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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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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*

property as well as real estate, and it may be that this is sometimes advisable, though the chief object of such statutes is to settle title to land. The act further provides that the petition may be filed at any time before the order for final settlement. Such an order may be entered practically four weeks before the date for final settlement, so as to permit the publication for that period. But, after this provision, the act says that the court shall fix a date "not less than *six weeks* from the date of such order", and shall cause a notice to be published for *four weeks*, and to be mailed to non-resident heirs at least *six weeks*, before the hearing. Furthermore, the result is that where the petition for determination of heirship and the petition for final settlement are filed on the same day, the day fixed for final settlement must be at least *six* weeks in the future.

As usual, the hypocritical practice is followed of adding both the emergency clause and the safety-clutch, so that the act took effect upon its approval (March 26, 1927). The session laws have not yet been published, and it is doubtful whether many attorneys are advised of this change in the law. Of course, no emergency in fact existed and obviously the law was not necessary for the *immediate preservation of the public peace, health and safety.*

Since the present law relative to administration of estates was enacted in 1903, scarcely a session of the legislature has passed without amendments thereof and instances might be cited of amendments of the same section time and again, sometimes at intervals of two years, only. Apparently an attorney has a case not covered by existing law or out of harmony with it, and he has a statute passed to meet *his* "emergency" regardless of its inconsistency with other provisions, and without expressly repealing them. Soon, the law is again amended or a new statute is enacted to fit another case, and so on *ad infinitum.* As a result our estate laws are in hopeless confusion on some subjects, and no sooner does a lawyer accommodate himself to a certain procedure than another legislature repeals all he knows. On the very question of determination of heirship, does the new law repeal Compiled Laws, Sections 5165 and 5166, themselves enacted at a different session from the new amended Sections 5162 and 5164, and relating to the same subject? If it was the intention of the draftsman that they should be repealed, why did he not expressly provide, rather than leave the same to the unsatisfactory expression "all acts and parts of acts in conflict herewith are hereby repealed." There is serious question whether the 1921 Compiled Laws do not contain a number of sections relating to estates which were repealed prior to their publication.

Finally, as to the emergency clause and the safety-clutch, no more valuable service may be performed by the new legislative reference director than to discourage the use of these provisions, especially in statutes designed to change existing procedure in courts or elsewhere, where, in fact, no emergency or "immediate preservation of the public peace, health or safety" can possibly be involved. The danger that such statutes will be subjected to referendum (an iniquitous procedure which is now practically nullified by resort to a bare-faced falsehood) is negligible. Those who are called upon to conduct proceedings in courts or to advise clients, are entitled to know (or, at least, to have convenient access to means of knowing) what the practice is, and should not be compelled to grope in the dark for months intervening the adjournment of the legislature and the pub-

lication of the session laws, and then be confronted with a statute completely revising procedure made immediately effective by these devices.

A recent conspicuous example is the "Act concerning real property and to render titles to real property and to interests and estates therein, more safe, secure and marketable". This act contains many admirable provisions and no objection is made to its substance, but it is submitted that it was not, as stated, necessary for the immediate preservation of the public peace, health and safety, nor was there any great emergency.

The legislative reference office cannot be a complete panacea, but if the director appointed be a lawyer of character, experience, independence, capacity for hard and careful labor, and above all possessed of proper ideals and enthusiasm for his work, and not a mere lame-duck who needs a job, he can be of great aid to the public and the bar.

Re: Colorado River Waters and the Santa Fe Compact

By Fred S. Caldwell, Esq., of the Denver Bar

WILL the Santa Fe Compact, if ultimately confirmed by the seven states and Congress, divest said states of their present sovereign power to grant appropriations of water for use in the generation of electrical power and vest that governmental function in the federal government exclusively?

The Compact does not undertake to define the term "agricultural use", evidently upon the theory that it is so well understood as to make definition unnecessary. But "domestic use" is defined to—

> "include the use of water for household, stock, municipal, milling, industrial and other like purposes, *but shall exclude the generation of electrical power.*"

And following this is a provision (Art. III, (e)) imposing an express inhibition upon all the seven states in these words:

> "The States of the Upper Division *shall not withhold water*, and the States of the Lower Division *shall not require the delivery of water*, which cannot reasonably be applied *to domestic and agricultural uses.*"

Although this inhibition is expressed negatively its obvious meaning is this: The states shall not have the right to withhold or require the delivery of water for "the generation of electrical power."

But, although the states cannot withhold or require the delivery of water for "the generation of electrical power", it is contemplated and intended that the water shall be used for such power purposes. Art. IV. (b) expressly provides that:

> "Subject to the provisions of this Compact, water of the Colorado River System may be impounded and used for the generation of electrical power", subservient only to the "dominant uses for agricultural and domestic purposes."

Now to "impound and use" said water for the generation of electrical power necessarily constitutes the