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Bar Sponsored Bills Become Law

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Six bills sponsored by the Colorado Bar Association and fourteen bills sponsored by the Denver Bar Association were passed by the 39th General Assembly and signed by the Governor. Reports submitted by C. Edgar Kettering and Ira L. Quiat, Chairmen of the Legislative Committees of the two Bar Associations respectively, are here published. From these reports readers will note that the State Bar Association sponsored mostly controversial measures and the Denver Bar Association sponsored so-called "lawyers bills" affecting property titles and the practice of law. The two committees worked very closely in their legislative campaigns and many of the bills sponsored by the Denver Bar Association were sponsored at the request of the Board of Governors of the State Bar Association. The report of the Denver committee summarizes the provisions of the new laws because it is felt that the members of the bar should be informed of these changes at the earliest possible time.

Report of Colorado Bar Legislative Committee

The following is a report of the activities of the Legislative Committee of the Colorado Bar Association during the session of the 1953 General Assembly. We were requested by the Association President, Mr. Jean S. Breitenstein, and the Board of Governors to sponsor the following legislation:

1. A Bill for the increase of salaries of judges of courts of record.

Many Bills for this purpose were introduced, ours being, so far as I know, the only one wherein Supreme, District and County Judges were combined in one Bill. We appeared before several committee and informal hearings advocating $15,000 per year for the Supreme court and $12,000 per year for the District court (the County judges' salaries being graduated in proportion). Many outside factors, forces, and the work of many individuals entered into the ultimate passage of separate Bills increasing the Supreme court salaries from $8500 to $12,000, the District court salaries from $7500 to $9000, and the County court salaries on a graduating scale, with the Denver County Judge being raised from $8000 to $9500. The Bar Association, together with other organizations and individuals took an active part with respect to this salary legislation. I believe our efforts were particularly helpful (a) in the general education of legislators on the subject of the necessity for judicial salary increases, and (b) in coordinating the efforts of the various sponsors so that such efforts were directed toward the entire program for the benefit of all the courts of record.

2. A Bill creating a Judicial or Departmental Council giving the Supreme Court supervisory authority over inferior courts.

This Bill was sponsored by the Association and was enacted.

3. Enabling legislation permitting certain county judges to sit for district judges, in accordance with the recently adopted constitutional amendment.

This Bill was passed with practically no opposition.

4. Legislation in connection with the revision of the 1953 statutes under the work of Mr. Charles Rose.

This legislation was adopted without the necessity for any active efforts on our part.

5. Legislation sponsored by the Mental Hygiene Sub-committee relating to the adjudication and commitment proceedings of mentally ill persons.

This Bill was defeated largely on the issue of requiring homes for mental defectives to receive all patients committed thereto without regard to the availability of space. Much time and effort had been expended in the preparation and sponsoring of this Bill by the Mental Hygiene Committee.

In addition to the foregoing proposed legislation, we interested ourselves in assisting in the enactment of a new law increasing and widening the field of payment of expenses to district and county judges when traveling out of the counties of their residence. This Bill was defeated on third reading in spite of the efforts of your Committee to secure its passage.

Special acknowledgment must be given to the members of the Committee and to the members of the legal profession who are serving in the legislature. Their assistance was invaluable in our activities.

C. EDGAR KETTERING,
Chairman.

REPORT OF THE DENVER BAR LEGISLATIVE COMMITTEE

The Legislative Committee of the Denver Bar Association drafted and actively sponsored in the 39th General Assembly sixteen bills. Fifteen of the Bills were passed by both houses, one was vetoed, and the other fourteen are now laws. We believe that this is the best record ever established by the Denver Bas Association and will attempt to briefly summarize these new laws and point out the changes.

SENATE BILL NO. 205—AMENDING SECTION 50, CHAPTER 176, 1935 C.S.A.—Sub-section (a) of this new law improves the language of old Section 50 and deletes provisions which are found elsewhere in our probate laws. For instance, Section 253 of Chapter 176 provides for the acceptance and waiver of service. There was no need to re-enact it in this new law.

The old law *"required"* all persons cited to attend the *"probate."* In most instances there is no contest or objections to a will, yet every interested party served with a citation was required to attend. The Court, the Clerk and the Bailiff all had to explain to

such persons that they did not actually have to be present unless they opposed the will.

Under the new act the citation merely *advises* the interested parties of the time, date and place of the hearing of the probate.

Sub-section (b) of the new act provides that if a person objects to a will presented for probate because he claims under another will, then such other will must be filed simultaneously with the objections or a reason be given why it is not filed, and the objections must set forth the reasons for the failure to file the same. It fixes the parties to be served in case of a caveat, and, upon the filing of such objections, all other wills in the possession of the proponent of the will must be filed. The Court in one or more hearings determines which of all purported wills is the will of the decedent.

Before the passage of this new act persons claiming under another will merely filed objections and the sole issue, was on the will presented for probate. If that will was denied probate then the other will would have to be presented and the same routine gone through. Under sub-section (b) multiple hearings and trials, where there is more than one will, are avoided and the delay of finding out which is the true will of the decedent is eliminated.

SENATE BILL NO. 208—PROVIDING FOR THE OUTLAWING OF CONTRACTS OF PURCHASE AND SALE OF REAL ESTATE—Section 1 of this act provides that no action or other proceeding shall be brought or maintained under a contract for purchase and sale of real property by a person (out of possession) after ten years, from the date fixed for the delivery of the deed under such contract, and if no date of delivery is specified in the contract, ten years after the date when the final installment of the purchase price was due.

Section 2 has the same provisions concerning a bond for a deed.

Section 3, makes it clear that the act does not affect Section 116 of Chapter 40, 1935 C.S.A. (outlawing agreements in the nature of an option) and grants one year from the effective date of the act in which to bring any action on contracts where the 10-year period has already expired or will expire.

For years old contracts of sale and purchase shown on abstracts have plagued title lawyers and have required Quiet Title actions to remove the cloud against real estate caused by such contracts.

SENATE BILL NO. 210—MINING AND MANUFACTURING CORPORATIONS—Since territorial days the Directors of a mining or manufacturing company had no power to mortgage the company mines or plant or its principal machinery until such encumbrancing was approved by a majority of the outstanding stock of such corporation at a special stockholders meeting. In the early

days when fake promoters were selling spurious mining stock and engaging in other doubtful and illegal ventures such provisions had a salutary effect. However, those days are long past and the provision remained on our statute books. A lawyer could not safely pass any trust deed or mortgage by any corporation because the corporation might be engaged in some manufacturing venture, and the statute provided that without the approval of the stockholders such mortgage was absolutely void.

In 1951 the Legislature amended this section and provided that if all of the stockholders signed the consent to such mortgage that no stockholders meeting need be held.

This bill repeals this antiquated provision so there is no longer any difference between a mining or manufacturing company and other corporations.

SENATE BILL NO. 212—ASSAULT WITH A DEADLY WEAPON NOW A FELONY—The District Attorney's office requested the Bar Association to present this bill to the Legislature. For years the offense of an assault with a deadly weapon was a high misdemeanor under our laws. It is now a felony.

Juries, in trying a person for an assault with intent to commit murder, were handed a number of possible verdicts. One of these possible verdicts was "guilty of assault with a deadly weapon." Many juries could not agree and compromised on "assault with a deadly weapon" in the belief that the same was a serious offense carrying with it a penitentiary term. In many instances such criminals escaped with minor sentences. This situation is now remedied.

SENATE BILL NO. 215—ACKNOWLEDGMENT OF CHATTEL MORTGAGES—Under the Colorado Statutes a deed or other instrument affecting real estate need not be acknowledged. It is notice to the world when recorded. The acknowledgment merely permits the instrument to be introduced in evidence without proof of execution.

For some mysterious reason the Colorado Statutes have always required that a chattel mortgage, in order to be valid against third parties, in addition to being recorded had to be acknowledged. Many a chattel mortgage has been held to be void even though recorded because of some technical defect in the acknowledgment. The committee felt that this technical requirement was arbitrary and unjust.

A chattel mortgage, even though un-acknowledged, is now notice to everybody if of record.

SENATE BILL NO. 219—DEATH, RESIGNATION OR REMOVAL OF A FIDUCIARY—Sections 90, 91 and 92 of Chapter 176 (1935 C.S.A.) dealt with the removal and resignation of fiduciaries. There was no express provision in the Statutes dealing with the procedure upon the death of a fiduciary.

Under Section 90 the court had the power to remove a fiduciary for certain reasons therein specified, but the fiduciary had to be *"summoned."* Why, in a proceeding already pending before the court, it was necessary to summon a fiduciary when the court had jurisdiction over him is beyond understanding. In many instances it was difficult to serve the summons, and in some instances the court was powerless to stop a fiduciary, especially if he had power under the will, until he could be served and a hearing had.

Under Section 92, if a fiduciary resigned, the resignation could not be accepted until notice of his intention to resign by publication, was given, as in case of a final settlement. If, thereafter the resignation was accepted, was another notice required for final settlement of the fiduciary's reports?

The new law combines all cases where a fiduciary is to be replaced, regardless whether the vacancy be caused by death, resignation or removal. It provides who is to make the final report, and provides for the appointment of a successor immediately.

No longer is it necessary to summon a fiduciary in case the question of his removal is before the court. The court may upon its own motion or upon the petition of any interested party notify the fiduciary to appear at the time fixed, and if the notice cannot be served personally, the notice is given in such manner as the court may direct, and the court can then hear the matter and remove the fiduciary.

Under Section 3 of this new law, whenever the court believes that it is for the best interests of the estate, the court may suspend or limit the powers of any fiduciary, with or without notice, until a hearing can be had. We believe the courts had this inherent power before, but probate judges were hesitant to enter an order curbing a fiduciary who was mismanaging or wasting the assets of an estate until such fiduciary was summoned.

In a recent instance an administrator proceeded to spend substantial amounts of estate funds in a drunken spree. The court hesitated to instruct the bank not to honor his checks. He could not be found and before he was finally located and summoned, a substantial part of the estate funds had been dissipated.

SENATE BILL NO. 221—REPORTS OF FIDUCIARIES—This law amends Section 217 of our probate law. There was no provision for the destruction of vouchers in estate proceedings regardless of the period that had passed after the estate was closed, and the files of the County Court were cluttered with vouchers going back to territorial days. The County Judges wanted authority to destroy vouchers 10 years after the date of the discharge of the fiduciary. The new law gives the court that power.

When the committee studied Section 217 it found other things that needed correcting. It simplified and improved the language.

Under the old law the fiduciary had to file his report every six months, but in practice very few fiduciaries did so. Under the old law the court could dispense with a report but it was questionable whether the court had authority to enlarge the time.

The new law empowers the court upon proper showing to shorten or lengthen the six month period or dispense with the necessity of filing the report.

The old law contained a peculiar provision. In all estates where any heir, legatee or devisee was unknown, or if known, there was no person qualified to receive the legacy or distributive share, the fiduciary had to serve a copy of each report upon the Attorney General. Not one lawyer in a hundred complied with this requirement, yet it was mandatory. The new law now makes it optional with the court. The court may, if it deems best, require such service.

SENATE BILL NO. 267—HOMESTEADS—The 1951 Legislature attempted to increase the exempt amount of a homestead from $2,000 to $5,000. It only amended the first section of the homestead law to read $5,000. The other sections continued to provide for a $2,000 exemption. The new law fixes the amount at $5000 in all sections.

Under the old law a marginal entry had to be entered on the margin of the instrument of the acquisition of title unless such instruments was not of record.

With the prospect of microfilming (discussed hereafter) an impossible situation would have been presented, because no marginal entry could be made on the microfilm record. Under the new law, a homestead can be created by either a marginal entry or by an instrument in writing in which the owner or his spouse states that the property is being homesteaded.

The act re-writes and clarifies provisions of the old law. Minor changes have cleared up ambiguities and more clearly defined certain rights.

Under the old law, if a homestead were sold and the proceeds invested in another home, the new home was also exempt to the extent of the homestead, and no marginal entry on the deed of the new home was required.

Under the new law the proceeds of the homestead are exempt for a period of one year, and if a new home is acquired it must be homesteaded within 30 days from the recording of the deed.

At the time of the adoption of the old homestead law we did not have joint tenancy in this state. Provisions are made to protect the rights of joint tenants and to define rights upon the death of one joint tenant.

Upon the destruction of the homestead by any casualty the insurance proceeds are exempt in the same manner as if the homestead had been sold.

The act also improves the present provisions concerning the

conveying or encumbrance of the homestead and provides that when two parties of opposite sex having the same surname join in the conveyance or encumbrance of the homestead, it is presumed that the parties signing the same are husband and wife.

HOUSE BILL NO. 345—ALLOWANCE TO WIDOWS AND CHILDREN—Section 1 of this new law authorizes the court, after a hearing, to permit the spouse or the minor children of the deceased owner of a home to remain in possession of the home and the household furniture without payment of rent for such period as the court may deem just.

Upon the death of a person the court may make reasonable provision for the surviving spouse or the minor children from and after the appointment of a fiduciary, and payments made are deducted from the widow's or minors' allowance.

This permits the court, instead of waiting six months to determine the priority of claims, to enter an order for the support of the dependents of the decedent at once.

The next paragraph of this section increases the widow's allowance to $3500. If there be no widow, then the minor children of the decedent are entitled to such allowance. If there be step-children the court no longer is compelled to give the widow and her children one-half and the step-children the other half. Under the old law if the widow had five children of her own and there was only one step-child, the step-child would have received $1,000 and the widow and her children the other $1,000.

Under the new law the court divides the allowance among the widow (if there be step-children) and the children of the decedent in such manner as the court deems best.

Section 3 of this bill amends Section 212 and increases the amount allowed to the spouse of a mental incompetent or the minor children, before the payment of creditors, to the same amount as provided for the widows' allowance.

HOUSE BILL NO. 351—AGREEMENTS TO MAKE A WILL —The Supreme Court in a recent case reaffirmed the principle that if two persons, at or about the same time, made wills with similar or reciprocal provisions, that *that fact alone* established an agreement to make the wills, and the wills were irrevocable. Most lawyers felt that this principle of law was unfair and that many similar wills were drawn by spouses without any agreement that the wills should be irrevocable.

This new law provides that the agreement to make a will must be proved by clear, satisfactory and convincing evidence, and the fact that two or more wills were executed at or about the same time by different persons shall not of itself be any evidence that such wills were made in consideration of each other.

HOUSE BILL NO. 353—TAX DEEDS—Section 258 of Chapter 142 (Revenue Act), 1935 C.S.A. provided that a treasurer's deed "when substantially thus executed and *recorded* shall vest in the purchaser all right, title . . ." Lawyers in examining titles

found a treasurer's deed of a certain date. Subsequently they found a quit claim deed from the grantee in the treasurer's deed, but the treasurer's deed was not recorded before the date of the quit claim deed. Lawyers therefore turned down the title because the grantee in the treasurer's deed was not the owner until he had recorded his treasurer's deed.

This new act amends Section 258 and provides that upon the execution of a treasurer's deed, regardless of the date of recording, title vests in the grantee.

HOUSE BILL NO. 355—EXTENSION OF MORTGAGES AND TRUST DEEDS—Section 123 of Chapter 40, 1935 C.S.A. states that in no event can a mortgage, trust deed or other lien be extended beyond a total of 30 years by various extensions. Lawyers had some doubt as to the meaning of the 30-year period extensions.

A new section was added which now provides that the "30 years" means 30 years from the original maturity date of the mortgage, trust deed or other lien.

HOUSE BILL NO. 392—MICROFILM RECORDING—In 1951 the Legislature authorized microfilm recording in Denver. The City of Denver was about to inaugurate a system of microfilming of real estate records which would have made the examination of real estate records by lawyers a difficult, tedious and endless task.

The Legislature amended Chapter 130 of the 1951 Session Laws and provided that real estate records could be microfilmed but the recorder had to maintain one set of records in books which are legible without the aid of any enlarging device.

The 1951 act provided that microfilm records were not subject to an inspection by the public, but the recorder could permit the inspection thereof.

The new act makes the microfilm records as well as other records open to examination by the public.

HOUSE BILL NO. 395—VALIDATING ACTS OF A FIDUCIARY UPON THE REVOCATION OF LETTERS—Under the law, when a person was adjudged to be a mental incompetent the court must forthwith appoint a conservator and the conservator takes possession of the assets of the mental incompetent. If the mental incompetent or some other person requested a jury trial, where did that leave the conservator if the mental incompetent was subsequently found to be sane?

If a will were admitted to probate and the executor proceeded to act thereunder, and thereafter a later will was discovered and the Letters revoked, what would be the liability of the fiduciary originally appointed?

The new law provides that any act of a fiduciary appointed by a court shall not be invalid or void solely for the reason that the order appointing him was annulled or revoked.

IRA L. QUIAT, Chairman.