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The Long Dinner

Denver Bar Association Record

Happy New Year

The Record greets you. It wishes you a happy and prosperous new year. The Record is starting upon its third year. We believe that it can be made to serve a useful purpose. It will keep you in touch with Bar Association activities. A regular feature will be Mr. Joseph C. Sampson's interesting reviews of the addresses delivered at our meetings. We hope to publish from time to time communications from the chairmen of the various committees concerning committee activities.

The judges of the local district, county and juvenile courts, and the justices of the peace, have been requested to furnish for publication in each issue statements of some of the more important law points decided by them during the month. The points will be stated with the brevity, though not necessarily in the form, of syllabi.

An advisory committee has been appointed to assist the board of editors in gathering and selecting available material for the Record.

The publication is not one for pecuniary profit. It is your publication. Whether it is a success or a failure largely depends upon you. We solicit your active co-operation. What interests you will no doubt interest your fellow members. If you have any suggestions to make concerning the administration of justice, civil or criminal, or concerning the new court house, or legal aid work, or small claims courts, or the public defender, or the library, or the Bar Association Record, or a schedule of fees, or Bar Association meetings, or the relation of the press to the administration of justice, or concerning any other subject within the scope of Bar Association activities, or if you have interesting reminiscences, write them down and send them to any member of the board of editors or of the advisory committee, or to the secretary of the Association. Ordinarily a paper should not exceed 1,000 words.

At the beginning of the new year we fill our glass with sparkling mountain water (nectar of the Gods!) and drink to each and every one of you this toast, in the words of our old-time friend, Rip Van Winkle (as played by Jefferson): "Here's to your good health, and your family's good health. May you live long and prosper."

The "Long" Dinner

Like the voice of the prophet crying in the wilderness comes the clarion call of United States Senator Chester I. Long, president of the American Bar Association, for a return to fundamental American principles of liberty and government, from which he made it clear we had wandered far afield.

Scheduled for an address on the subject of the proposed Denver meeting of the American Bar Association at the bar dinner given in his honor at the University Club on December 15, Senator Long dropped a verbal bombshell amid the assembled lawyers and, in a stirring speech such as we have seldom heard, called upon them to awake and gird their loins for the fight to preserve our American system of government.

Dorsey Extends Invitation

President Butler introduced Clayton C. Dorsey as the toastmaster of the evening. Mr. Dorsey said that Senator Long's high fame and great accomplishments as a lawyer and thinker made it appropriate to dispense with the formality of introducing him and that he would, therefore, introduce the company to the distinguished guest. He referred to the assembled company as the representative lawyers of Colorado and declared that there were none better to be found anywhere. He then referred to the possibility and probability of the American Bar Association's holding its convention in Denver in 1926 and said that the meeting was held because Denver lawyers not only wanted to pay their respects

to Senator Long, but also wanted him to know that they wanted the American Bar Association to come to Denver for its next meeting. In behalf of Denver and Denver lawyers, he extended a hearty invitation to the American Bar and called attention to the fact that the meeting held here about twenty-five years ago was one of the most successful on record. Both the Association and the city, he said, were now much larger and he was confident that we could now entertain the Association even better than we did on the former occasion. We could not do all of the things we did then, he explained, because of certain obstacles, particularly the Eighteenth Amendment, the Volstead Act, the Colorado Prohibition Law, Judge Symes, United States Attorney Stephan, Judge Butler and his brethren on the District Bench, District Attorney Cline, the police, and, last but not least, Governor Morley's "hop-lights." However, he thought that these officials might be induced to declare a sort of moratorium while the meeting was in progress, for, after all, as a great American once remarked, "What is the Constitution between friends?" After extending again a hearty Western welcome to the American Bar, Mr. Dorsey then introduced President James Grafton Rogers of the Colorado Bar Association.

Rogers' Story

Mr. Rogers referred to the story told by Judge Wells of the early days in Leadville. It was the custom then, it seems, for Denver lawyers to take the night train to Leadville and in the baggage car there was card playing and other entertainment throughout the night. Much consideration was therefore required on the part of the judge who was to hear these lawyers present matters on the following morning. On one such morning, the judge had said to one of the lawyers, "I can't hear you this morning, sir," whereupon the lawyer had replied, "Ish all right, Judge, I can't see you." The real difficulty in the path of providing appropriate entertainment for the American Bar, Mr. Rogers thought, was not the Constitution of the United States or the various officials mentioned by Mr. Dorsey, but was the geography of the country—we were too far away from the border.

Coke and Bacon

In studying Senator Long and reflecting upon the fact that he held the highest office within the gift of lawyers, Mr. Rogers said, he had puzzled over the reasons why men of this type are selected. Every modern lawyer, he declared, was partly Coke and partly Bacon and constantly faced the problem of whether he should be entirely one or the other. It was axiomatic, he said, that our office-holders represent us about as we wish to be represented, and the list of officials in the American Bar Association probably represented what the American lawyer actually was. The professions all have standards after which practitioners model themselves, he stated, and he mentioned Dr. Osler, among the medical profession, and Secretary Hoover, among the engineers. They all have types, he declared, but not in all legal history was there an instance when two contemporary leaders afforded such a clear contrast in character as did Coke and Bacon. He traced the careers of these two men in a very entertaining manner, pointing out the remarkable coincidence in their fortunes and misfortunes and their differences in temperament and character. He told of the disgraceful climax to Lord Bacon's career and of the disappointing end of Coke's public life; of the conscientious fairness and the cruelty of Coke, and of the versatility and corruption of Bacon. Bacon, he said, stood out today as one of the greatest intellectual lights of the centuries, while Coke was purely a lawyer and nothing else. The model of the American lawyer, he thought, was made up of a combination of these two types. The representative successful citizen-lawyer, he thought, was exemplified in the past presidents of the American Bar Association, who dealt with broad problems and represented a combination of a little of Coke and a little of Bacon.

Senator Long Compliments Us

Senator Long said that he knew his audience were all good lawyers and that he was impressed with what Kansas had lost in losing Colorado. He spent a good deal of time fishing out here in the summer, he said, and he had often thought how much better the fishing would be if it were only in Kansas. He reminded us

that Colorado was once part of Kansas Territory but that it had been gladly given up by Kansas at a time when she had trouble enough within her present borders without extending her dominion further. The eastern half of Nebraska had once been offered to Kansas but she had declined the offer for the same reason. Kansas, he said, didn't feel like taking on more trouble by acquiring this part of the country, but felt she should give her time and attention to making trouble for the rest of the country. He appreciated, he said, the opportunity to hold the American Bar Association's meeting here in what was once a part of Kansas.

Discusses Obstacles

Apropos of the obstacles to the convention's being held here, Senator Long said that the older members of the Association who had attended the meeting held here about twenty-five years ago seemed to think that no trouble need be anticipated. In recent years, he said, the meetings had been held close to the border, in San Francisco, in Minneapolis, and in Philadelphia, and the question now presented was whether they should hazard a meeting in the center of the country. He reminded us that we had serious competition from Seattle, which was not far from the northwestern border. However, if we can put aside the obstacles, he said, he had no doubt that, accustomed as we are out here to overcoming obstacles, we will find some way to entertain the American Bar Association in a satisfactory manner.

The National Legal Organizations

All of us believe in organization, he said, and most of us belong to some organization. There are four national legal organizations: the American Bar Association, which is forty-eight years old; the Conference on Uniform State Laws, which is thirty-five years old; the American Law Institute, which is thirty-one years old; and the Criminal Law League, which is thirty-one years old. He explained that the American Law Institute was the best equipped for work; that it had an endowment of $1,000,000 and an income of $100,000 a year, with an additional temporary endowment of $20,000 annually for the development of a model code of criminal procedure. Mention was also made of the Commercial Law League, which seeks to improve the practice of commercial law. The Conference on Uniform State Laws, he said, was limited in membership, and this organization, as well as the American Law Institute, was affiliated with the American Bar Association. It prepares bills to bring about uniformity in state laws and arranges to have them submitted to the various state legislatures. The American Bar Association is the oldest national legal organization and has a membership of about 24,000, Senator Long explained. It has doubled its membership within the last five years. It was organized, he said, primarily to promote the administration of justice and improvement in the practice of the law. Our first duty as lawyers, he reminded us, is to look after the judicial machinery used in the administration of justice. This judicial machinery has faults, and committees of the Association are continually seeking to correct them. The Association as an organization has taken great interest in public questions relating to the law and to the administration of law, he said, and never hesitates to take a positive stand on questions concerning the Constitution of the United States. It opposed the recall of judicial decisions and brought about the defeat of the principle, and it has likewise thus far succeeded in defeating the proposal to make Congress the court of last resort on constitutional questions. He reminded us, however, that the presidential candidate advocating this latter proposal had gained 4,000,000 votes in the last election, which illustrates the necessity of giving attention to such questions.

The Two Big Issues

There are two issues now confronting the people of the United States, Senator Long declared—the preservation of individual liberty and the preservation of local self government. These issues are now forming and the outlines of the battle are now being given, he said, and lawyers ought to inform themselves on both questions. They are before us now as lawyers and as citizens of the republic.

Liberty is Defined

Liberty, he said, was referred to in the organic law, in the preamble to

the Constitution, in the Fifth Amendment, and in the Fourteenth Amendment, yet we have heard but little concerning it in judicial decisions. He read a recent decision of the United States Supreme Court in which the court said that liberty denotes not merely freedom from bodily restraint, but also the right of the individual to continue to engage in a useful occupation without interference, to marry and to bring up and educate his children, and to worship God according to the dictates of his conscience. The occasion for this decision, he said, was the beginning of this effort to interfere with individual liberty. Nebraska had placed restrictions on the teaching of certain modern languages; Iowa had attempted the same kind of thing, and Ohio had come out in the open and forbidden the teaching of the German language in the lower grades. The question was whether such teaching could be prohibited, when the teachers were qualified, and the Supreme Court had said that it could not be done because it interfered with the principle of individual liberty.

Initiative and Referendum

He said that these laws had originated under the Initiative and Referendum, which he thought we had here, but "it was pretty hard to tell just what we had here from the decisions of the courts." Kansas, he said, had never had the Initiative and Referendum.

In Oregon, he said, they had sought to determine that the state alone should decide where a child should be sent for its education in the primary grades. This attempt was made under the Initiative and if successful would have destroyed all private schools in that state. When the case came before the United States Supreme Court, the court had declared the law unconstitutional and void as an interference with the individual liberty of the parent and guardian. The Tennessee evolution case, he said, was also on its way to the United States Supreme Court, and while as lawyers we are not interested in the questions of Fundamentalism and Modernism, we have a vital interest in preserving the liberty of teachers to teach and of children to learn. This, he said, was simply an instance of the tendency of the states to interfere with liberty. There are, however, he said, a few things left to us which neither the state nor the nation can take away from us.

Religious Freedom

The battle for liberty, Senator Long said, was fought out before the adoption of the Constitution. Thomas Jefferson had resigned from Congress to go back to Virginia, where he was elected to the legislature, where he submitted to that body a statute to insure religious freedom. A bitter contest immediately arose and when Jefferson went to France Patrick Henry proposed an appropriation for the teaching of religion in the schools. Madison then again presented the Jefferson statute for religious liberty and after a bitter controversy the Jefferson bill was enacted into law. How much Jefferson thought of this accomplishment, Senator Long said, was revealed in his epitaph which recited, "Thomas Jefferson, author of the Declaration of Independence, of the Statute for Religious Liberty, and father of the University of Virginia." The contest over this Jefferson law, Senator Long declared, had much to do with the adoption of the First Amendment to the Constitution, which Madison helped to write. In support of religious liberty, Senator Long then quoted the late Mr. Bryan as having said that "God would not coerce His children in matters of religion and that Christianity was a religion of love and not of force." In the Reynolds case, Senator Long said, the Supreme Court had held that Congress had power to reach actions only and not opinions.

The question now is forced to the front, the speaker declared, as to whether or not the opinions of men are to be controlled by legislation. We must meet this question as it was met by Madison and by Jefferson in the early days of the republic.

Local Self Government

The second menace now confronting us, Senator Long said, was the destruction of the principle of local self government. We must remember, he said, that this is a dual form of government and was made so from the beginning. The states were recognized as having some rights that could not be interfered with. There is now a disposition, he declared, for

the national government to usurp many of the powers of the states, and he cited the various attempts to secure a national child labor law by way of illustration. We all have the feeling, he said, that too much power is being lodged in Washington, and he read Senator Root's statement, made in 1913, to the effect that the preservation of our dual form of government is essential to our national life. He also called attention to President Coolidge's Memorial Day address, at Arlington, last May, in which he had emphasized this question and warned against the menace of unification. Further centralization of government, the speaker said, ought to be avoided. The Mason and Dixon line no longer marks division of opinion on this question of States' Rights. It is not now a partisan matter. He called attention to the fact that both parties had participated in the passage of the so-called "50-50" appropriation bills by which the states and the nation share in the expense of public projects and the federal government directs the expenditure of the money jointly raised. The time has come, he said, to stop this subsidizing or bribery of the states.

Our Duty as Lawyers

The question, Senator Long said, is whether or not we shall destroy this dual form of government and the old story about liberty and government is still on. The effort to reconcile the two—liberty and government—has been apparent everywhere down through the ages, he said, first there is government and no liberty; then liberty and no government, and so on ad infinitum. The petition of Right and Declaration of Right, in England, and the Bill of Rights in the Constitution of the United States, he said, mark great progress in reconciling the two, but the conflict is on and there is the greatest danger of the impairment of the principle of local self government. We, as lawyers, have our part to perform in this contest, he said, and we should appeal to public opinion and see to it that liberty and local self government shall not perish from the earth.

Whitehead Wields Wit on Dry Topic

Genius converts dry land into fertile fields and it takes genius to make an apparently dry topic palatable to an audience unfamiliar with its ramifications. This latter kind of genius Mr. Carle Whitehead possesses to a marked degree, for, in an address at the meeting of December 7, he not only surrounded the subject of "Patents, Copyrights, and Trade Marks" with romance, but injected into it so much spontaneous humor that, far from being dry, it proved to be delightful.

The story of the development of our legal system, Mr. Whitehead declared, is a story of restrictions and prohibitions followed by evasions and circumventions, followed by more restrictions and prohibitions, followed by further evasions and circumventions, and so on, ad infinitum.

Patents, copyrights and trade marks, he charged, now afford the most effective means of accomplishing the objects of combinations in restraint of trade. Witness the Radio Corporation, Shoe Machinery and Oil combines; all made possible by pooling patents. Pooling the principal patents in an industry gives the pool a practical monopoly for a period of seventeen years, the life of the patent, and during that time inventors of improvements upon the inventions pooled must either sell their patents to the pool on its own terms or let them lie idle. The pools, he said, thus acquire many patents extending beyond the 17-year term and in this way are able to maintain their monopoly indefinitely.

Litigation arising out of the subject is complicated and technical, Mr. Whitehead declared, and he likened some phases of it to proceedings before the Interstate Commerce Commission, where "witnesses argue under oath and lawyers testify without being sworn." The prosecution or defense of an ordinary patent suit, he said, involves an expense running into thousands of dollars and the poor inventor cannot afford to fight for his rights. As an illustration of the cost of such litigation, he cited