The Repeal of Section 2687M

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COMMENTS

A movement supported by the leading jurists throughout the United States is on foot to cause the adoption of an act in spirit like that of the English Practice Act. In this issue Judge Stevens presents an appreciation of the progressive legislation of Wisconsin in the field of pleading and practice, as well as an able exposition of the English Practice Act.

Section 4090, Wis. Stats., a statutory development of the old bill of discovery used in equity, is a highly efficient aid in the administration of justice. In his ample treatise on the uses and abuses of examinations under this section which appears in this issue, Judge Werner has embodied many practical hints based on actual experiences on the bench.

Water power and riparian rights are now a subject of federal legislation. The probable effects of this legislation are of peculiar interest to the Wisconsin lawyer. The views of Mr. Hooper, who is a well-known authority on water power and riparian rights in this state, are based on a profound study of these topics.
EDITORIAL COMMENT

While the subject of the decision in the case of Meyer vs. State of Nebraska lately decided by the United States Supreme Court may compel a passing interest only, yet that which may be inferred from the language used by the court is of paramount importance. Mr. Zollman, who by his book on American Civil Church Law has established himself as a national authority in that field, amply discusses a probable sequence of this decision.

THE REPEAL OF SECTION 2687M

The repeal of Section 2687m which empowered the courts of this state to render declaratory judgments came as an acute disappointment to the proponents of declaratory relief. The adoption of this and similar statutes was hailed by prominent members of the legal profession as a landmark in the history of American Jurisprudence. True, in Michigan, a similar statute, but broader in its scope, was declared unconstitutional. Nevertheless the friends of Section 2687m had strong hopes that this section would become part and parcel of the Wisconsin practice.

It is a curious fact that such relief is granted in equity and by statute in specific instances. Moreover, statutes are now construed by means of so-called test-suits. But the granting of such relief by a direct proceeding instituted for that purpose is precluded by a definition of the judicial power in the light of the ancient common law of England, a jurisdiction which now freely applies such relief.

An extension of the principle of declaratory relief to afford a construction of existing contracts as a matter of course before damages accrue would be highly beneficial. It would clarify proposed business activities. It would be a firm step in the direction of dispelling a growing lack of confidence in the effectiveness of the courts as now constituted to cope with the problems of a rapidly expanding commercial nation without the aid of constitutional amendments.

JOSEPH WITMER, Editor.