyer, and his views on nearly every subject were colored—I will not say distorted—by the whispered persuasions of his mistress.

My father's professional duties permitted him the companionship of art (as well as literature), a boon denied to many busy attorneys. There was a string attached, however; that his appreciation of works of art should be mixed with such speculations as whether a particular statue should be considered a chattel or a fixture. Thus, the contemplation of Rodin's Thinker in weighty

thought would lead to an absentminded comment that a heavy statue of George Washington had been held real rather than personal property in an early New York case.

A client who paused to admire a print of Daumier which decorated my father's law office might be rewarded by a generous reference to the part which etchings created by Prince Albert and Queen Victoria had played in the development of the law of privacy. Whistler had produced masterpieces of painting, of course, but he also had performed nobly in the witness box when cross-examined by an English advocate in a libel action brought against the famous author and critic, John Ruskin. The critic had called the artist impudent in asking 200 guineas for one of his paintings.

My father did not wholly share a friend's lament that the art of Leonardo Da Vinci scarcely is represented in this country. He was reminded of an interesting litigation concerning a painting which the owner claimed was done by the hand which gave the world the Mona Lisa. A well known art dealer had challenged that claim in an interview with a newspaper reporter. In the action for damages brought in New York by the enraged owner against the dealer, the jury disagreed, but the judge took advantage of an opportunity, which my father would have relished, to write an essay giving his opinion on the law of the case.

My father's attitude toward art was not a personal idiosyncrasy merely. Other lawyers, to my knowledge, make the same bows to their mistress when admiring, say, a portrait of a lovely lady by Gainsborough. An incident which happened many years ago illustrates this. Father and I were visiting a friend who practiced law in another city. Our host showed us the unfinished portrait of his daughter. There were a few remarks about the artist and the picture's promised likeness to the subject. Then the two good friends began to warm their passions in a dispute whether the contract for the painting was for the sale of materials or for work and labor.

Father was an inveterate visitor of museums and art galleries. It is only fair to say that he knew of the Barnes Foundation and the Frick Collection before their names appeared in the law reports. While Father's interest in such institutions did not depend on their contributions to legal lore, it certainly was heightened by such circumstances. Justice Holmes' comparison of the Smithsonian Institution to the ark of the covenant intrigued him. The litigation over the Smithsonian's Gellatly Collection enhanced the delight which he always had taken in its enviable paintings by Ryder and others.

When Justice Holmes wrote, in one of his renowned dissents, "We have not that respect for art that is one of the glories of France," he was speaking as one lawyer to another. The lavish homage demanded by the lawyer's mistress, his profession, scarcely permits a courtship of art.