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Revised Codes of 1947

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THE REVISED CODES OF 1947

Enactment of the bill[1] for recodification of the laws of Montana by the 1945 legislature awakens the bar to its responsibility in the undertaking. Changes have been authorized which presage for Montana a modern code found now so frequently in our sister states.

The bill continues the code commissioner system for the 1947 Revised Codes of Montana and in addition creates a paid three-member Advisory Board to work with the commissioner. Personnel of the Advisory Board, like the commissioner, are to be appointed by the Supreme Court and may be selected if possible one from among the district judges of the state, one from the law faculty of the university, and the third from the bar at large. Commissioner and Advisory Board both will work under supervision of justices of the Supreme Court. Traditional features of older codes are to be reproduced in the new and include a copy of the Magna Charta, the Declaration of Independence, the Organic Act of the Territory of Montana, the Enabling Act, the Federal and State Constitution, and the laws of Congress on authentication of records. Most significant change authorized is the power,[2] inferentially granted, to group bodies of the law into titles and sections.

Denominated topical grouping, this method has sanction in most of the modern western state codes. In order to collect the laws into an integrated, accessible whole, and to permit the expansion of the code by future legislation without dis-

[1]Chapter 184, Laws of 1945. (House Bill No. 320.)
[2]Section 6. "In compiling said codification and revision of the Laws of Montana hereby authorized, the said Commissioner, Advisory Board and Justices shall have authority to determine the form and arrangement of the Codes, to rearrange the parts, chapters and sections thereof, and to make appropriate and descriptive designations, numbers and titles for such parts, chapters and sections."

turbing the arrangement, the modern code came into existence. Instead of consecutive numbering of sections, law subjects are segregated into titles and sections. Gaps are left in the numbering scheme to accommodate amendatory and new acts to fit into their proper titles. The result is a statute arrangement adequate for years to come, presenting at the same time a logical division of the body of the law into appropriate titles. Should it be deemed advisable by the revisors, Montana may have a modern code in 1947 with the advantages named. Lawyers will at first meet with the same difficulty as in the past when section numbering has been changed. The task will be no greater than before, tables of parallel citations will be supplied, and the bar will have the security of a permanent numbering scheme which once-learned will serve for many years in the future. If Montana is ever to have a modern topical code, now is the time to achieve it.

The invitation to the bar is in the Act itself[3] to submit comments upon defects in the law to be remedied and other matters related to the project. It is the purpose of these remarks to call attention to the function of bench and bar in the endeavor. Not alone will suggestions as to the method to be adopted in the form and arrangement of the code, the paper, number of volumes, index, etc., be appropriate, but comments as well upon the inadequacies or omissions in matters of substantive and procedural law should be acceptable. If the title-section arrangement prevails, the question how to number the sections arises. C. D. Yetter devised the chapter, article and section system for the 1923 Revised Statutes of Kansas and it survives in numerous western state codes. For illustration, a reference to 60-2928 indicates Chapter 60, Article 29, Section 28. Simpler is the United States Code designation of, for example, Title 28, §724. The advisability of omitting from the Montana code legal description of county boundaries and placing those records in the office of the Secretary of State might be suggested, thus effecting a saving of some seventy pages. An earnest recommendation might be forwarded that a paper be used in the code of sufficient quality to receive notes penned with ink. Both a volume and a consolidated index are specified in the Act. Since the value of law books is measured by the adequacy of the index, your

[3]Section 2. "Said officials (code commissioners) shall invite comments from members of the Legislative Assembly, the Bar, and public officers of Montana, and its subdivisions as to defects to be remedied, or on other matters related to the undertaking."

ideas of what that should contain will be of use to the revisers.

For an example of a substantive defect, the omission of the vital word "agent" in a statute[4] exacting a fee for engaging in the business of purchasing furs was fatal. The Montana Supreme Court condemned the statute when a defendant was informed against for its alleged violation.[5] This defect would have been a proper subject for the attention of the revisers, for they are invested with power[6] to note imperfections in the law and to prepare bills for correcting them. The action[7] of the 1945 legislature has however removed the uncertainty as to that statute. A substantive imperfection is to be found in Section 6741, Revised Codes of Montana, 1935, where this language appears: "When a remainder is limited to the heir or heirs of the body . . . ," it should read "to the heirs, or heirs of the body," as a reference to Field's Civil Code, §237, the original source, will reveal. This too is an appropriate substantive matter for the consideration of the revisers.

It perhaps is in keeping with the spirit of the Act to venture the suggestion that the office of the code commissioner be made a permanent, continuing institution. Other states have found it profitable. The code commissioner is authorized to study decisions of the courts for inadequacies in the laws there disclosed, to confer with state administrative officials as to changes desired in the statutes under which they work, to act as counsel for members of the legislature in drafting bills. He represents an instrumentality, long needed, to bring the makers of the law into contact with the problems which should be exposed to the legislative process.[8]

Matters of this kind are mentioned merely as examples to point the way. Every lawyer in Montana must have his own notions as to changes which ought to be made in the code. This article seeks to elicit them for the use of the revisers.

The Supreme Court sets the machinery of recodification in motion by the appointment of the officers empowered under the Act to do the task. Intelligent and informed thought by the members of the bar communicated to the recodifiers is needed to build a more perfect structure. With the materials

[4]Chapter 69, 1941 Session Laws.
[5]State v. Salina, (1944) .....Mont....., 154 P. 2d 484.
[6]Section 6 of Chapter 184.
[7]Chapter 188, 1945 Session Laws.
[8]See Cardozo, *A Ministry of Justice*, 35 HARV. L. R. 113. And for the dynamic work of the New York State Law Revision Commission since its creation as a permanent body in 1934, see MacDonald, 14 CINCINNATI L. R. 308.

and opportunity at hand, and backed by the active interest of the bar, the efforts at recodification promise for Montana a bright chance to achieve a new modern code in the Revised Codes of 1947.

James A. Nelson.

MODERN TREND OF THE LAW OF CONTRIBUTION AMONG JOINT TORTFEASORS

The law of contribution is founded upon equitable principles and based upon the desire for a proportionate distribution of a common burden among those obligated. Thus it seems strange to hear the general rule stated today, in most American jurisdictions, that there can be no contribution among joint tortfeasors. The policy of the Anglo-American common law has been to deny assistance to tortfeasors simply on the theory that they are wrongdoers and therefore not entitled to a proportionate distribution of the common burden. To gain a clearer concept of the reasons for such a rule, its application today, and the trend away from the same, it is necessary to take a brief glance at the historical background of the law on this subject.

It is quite generally accepted that the rule had its origin in 1799 in the famous case of *Merryweather v. Nixon*.[1] In this case a judgment was recovered jointly against the plaintiff and defendant in an action for injury to a reversionary interest in a mill and trover for certain machinery. Plaintiff was levied on for the whole judgment, and he then sued the defendant for contribution. Plaintiff was denied such a right on the grounds that his action rested upon what was, in the eyes of the law, his own deliberate wrong. In spite of the meager report of the case, it seems clear that the action proceeded on the theory of a malicious and wanton tort. Therefore, it appears that the rule set down was merely that no contribution should be allowed between wilful and intentional wrongdoers, but later authorities seized upon the decision as stating the general rule that no contribution should be allowed among joint tortfeasors as a class.

Subsequent English cases, however, seemed to recognize the limitation of the doctrine of *Merryweather* v. *Nixon* and applied the rule against contribution only where the plaintiff was a wilful and conscious wrongdoer.[2] In 1894 a case arose in

[1] *8 Term Rep. 186.*

[2] Adamson v. Jarvis 1827, 4 Bing. 66; Betts v. Gibbons 1834, 2 Ad. & El. 57; Pearson v. Skelton 1836, 1 M. & W. 504.