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The March Meeting

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The March Meeting

THE Association's regular monthly meeting was held March 5, 1928, at the Chamber of Commerce Building with President Robert L. Stearns presiding.

The following were unanimously elected to membership in the Association:

George H. Allan
Robert G. Baker
Charles J. Blakeney
Ernest C. Burck
Ora L. Capps
George Alfred Crowder
Donald C. McCreery
C. Milton Morris
Merle Dean Vincent

Twelve recently admitted attorneys were the guests of the Association at this meeting. After the transaction of the above business, L. Ward Bannister, Esquire, of the Denver Bar, was introduced as the speaker of the day and spoke on the subject, "Legal Phases of Recent Developments in the Colorado River Problem".

Mr. Bannister in opening his remarks, said that the old statement to the effect that "virtue is its own reward" is not accurate in his opinion. He said that he had been riding and standing on the water-wagon for five long years, so that now his friends insist upon talking about water until he begins to feel that they think he knows nothing about anything else.

He then referred to the decisions of Judges Hallett, Wells and Belford, which first announced the principles of the doctrine of appropriation of water to beneficial uses and said that they undoubtedly not only declared

law but made law, and that they were as much entitled to be called statesmen as any legislator. He said that the Colorado River problem was embedded in the question of water rights under the appropriation system, and that his discussion would be largely limited to a consideration of the legal phases of the Colorado River controversy.

He said that the problem is variable in that it means different things to each State. To California, it means flood protection, irrigation, and municipal supply with no revenue feature; to Arizona and Nevada it means power benefits and revenues to the state treasuries; to New Mexico, it means solely a division of water; to the Upper States (Colorado, New Mexico, Wyoming, and Utah) it means a segregation of water on definite lines so as to prevent the loss to the Upper States of all of the water of the River through prior appropriation in the Lower States,—or how to bring about a segregation of the water of the River for use in the Upper States. Mr. Bannister stated that this was due to the decision of the United States Supreme Court in the case of Wyoming vs. Colorado, to the effect that as to interstate streams, state lines will be disregarded and priority shall govern the use regardless of state lines. Under this doctrine, one state might take all of the water if its citizens appropriated the same prior to appropriations in other states.

He stated that Old Mexico uses 800,000 acre feet per year from the Colorado River waters under priorities, which are older than those of the Federal Government on the Gila River in New Mexico, and that priorities in California are older than those of the Federal Government. Therefore, in years of small supply, the Upper States must give up the water to the earlier priorities of Mexico and California, unless a segregation or division of the waters is made.

As an example of the need for prompt action, Mr. Bannister stated that twenty applications are now pending before the Federal Power Commission for the power rights on this River. Under an Act of Congress, the Federal Power Commission can issue no license for power rights until March, 1929. He said that this embargo might as well expire in June of 1928 because if any appropriate legislation is to be passed by Congress, it must be done during the long session, which ends in June of 1928, as there will not be sufficient time in the short session, commencing in December of 1928, for any contested legislation.

Twice since the year 1924, the Colorado River was so low in Arizona that it contained insufficient water to supply the earlier priorities below that point, because persons holding later priorities in the Upper States had withdrawn the water. He cited this as a further reason why the Colorado River problem is not going to solve itself and why we should take immediate affirmative action in the matter.

Mr. Bannister stated that there are 1,000,000 acres of land in Colorado not irrigated; that there are 3,700,000 acres of land in Colorado already irrigated from the Colorado River and other rivers. In addition to the above water demands in Colorado, he mentioned additional needs which will arise for municipalities. He stated that the Colorado River Compact offers a means of segregating the waters of the Colorado River. Under the terms of that Compact 7,500,000 acre feet would be allotted to the Upper States (Colorado, New Mexico, Wyoming, and Utah) and 8,500,000 acre feet to the Lower States (California, Arizona, and Nevada). These figures would be decreased somewhat when

by comity some appropriate arrangement is made with Mexico.

He then recalled the fundamental principle with reference to water—the thing to be divided is not the water itself but the right to use the water. He reminded his audience that the water in the streams belongs to no one and that while in the stream it is unowned.

He stated that the legal theory of the Compact was that the states have the power with the consent of the Federal Government to divide the use of the water in such manner as to bind the different water users within their respective states. He said there was legal authority for the transmission of water from one basin into another basin and that Colorado may bring water from the Colorado River to the eastern slope and that the Federal Government may move water from one state to another even though the drainage area does not lead back to the source of supply.

Digressing for a moment he told of attending the convocation at the University of Colorado in honor of Dean James Grafton Rogers. Upon entering the auditorium, he inquired of an usher where he might sit; the usher told him that he might sit any place except in the middle section, which was reserved for lawyers. He said he sat on the side.

Mr. Bannister then explained the three Colorado River Bills in Congress, known as the Swing, Johnson and Phipps Bills. The Swing and Johnson Bills are much alike, except that one depends upon the approval by six states and the other by three. He stated that five states had already passed statutes to the effect that when six states ratify the Colorado River Compact, it shall go into effect as to the six. He said that five states had ratified now out of the seven negotiating. Utah and Arizona have failed to ratify to this date. He said that under this Compact, California and Nevada assume the greatest burden in that if Arizona refuses to ratify, California and Nevada agree to give up enough water to make up Arizona's share. All of the Bills contemplate a government project at Boulder Canyon, which is on the border line between Arizona and Nevada, at an estimated cost of $125,000,000. He stated that another essential difference between the Bills was that the Swing and Johnson Bills give to the Federal Government the preferred right to own and operate the Dam and power plant although it may in its discretion grant the right to operate the power plant to a private enterprise. Under the Phipps Bill, the states are given the preferential rights. All of the Bills provide that the project is to be erected through the sale of water privileges.

He stated that the legal theory upon which the Government would assume this expenditure was that it would be improving the navigability of the Colorado River and hence affecting interstate commerce. He said that the Colorado River was navigated down stream from a point in Utah from which oil shipments were made, and that the navigability of the stream would be improved in that the flow would be equated for one hundred fifty miles below the Dam and a great lake would be created between Arizona and Nevada which would be one hundred ten miles long, five hundred feet deep and of varying width. He felt that if Congress declared this project to be for the improvement of navigation, then the Supreme Court of the United States would certainly follow Congress' declaration and sustain the legality of this legislation on that ground.

He said the theory of segregation was that the waters of the River should be administered in accordance with the Colorado River Compact. It

was felt that if Arizona did not ratify it could be compelled to comply with the terms thereof through the control by Congress over rights of way for ditches and canals on public lands. In other words, Congress could declare as a condition precedent to the issuance of a permit for rights of way over Government lands in Arizona that no water be carried under the same in conflict with the Colorado River Compact. Mr. Bannister felt that it is infinitely better for the Swing and Johnson Bills to be passed than no Bills at all. He referred to the Pittman Resolution, which requested that the Government be kept out of the power business and he felt that Utah could not be induced to ratify the Colorado River Compact unless the Pittman Resolution was complied with. He said that it was impossible to overestimate the importance to the Upper States of these matters because by this procedure the consent of California would be obtained, whereas now she has three times the appropriations of the State of Arizona and, further, the passage of any of these Bills would fortify the validity of the Colorado River Compact.

Mr. Bannister then commended Senator Phipps, Congressmen White and Taylor for their activities in connection with the above. He said that he had no information as to the position taken by the other members of Colorado's congressional delegation. He stated that he felt that Senator Phipps was working for the good of the state, although Mr. Bannister was originally opposed to some of his views. He said he also liked to say a good word for the Democrats, "because the Democrats need all the good words they can get".

In concluding, he said that opportunity was knocking at our door; that the recent Mississippi and New Eng-

Special Notice to Members

March 31, 1928.

The members of The Denver Bar Association are hereby notified as follows:

The Nominating Committee of this Association heretofore appointed by President Robert L. Stearns has made the following nominations for the ensuing year:

For President - - - - - - - - - - - Henry W. Toll
For First Vice President - - - - Hubert L. Shattuck
For Second Vice President - - - - - Philip Hornbein
For Trustees - - Charles J. Munz and Hamlet J. Barry

Pursuant to Section 3, Article 7 of the by-laws, further nominations may be made by filing with the Secretary at least fifteen days before the annual meeting the name or names of additional candidates bearing the written request of at least twenty members of the Association.

Pursuant to the by-laws, the annual meeting of the Association will be held at 6:00 P. M. on April 30, 1928, in the dining room of the Chamber of Commerce.

Respectfully submitted,
(Signed) ALBERT J. GOULD, JR.,
Secretary.

land floods had aroused congressional interest in flood legislation and that this sentiment would assist in the passage of one of the Colorado River Bills. Mr. Bannister hoped that the people in the Washington delegation would be a unit in demanding congressional legislation predicated on a six state basis if a seven state basis cannot be secured. —A. J. G.

What's Wrong With The Law?

Long-tailed Coats, Green Bags, Stuffy Pomposity Have Been Laughed Away, but Legal Machinery Intended for Rural Communities Creaks Badly Today—Juries and Judges, Laymen and Lawyers Must Act Now to Bring Justice Back to the Courts.

By Bethuel Matthew Webster, Jr.
Assistant United States Attorney for the Southern District of New York
Son of B. M. Webster of The Denver Bar

SECURITY of commercial transactions, peace of mind, happiness, and health—these depend upon efficient administration of justice. Yet the profession of law is in disrepute. Judicial machinery has broken down. Courts are despised and avoided. Most unfortunate of all, due mainly to shameful neglect, there is chronic, terrible failure of criminal justice.

Well, what can be done about it?

Laymen and lawyers have a joint responsibility. In taking remedial steps the bar must be provoked by an indignant, dissatisfied public. But that public must be enlightened. Failure of justice is not an occult occurrence. It is usually attributable to obvious, concrete flaws in the judicial machinery—an outworn part, an over-loaded engine, insufficient fuel. To lend intelligent assistance in correcting the imperfections, conscientious laymen must understand the operation of the jury system. They must scrutinize professional poses. They must determine whether the old machinery is adequate for present use.

The friction incidental to the operation of the jury system is a condition with which most laymen are familiar. One who has talked to many jurors, in and out of court, can say with assurance that the average private citizen is appalled and frightened into inactivity by the complicated business of the administration of justice. A feeling of the futility of individual effort is the bane of large-scale democracy. The consequence of this feeling—inactivity—is interpreted as apathy, self-interest, ignorance. It is not that.

The writer has seen few jurors who failed to take an active interest in a case on trial before them. Not infrequently, after trial, a juror calls on one of the attorneys to explain his action in a case. If, in a criminal case there has been a disagreement, the juror often makes suggestions respecting presentation of the case for retrial to the lawyers representing the side he favors, and not infrequently jurors apologize for the action of their fellows.

In spite of judicial admonition, jurors discuss cases with their relatives and business associates during recesses. They linger to ask questions after trial. The moral standards of a race, a generation or a community can