

January 1928

## The May Meeting

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THE regular monthly meeting of the Bar Association was held May 7, 1928, President Stearns presiding.

The following applicants for membership were duly elected:

Milton Carlson  
 Glen L. Daly  
 Stanley H. Johnson  
 Benjamin B. Miller  
 Robert F. Palmer  
 Osmer Smith  
 Irving A. Sobol  
 J. Nelson Truitt  
 Merritt D. Vondy

Mr. Stearns announced that the annual Memorial Meeting of the Association would be held June 4, 1928, in Division I of the District Court.

Mr. Kavanaugh on behalf of the Executive Committee then presented a resolution adopted by that Committee, recommending the holding of a Bar Primary for the election of District, County and Juvenile Court Judges at the fall election, said Primary to be conducted by the Judiciary Committee and all details as to time, place and method to be left to its discretion. Mr. Kavanaugh moved its adoption. There being no discussion, the resolution was unanimously adopted.

President Stearns then introduced Chief Justice John H. Denison of the Supreme Court as the speaker of the day. In doing so, Mr. Stearns stated that forty-seven years ago, a boy from Vermont arrived in Colorado and was admitted to practice in 1881, and he gained the confidence and regard of the courts and his fellow lawyers, and in 1912, was elected to the District Bench and later to the Supreme Court Bench. Mr. Stearns said that no man in the legal profession in Colorado was more loved and respected than Judge Denison. He stated that the Judge had

recently attended the Sixth Annual Meeting of the Law Institute in Washington, upon which subject he would speak.

Chief Justice Denison said:

"The American Law Institute is a great institution. In all honesty I must confess I know less about it than I ought. Although I have been a member for years I have given it too little attention, and only recently, when I attended the annual meeting at Washington, have I become at all acquainted with its methods and advantages. The purpose, as you know, is to restate the whole law; just to mention that fact almost takes one's breath. The undertaking is a bold one, the proposition is more than commendable, it is admirable, but the task is appalling. The idea had been growing in the minds of thoughtful lawyers for many years while the study and administration of the law were becoming cumbersome and were approaching that degree of cumbersomeness when they would be impossible. Fifty years from now the State House will hardly hold the Supreme Court library. Many able and thoughtful jurists thought a restatement of the law might be made that would abbreviate and clarify it, but who was to do it? The task was too great for any one man or any ten men; it would require a small army. Lawyers could not afford to leave their practice, and how could the incidental expense be paid during the years it would require to do the work. At this stage the Rockefeller Foundation came to the rescue, agreed to furnish the necessary expense, and have done so for the last six years. I do not know the amount they have furnished annually, but it is very large.

The Institute is a voluntary association of lawyers, and is for the sole

purpose of making this restatement, so greatly to be desired. It is composed by practitioners and instructors of high standing and led by some of the chief men of our profession. Many of the members are highly distinguished; Elihu Root is Honorary President, Chief Justice Taft, John W. Davis, William B. Greenough of Rhode Island, George Wharton Pepper, Henry W. Taft, Harlan F. Stone and Silas H. Strawn are among the members who attended the last meeting.

The leaders of this movement have organized and carried it forward on this general plan: It is managed by one head called the director. At present William Draper Lewis holds that position, and maintains an office at Philadelphia with sufficient number of clerks and stenographers. He is controlled by a board called the council.

The restatement of each branch of the law to be restated is under one man called a reporter, he is aided by a number of others called his advisers. These advisers are widely scattered throughout the United States, and thus the expression of view points geographically variant is secured.

The method of the formation of the restatement is thus; the reporter, in correspondence with the advisers, makes a statement of what he believes the law to be on part of his subject; for example contracts. It is printed and copies sent to the members of the Institute throughout the country. With this copy is sent a blank form for suggestions of errors, amendments or improvements which every member is invited to offer. Upon receipt of these suggestions the reporter and his advisers accept or reject as they think wise. This tentative draft is then considered by the council, a body of men elected from the members of the Institute, and when approved by them is taken before the Institute at its next annual meeting. In this meeting it is

read, section by section, and all present are invited to suggest errors, amendments and improvements. This invitation is accepted very freely. The reporter sitting beside the director and president listens to all these suggestions, they are taken down in short hand by highly experienced stenographers, for the use of the reporters in preparing a new draft. With the help of his advisers he then restates the tentative statement, and it is again submitted at the following annual meeting. This goes on until he makes a proposed final draft with his recommendation to the annual meeting for its adoption as an official draft of the Institute restatement of the subject under his commission, thereupon it is submitted to all the members of the Institute with the blank form as heretofore for criticisms and suggestion. At the next annual meeting this final draft is read and discussed, section by section, freely criticized and finally adopted. This goes out to the public as the statement of what the Institute thinks is the law of the subject under consideration on the points of that subject sought to be restated. We, of course, must not confuse this restatement with legislation. It has no governmental sanction. It has no analogy to legislation and cannot in any way affect it except by suggestion, which is the principal way in which it can effect criminal procedure, since that is so commonly regulated by statutes which are not subject to restatement as are the principles and rules of the common law. It is not the law because the Institute says so, but the Institute says so because they believe it to be the law. In this respect it amounts to the statements of law which you find in your text books, but because of the character of the men who have made it and have considered and adopted it and because of the time and care that have been given to it, the probabilities are that this restatement more nearly

accords with what the law is than any text book, and is more reliable, affords a more reliable answer to the question: what is the law? upon any given point, than the decision of any ordinary court. This work is done in the hope that the law might thereby be simplified and clarified, that is to say, that it will furnish an easier and surer way to determine what the law is than any text book or recorded precedent.

What the effect of all this work will be no one can foresee, but that it can not be ignored by the courts even if they wish is obvious. Counsel, searching for every possible support for the legal proposition he lays before the court, will surely cite that section which he deems favorable, and thus it will be brought before the courts of every grade, from the Supreme Court of the United States down. Several of the Judges of the Supreme Court of the United States are members of the Institute and others are interested in its success; their reception of its work, then, will not be unfavorable. The Chief Justices of the several states and some of the Federal Judges, *ex officio*, are members of the Institute and their reception of it will not be hostile, but the ultimate effect of this undertaking can only be determined by time and use, and will, of course, depend upon the skill, accuracy and learning of its composition; its power and virtues will lie somewhere between those of a half forgotten text book and those of established principles of elementary law.

The meetings of the Institute are not without social features. Many of the members bring ladies who are received as at a meeting of the American Bar Association. On the night before the first meeting of the Institute there was a reception at the Mayflower Hotel, the official headquarters; on Friday, April 27th, there was a tea in the afternoon, and a dinner Saturday night after the last meeting.

Among the members present were

two attractive young women, practitioners in Philadelphia. Mr. McCreery and I were fortunate enough to be assigned to the same table with them at the dinner, and when I searched out and found that table I found that the handsomest member of the Denver bar had, inadvertently no doubt, ensconced himself between them. The gall of the man!

The Chief Justice of the United States, though a member, does not take part in the deliberations of the Institute, but he honors every meeting with a short address and this year he did not omit it. Among other things, he showed how well up with its work the court was and that it was no longer possible for a criminal, by appeal, to secure a period of rest and recreation before taking up his duties as a compulsory employee of his country, and, said the Chief Justice, "I wish to impress on certain members of the bar that the constitution does not forbid this expedition."

This, gentlemen, will give you a fairly accurate, though meagre, account of the meeting upon which I was asked to report. In conclusion I wish to say that whatever your present ideas are and whatever they may become, I think you all must agree with me that the effort of the Institute is a brave and wise one, and that some good must and much good may come from it."—A. J. G.

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*At the Recent Coal Strike Hearings:*

Q: Mr. \_\_\_\_\_, I don't want you to tell me what anybody else said, or what you think, but I want to know what you know of your own knowledge, but I don't want any hearsay or anything that somebody told you,—are you a married man?

A. Yes, sir.