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Address By Roscoe Pound

Dean of Harvard Law School

At a Luncheon at The University Club

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I USED to be embarrassed when I had to sit, conscious that anyone was looking at me, and listen to specimens of introductory oratory such as we have just heard, and as I have heard sometimes before when I have been introduced, until some years ago when I tried to sit on the bench in a city to the east of us and did not decide a case to the satisfaction of the populist newspapers and they compared me to Pontius Pilate. There isn't anything that anybody has ever been able to say about me since that time that has given me the slightest concern!

When the American Bar Association met in London three years ago we were told over and over again that we were there in virtue of the common blood, and the common institutions and the common speech. Yet some of us began to reflect and as we looked somewhat at the real members of the American Bar Association there present we could not but be conscious that that common blood had been considerably diluted on this side of the water; and when we came to look into the common institutions we could not but notice that beginning about 1700, be-

ginning after the revolution of 1688, the common institutions had diverged very considerably. And as to the common speech, well we understood our English Brethren, and they understood us in a measure, but when we found that nearly every one of them carried in his pocket a dictionary of Americanisms, and when some of us were privileged to look at that dictionary, and found among other things that it defined a "jag" as an umbrella, we began to suspect that even the common speech had diverged considerably since our separation from the mother country!

And so if you will look at the proceedings of that meeting you will notice that in the later days of the meeting the speeches all dwelt upon the common law as about the only thing that we could find really that we had in common. That led me, after I came back, to think about this common law.

There does seem to be such a thing. If you go into any reasonably complete law library there are of course volumes of black letter, which no one can read any longer; there are rows of text books in crumbling law sheep binding, covered with dust; there are old reports accumulating dust, all of which in their time formed a part of the law as it stood at some given date in some given place.

And yet out of all that welter of legal precepts and statutes obsolete and obsolescent—out of all that welter there does seem to arise something that gives unity to English speaking peoples; that makes us conscious of living under one law with England and Canada and Australia; and that makes us conscious of a certain continuity, not merely with Blackstone's time, not merely with the classical law, shall we say? of the seventeenth century, of the time of Lord Coke or even the great worthies of the middle ages, Choate and Bryan and Fortescue. And if we call that common element which gives this unity and continuity to the law of English speaking peoples, if we call it the common law, or if we give it its medieval name of the law of the land, I suppose there is no phenomenon of our social or political history that is so significant as the persistence and the vitality of that law of the land.

It has come into competition at one time or another all over the world with its great rival the modern Roman law system. I suppose only historians know that the custom of Paris was once law in Michigan and Wisconsin and Illinois. Look at the map. The map bears abundant evidence that those states were once French territory, and yet I suppose there is not a mark upon the law of those jurisdictions to suggest that they were ever anything but common law jurisdictions

Take Florida. Florida was once a domain of the Roman Spanish law, and there are remnants of Spanish architecture there today to remind us that that was once a part of the domain of Spain. And yet there is not even a word in the law of Florida to suggest that it ever was under any other than the English common law.

And take the domain where we are today, carved out of the Louisiana purchase. Outside of Louisiana where is there anything to suggest that this was ever any other than a common law domain? The map shows that the French voyageur and Spaniards reached here or hereabout, but there isn't anything in the law books to suggest it.

And even in Louisiana, where they have the civil code, that I suppose is almost literaly translated from the French civil code, the whole departments of the law have become, as you might say, Anglicized. Their whole law of torts has become our Anglo-American common law, and outside of

family law and the law of inheritance and a few things in the law of property, Louisiana itself is pretty nearly a common law jurisdiction.

But it is not only in respect to place and geography, that the common law has shown that persistence and that vitality. At one time or another in its history, it has come into competition with the strongest social and political forces of the time and it always has come out victor.

Go back to the very beginnings of our common law, in the twelfth century. The common law came into conflict there with the Church, the most powerful force in the middle ages, and in the Constitutions of Clarendon there was a compromise between the common law and the law of the church, and a wonderful compromise it was, a compromise that gave to the common law everything that was significant in the administration of justice between Englishmen and Englishmen.

Later, at the time of the Tudors, the movement that swept over western Europe in the reception of Roman law made it look for a time as if the Roman law might prevail even in England. But it did not. England alone of the countries of Western Europe resisted that movement and retained the law of the land. And later, with the Stuarts, the common law again came in conflict with the strongest force of the time, the doctrine of passive obedience and absolute power, or the desire for absolute power, on the part of the Stuart kings. Again the common law marched triumphant and imposed upon those kings the dogma that the king ruled under God and the law.

Come to our own legal history. After the Revolution the common law again came into conflict with the strongest force of the time, the rising tide of Jeffersonian democracy. The common law had to contend with the odium of English origin. Things English were looked on with disfavor; things French were in favor at that time. The common law was under suspicion because of its doctrine as to the obligation of contracts, that were not popular with the great population of debtors after the Revolution; and this doctrine of the supremacy of the law and judicial power was not looked upon with favor by those who conceived of the legislature as most immediately responsive to the popular will.

Yet the common law prevailed. Its supremacy remained unquestioned through the nineteenth century.

And now, within the memory of all of us, again with the rise of social legislation, at the beginning of the present century, the common law came in conflict with the strongest force of the time. Almost forgotten, I suppose, are the days of agitation for recall of judges and recall of judicial decisions, that threatened the doctrine of supremacy of the law and the fundamental notion of an independent judiciary. Yet there again the common law definitely triumphed and imposed even upon sovereign peoples its doctrine that they too rule under God and the law.

We seem therefore to have something very real, very tangible, here, that gives unity and consistency to the law and to the legal institutions of English-speaking peoples, that gives continuity virtually from the middle ages to the present.

And yet, when we try to put our finger on something definite, and say, "This is that common law," I venture to think we shall find it very elusive. What is it that gives to the institutions of English-speaking peoples this unity, consistency, continuity? What is it that makes the English lawyer, the Canadian lawyer, the Australian lawyer, the American lawyer, conscious of living under the same system?

Well, certainly it is not that we have got a body of legal precepts in common. We have only to look at the statute books in the different English-speaking jurisdictions, or even the statute books in our 48 different states, to see that that is not true. And if you turn to our reported judicial decisions, you quickly find that diversities in geography and social and political conditions have given rise to a wealth of diversity in legal precepts.

Take one example that I would like to adduce on this point. In Oklahoma the personal property of a deceased passes to his heirs. In England the real property of a deceased person passes to his personal representative. And yet England and Oklahoma are both common law jurisdictions.

There is not, then, any continuity to legal precepts, nor any consistency or unity of legal precepts.

I had occasion some years ago to look into the reports for 150 years, from 1774, the declaration of rights of the Continental congress, to 1924. And I found that you could not put your finger on a single decision in the reports of 1774 and say, There is a proposition that obtains as a bit of living law actually governing the everyday administration of justice in the United States today.

What do you find in those reports? Why, they are filled with the minutiae of procedure for imprisonment for debt, the minutiae of procedure for the settlement of paupers, the minutiae of proceedings in real actions—and how many of you here know what a real action is?—and the many details of the old eighteenth century common law procedure. There is just one decision in the reports of that year on a point of bills and notes, and it is not in any way significant, it has reference to a custom that is as dead as the dodo.

It is not then in any common body of precepts that we are to find this common law. Well, I can imagine your saying, We knew that long ago; it is not that they are common precepts, but there are certain common principles, certain principles that obtain wherever English law has followed English speech, and they set off our common law from the Roman law of the whole world. Well, one should like to think so; but it is pretty hard to find them. You can put your finger on certain principles, but the moment you do that you are likely to find that they are common not merely to the English-speaking world but to the whole world. There are a certain number of principles of universal justice that obtain wherever justice is administered among civilized men, and we haven't any patent on them in common law jurisdictions.

When you get beyond those principles you will find it very hard to put your finger upon anything. I had occasion not long ago to turn to the great book of the law in the days of Henry VIII, where there are several pages of what are called customs, fundamental common law propositions, and there is not a single one of them that we recognize today. Turn to that oracle of our common law, Sir Edward Coke, in the reign of James I. Look at what he calls principles, the authority or premise for judicial reason, and they are so scholastic, so pedantic, so out of touch with what we regard as realities that they simply make you smile. There is not a proposition there that you can say with assurance is a distinctive, characteristic, common law principle.

Well, one might say, those are not significant things, the significant things are institutions, and there are certain institutions that prevail wherever the English law has been in force, and there are three institutions that occur to each of you instantly when we speak of common law institutions, the doctrine of precedents, the

doctrine of the supremacy of the law and trial by jury.

Now I should like to think that there we have three characteristics, universal, fundamental and eternal, of common law institutions, and if you could let it go at that I think we would all be well satisfied; but the moment you begin to look into it you get an uneasy feeling even there.

Take the doctrine of precedents; that has been relaxing considerably in our practice in this country for 150 years. The theory is that a single decision has the authority of law. But has it? Look at the long list of overruled cases in any of our states, and ask yourself if single decisions actually have the authority of law with us.

The fact of it is we have been relaxing our doctrine and they have been expanding theirs until we are very much alike all over the modern world.

Well, you say, there is the supremacy of the law. The late Professor Dyer of Oxford wrote a book in which he did seem to demonstrate that there is a fundamental, universal, peculiar common law institution, and of course we carry it to its legal extreme in our doctrine of judicial power over unconstitutional legislation. But I was considerably astonished not so long ago to find that a Roman (Dutch) court in South Africa had reached the identical conclusion on the basis of Justinian's Digest and Commentaries of Modern Roman law. A court in Roumania not so long ago reached the identical conclusion on the basis of Roman law authority.

But as I say, we have carried it to the extreme in our doctrine of judicial power over unconstitutional legislation, which is not admitted in England.

Roman law authorities and Roman law technique sometimes afford a like conclusion to men who do not know how to use and do not have access to our American authorities.

Well, you say, there is trial by jury; we have always recognized in that a peculiar, characteristic, fundamental common law institution. Yes, but the civil jury is almost extinct in England, and one cannot study American legislation without being conscious that the civil jury shows signs of being moribund in this country.

Legislative constitutional amendments are continually encroaching upon the common law institution of trial by jury, and I can conceive that much may happen to it in the next generation. In the generation to come we shall not be so sure that there is a fundamental, eternal, peculiar common law institution.

Take the one matter of cases that call for expert opinion evidence. There is pretty strong pressure from our brethren in the medical profession to introduce quite a different element into cases involving expert testimony, and I can see that there may be a considerable infusion of the inquisitorial as distinguished from the controversial in our trial procedure.

But let us suppose that we have a certain residuum of precepts, of forms and of institutions which are fundamental, characteristic common law institutions, we must notice that that residuum seems to be under attack today from more than one point.

First, of course, you will think of legislation. Well, legislation in a way is not so alarming in that connection. Legislation is administered by judges trained in the common law; it is interpreted by common law canons of interpretation; it is developed with a common law background, and it deals with particularly isolated situations. You see it does not, after all, involve great danger to the unity or consistency of the common law. And then anyhow legislation is apt to be a little like the hurry of the Frenchman's time when he said he made himself

immortal for a great many years. Life is not long.

I like to think of a statute that may be found in the old statute books of Indiana. There was an old time surveyor in Indiana who was usually called as an expert in land cases, and he did not like to carry out long columns of figures, so he always figured pi as 3.14, which was good enough for most cases. But in came some rather smart young man who had been trained in more modern methods, and he used longer decimals, and began to figure pi as 3.14159, and the old man got into difficulties with his expert evidence. And he was very indignant about it, and he got himself elected to the legislature, and he got enacted a statute which was upon the statute book for some years fixing, authoritatively and officially and legally for the state of Indiana the value of pi at 3.14!

Well, you see the unity and continuity of law is not in great danger from that sort of thing; and that is true enough. But when you come to examine modern legislation more critically its destructive and corrosive possibilities prove to be very considerable.

I spoke of one point. I spoke of legislation in Great Britain, whereby the realty of a deceased person passes not to his heir but to his personal representative. And they have gone further. In Great Britain today all assets in land are either fee simple absolute or terms for years. I think you will feel that it is "going some" when you come to reflect on what that involves. Ninety-nine years from now, when these estates have been resolved by their terms parliament is going to have to get very busy unless the courts in the meantime do something that the legislative draftsmen did not provide for.

Take the crimes which are enacted in every session of the legislature without requiring a guilty mind, running counter to every fundamental proposition of the common law that crimes involve a guilty mind. Take the statutory negotiability, going counter to the common law proposition that a man can only convey what he has got. Take the statutory liens, of which we have a wealth nowadays, that have upset almost overnight what a common law lien was. On every hand you can see what we have taken to be fundamental common law dogmas undermined by legislation.

Take another institution that is growing up with great corrosive and destructive possibilities, namely, administration. Now I would not decry administration for a moment. It is required by the circumstances of our life in an urban industrial society of today. We have got to have a certain individualization and the application of rules.

It was all right in the days of the lumber wagon to say to the farmer, You navigate your wagon with due care; if you don't you will have to answer for the consequences. But when it comes to the day of motor vehicles upon our highways today, you cannot leave the matter to the ex post facto judgment of a jury after the event. You have got to tell the people by white lines and yellow lines and mechanical agencies, and even by the agency of policemen wigwagging at the corners, where to go and where not to go, and when to go and when not to go.

It is the same way in the conduct of enterprises. We cannot lay down abstract rules for the abstract conduct of abstract enterprises. We have got to tell the great enterprises what they can do and what they cannot do at this juncture and that. So that whether we will or not we have got to expect this administrative element in our polity.

I was talking to a physician about

this the other day, and he said, Yes, we are having the same experiences in medicine; when I came into the medical profession we used to treat the heart, the lungs, the liver, the stomach; our books told us how and we knew the way in which to treat them. The patient came to us; we found the difficulty to be with his heart or his lungs or his liver or his stomach, and we treated his heart or his lungs or his liver or his stomach accordingly. But now, he said, we have learned to treat the concrete John Doe or Richard Roe whose heart or lungs or liver or stomach are not functioning as they should.

And it is that same tendency to individualize that is going on in every department of human activity that we are having to reckon with in the law. Yes, I grant that. I am not the least alarmed about it. But consider its legal possibilities for a moment.

What is it that differentiates an administrative tribunal from a common law tribunal? Why, isn't it that the administrative tribunal treats every situation as unique, as unrelated to any situation that ever went before it or that shall ever come after it? It seizes upon the unique features of the situation. It treats the case by itself, unrelated to any other, past, present or future.

The common law treatment of a controversy, on the other hand, tries to refer the essential features to some type, to some principle of action, and to deduce a decision accordingly.

In the very home of the common law, at Westminster, a little more than ten years ago the House of Lords decided that in an appeal to an administrative appellate tribunal from an administrative officer, it was not necesssary for the administrative appellate tribunal to observe what it supposed were the ordinary decencies of judicial appellate system. The House of Lords held that if the administrative appellate tribunal chose to decide a case on the secret report of an inspector sent down to look over the situation, without anyone knowing who he was or what he was doing, and to act on that report without the appellant having an opportunity to see it, to know its contents or explain it or refute it or meet it by argument—if the appellate tribunal chose to proceed in that manner, the only question that the House of Lords could ask was, Did it treat everybody else in the same way? If that was its ordinary method of procedure; if it applied to all litigants, there could be no complaint, even though that ordinary procedure was the procedure of Harun-al-Rashid by way of relieving the tedium of royal ennui through the administration of justice.

Well, you see that is England; and queer things have been happening in the old country. We have known for some time that some legislation has been pretty socialistic, and I suppose the courts have got to go that way next.

And look at our own country the very year that this case was decided in the House of Lords. It happened that a workman employed by the Knickerbocker Ice company in New York came home one evening in a rather dilapidated condition. He was nervous and shaky, white, had no appetite for his supper, and when his wife asked him what was the matter he said that the boys had been putting in some ice at the basement of Hogan's place and a 300 pound block of ice had slipped and fallen on him and shaken him up pretty badly. He got no better; his wife sent for a physician, to whom he told the same story. The physician looked him over, and sent him to the hospital, where he died at one o'clock the next morning of delirium tremens.

As this fatality obviously grew out

of his employment his widow brought a proceeding before the workmen's compensation commission for the statutory compensation. The evidence before the commission showed beyond question that there was not a bruise or an abrasion or a scratch or a mark upon the body. The testimony of those who had been at work with him was that during the whole day he had been neither upon the ice wagon nor the water wagon! but that he had that day in the interior of Hogan's place laid the foundation of the fatal attack that took him off the next morning. But the statute said that the commission in awards under the act was not to be governed by the technical rules of evidence, and it made a highly technical rule of evidence that there needed to be no causal connections between the putting of ice into that cellar and the fatality; and having before them the testimony of the physician and of the widow as to what the deceased had said, the Board apparently actuated by a desire—shall I say to distribute the economic surplus?—looking by this case by itself as a controversy between the widow and the ice company, made an award distributing the economic surplus.

The Court of Appeals of New York found itself very much embarrassed in dealing with that case, because while it had this evidence before it the question of fact was for the board, and so long as it proceeded upon the question of evidence as it was in the habit of proceeding upon it, and dealt with this case as it dealt with other cases, where was there power in the court to turn itself into an administrative body and to apply purely legal technicalities to things that were within the province of this administrative board?

Well, you see there are corrosive and destructive possibilities for the common law in these administrative commissions.

Let us look at another thing that is going on. You would not expect to see anything of this nature in the treatment of controversies creeping into judicial decisions. The art of the common law lawyers' craft, however technical in using legal materials, has somehow managed to keep a very considerable uniformity and consistency in the decisions of the courts of our 48 states. And yet there are 48 of them, and there are nine circuit courts of appeal, besides the Supreme Court of the United States, each within its sphere—shall I say with a mouth speaking great things?—empowered to lay down the universal, eternal common law in its particular jurisdiction.

And this tendency to individualize seems to be creeping in at more than one spot. Let me give you an example. I suppose if there is anything that we should have agreed upon a generation ago, it was that a parent is not responsible for the child's torts. Also we should feel that one is not responsible for what another does unless that other is an agent acting within the scope of his agency.

Well, that was clear enough in the old horse and buggy and lumber wagon days. If little Willie took out the family horse and buggy on a frolic of his own, he was not likely to be able to hurt much of anything except the horse and buggy and himself; the public at large were in no great danger. And so it seemed perfectly clear that unless the parent was at fault, or unless Willie was engaged in his father's business and within the scope of that business, that there was no liability.

Then came the advent of motor vehicles. When little Willie takes out the family automobile there are great possibilities of danger, and that situation has given us pause, and in more jurisdictions than one the judicial doctrine of the family automobile has risen to deal with that situation.

Now I do not say that you are to explain those decisions on the ground that the ownership of a Ford indicates such affluence on the part of the owner that distribution of the economic surplus comes into account, and yet one cannot read some decisions without suspecting that that does enter into it. But I will be a little more charitable, and suggest as a principle, Qui facit per *auto* facit per se!

But seriously you see what I mean. That tendency to individualize, that tendency to treat a case as unique, to think of it not in terms of x and y but to think of it as the Knickerbocker Ice company on the one side and Mary Doe on the other, is showing itself in every department of our legal activity.

Now I am not putting up a sign of distress and saying that our legal and political and social institutions are in danger, because I do not believe it.

If you look at legal history you will see that there are periods of stability and there are periods of growth. And in periods of growth for a time we have to grow through trial and error, and when we are doing things through trial and error there is very likely to be a considerable percentage of error.

There isn't any danger to our institutions in those things, and yet isn't there very grave danger of our losing the continuity and the unity that has seemed to be characteristic of the law of English speaking peoples in the past?

Well, what shall we say? Is there nothing but history behind the law of English speaking peoples? Have we nothing in common with the English and the Canadian and the Australian but a certain common legal terminology? Is it true after all that there isn't any fundamental, eternal, universal law of the land?

They tell a story of the great Bishop Wilberforce, who when he became Bishop made a resolution that he would visit every parish in his diocese. In the course of carrying out that resolution he came presently into one remote parish where there was an old fox-hunting parson who mumbled through the service hurriedly on Sunday morning and then got on his horse and went about the more serious pursuits of life; and the Bishop naturally was shocked, and he said, "This won't do; we must have some spiritual life in this parish." "Yes," the parson said, "I thought so too when I came here 40 years ago, but 40 years of life in this parish tends to disabuse one of ideals of that sort." But the Bishop said, "That won't do; that won't do at all. I will come down here next Sunday and I will preach and I will show you what you are to do."

So the Bishop came down and preached as only he could, one of those characteristic magnificent sermons of his, on the text, "The fool hath said in his heart, there is no God." After the service the parson said, "Now we will see what the parish think about it." So he sent for Hodge, a representative of the fine old English farmer, to come up and be presented to the Bishop. And Hodge came up with his cap in his hand, very much embarrassed, and was presented to the Lord Bishop. "And now," the parson said, "tell the Bishop, Hodge, what you think of the sermon." And Hodge said, "My, it were a powerful sermon —it were a powerful sermon. And do you know, My Lord, I can't help thinking there do be a God, after all!"

Well, I cannot help thinking that there do be a common law after all. And I am going to suggest to you where I think it is that we are to find it. I think our whole difficulty in a discussion of this sort is in assuming that law is simply an aggregate of laws; that if you have two thousand rules of law, adding them together you have law. I do not believe it. Legal

precepts are an element in the law but they are a relatively transient and fleeting element. There are at least two other elements that we have got to take into account. One is, if I may put it so, the art of the lawyer's craft, the technique of the lawyer; that technique whereby he finds the grounds of decision in authoritative legal materials; that art of his craft whereby he develops rules for new situations out of a body of rules made for quite different situations; that art of his craft whereby he can eke out a constant and reconstructive development so as to make them into a living law for the administration of justice in a time and place. And then in addition to that technique of which I speak, there is a body of received ideals, ideals of what the social order should be, what the legal order should be, and consequently what the rules and principles, what the legal precepts, ought to be. Those received ideals are the whole background of everything that the judge and that the lawyer does. He projects his question upon that background and he fills in the details according to that picture.

Now if you look at those elements of the law you will see that the element of legal precept, as I said, is a relatively fleeting one. If you think of the law of today I suppose you will think almost instantly of contracts and torts.

Look at Blackstone's Commentaries and see how much you will find there of anything that we call contracts today. It is all about contracts under seal. The first text book upon torts was written in 1859, and as late as 1874 a reviewer argued that there wasn't any such thing. And if we take contracts and torts as the significant parts of the law I need not remind you that the subject that bulks largest in the reports today is taxation, and you cannot find that in the reports of a generation ago.

The life of these precepts is not much more than a generation. What was the first book that came out of an American law school? It came out of Judge Reeves famous school at Litchfield, Connecticut, and was a treatise on the law of Baron and Fief. What was the next book that came out of an American school? It came out of Harvard law school, and its title was a Treatise on the Law of Real Actions. There may be some lawyers here who were brought up on Blackstone and know what real actions are, or were, but I suspect most of them skipped that part and turned to the parts that were more relevant to the affairs of the day.

If we go back into the reports, as I said, they are filled with settlement of paupers, imprisonment for debt and the minutiae of the old common law practice, but where are the snows of yester year? When you come to the element of received ideals, they are more permanent, and yet they change. If anyone doubts that let him turn to our classical books of the seventeenth century where the picture is still that of a feudal, relatively unorganized, society. Today our ideals have been affected by the random organization under which we live, by the ideals of the French revolution, by the democratic ideals of the nineteenth century, by the identification of the immemorial common law rights of Englishmen with the rights of man. They are radically different ideals, and although these ideals change slowly, we think they are changing, as at least suggested by the not infrequent five to four decisions on questions of social legislation in the Supreme Court of the United States.

And when we come to the element of the art of the lawyer's craft, the technique of the common law lawyer, there we find something doing. We can recognize that technique clear back

into the Year Books; we can recognize it in England, in Canada, in Australia, in our forty-eight states, and there is that same model of approach toward a legal controversy, that same mode of handling the legal materials, that same sure motive and Anglo-Saxon tendency to lay hold of concrete experience and apply it no further than the circumstances of a concrete controversy require.

When you turn to the modern Roman law you find an utterly different technique, applying written texts. He looks for a universal proposition and he proceeds by a process of deduction from a universal proposition as laid down or not laid down in third century Rome. His books of authority are the ancient oracle; his treatises are commentaries upon the written law.

But the oracle of the common law is a judge. The books of authority are reports of decided cases; the treatises are commentaries upon decided cases. And there is something that lies back of this technic that seems to me a most significant thing, and that is the frame of mind of the common law lawyer, the frame of mind that leads him always to keep his eye upon experience, to think of legal problems, to think of controversies in terms of experience, to seek his solutions not in ambitious programs for laying down universalities, but rather in a cautious, slow but surefooted application of experience to the exigencies of justice for the time being.

Now in that frame of mind, in that point of technique of the common law lawyer, is the spirit of the common law. I suggest to you that it is our most precious legal and political, and possibly social, possession; and isn't it the duty of the common law lawyer to see to it that in spite of the destructive and corrosive possibilities of legislation and administration, this frame of mind, this technique, is preserved, is handed down, to remain a living instrument of justice among English speaking peoples?

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C. P. Gehman
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Denver, Colo.

Recent Statutes

By Henry McAllister, Esq.

THE wisdom of the act of the 1927 General Assembly in providing for a "legislative reference office", designed to supervise the drafting of laws and the prevention of foolishly conceived and phrased statutes, finds support in another act passed at the same session, House Bill No. 321, "by Representative Hill (by request)", being "An Act to amend Sections 5162 and 5164 of the Compiled Laws of Colorado, 1921".

Section 5162 of the Compiled Laws had been operative some twenty years, and gave satisfaction. It provided a method of determining heirship to real property in intestate estates, at a minimum of trouble and expense, by the filing of a petition therefor at any time before order for final settlement and inclusion of notice thereof in the notice of final settlement. Section 5164 prescribed the effect of the decree upon heirs and their grantees.

The new act purports to extend the proceedings to inheritance of *personal*