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County Court Practice Changed

Dicta Editorial Board

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Standard No. 75 SPECIAL IMPROVEMENT TAX—WHEN A LIEN

Problem: Does a local or special improvement authorized pursuant to statute, ordinance or charter become a lien or encumbrance before the amount of the special tax therefor has been ascertained, assessed, and made a lien in accordance with statute, ordinance or charter?

Answer: No.

Note: The Charter of the City and County of Denver provides that special taxes shall become liens from the publication of the assessing ordinance. Charters of other home rule cities should be examined for pertinent provisions. Insofar as the state law is concerned, it is provided that a special improvement tax becomes a lien when the amount of the assessment is finally determined by the Board of County Commissioners, City Council, or other governing body as the case may be. (Sections 1 and 8 of Chapter 138, C.S.A. 1935.)

In drafting contracts of sale, attorneys should recognize the possibility of assessment at some time subsequent to the transaction, especially if the improvements have been authorized.

COUNTY COURT PRACTICE CHANGED

After January 1, 1952, appellants from Denver municipal court judgments who wish to demand trial to a jury as a matter of right must make such demand within 10 days after they docket their appeal in the county court, according to a court rule promulgated by County Judge David Brofman on December 27. The rule further provides that the clerk shall mail notice of the appeal to the appellee, who must make demand within 20 days thereafter if he desires a jury trial.

Issuance of the court rule has been found necessary to avoid the misunderstandings arising from the fact that Rule 38 of the Rules of Civil Procedure, governing demand for jury trial, provides that the time limitation on such demand shall be "not later than 10 days after service of the last pleading", whereas Section 149 of Chapter 46, '35 C. S. A. directs that no written pleadings may be filed in cases appealed from justice court judgments.

The mailing of the notice of appeal to the appellee should also prove helpful since heretofore the winning party below had no inkling of an appeal unless he had meanwhile sought to execute on his municipal court judgment.

Until the rule becomes familiar to attorneys, copies of it will be handed to appellants at the time they perfect their appeal by payment of their county court docket fee, and appellees will receive a copy by mail along with notice of the appeal. Judge

Brofman also announced that, with the help of the bar association, he hopes to have the entire body of County Court rules revised and distributed within the next three or four months.

These new provisions pertaining to jury trial have been put into effect by amending existing Rule XV of the Rules of the County Court to read as follows:

> Section 1. The right to jury trial, the demand therefor, and the waiver thereof, in all civil cases originating in the county court are governed by Rule 38 of the Colorado Rules of Civil Procedure.
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> Section 2. In cases appealed from the municipal courts of the City and County of Denver, whether involving civil, criminal, ordinance violation or small claims matters, and in all other cases where Rule 38 does not apply because no pleadings are required, demand for jury trial by the appellant must be made within 10 days after payment of the county court docket fee, and demand for jury trial by the appellee must be made within 20 days after notice of such appeal is mailed to the appellee by the clerk.
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> Section 3. Failure of a party to make demand as aforesaid shall constitute waiver by him of trial by jury, but notwithstanding such waiver the court in its discretion may order a trial by jury of any or all issues.
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> Section 4. Where a party to an action demands a jury trial, except by a special jury, such party at the time of making such demand shall deposit with the clerk of the court a jury fee in the sum of $5.00. The jury fee shall be refunded upon demand if no specific setting for jury trial is made. Even though no jury trial may be had, if a specific setting for trial by jury is made, the $5.00 jury fee shall be forfeited.
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> Section 5. A deposit sufficient to cover the expense thereof shall be mad by any person requesting a special jury, and all expenses of such jury shall be taxed as a part of the costs as provided in Sec. 162, Ch. 46, '35 C. S. A.

RECENT DECISION UNDER RULE XVI—FAILURE TO PROSECUTE

The mailing of notices to litigants or their attorneys under County Court Rule XVI, providing for dismissal by the court for failure to prosecute, recently gave rise to a reaffirmation by the court that once an appellant from a municipal court judgment has perfected his appeal, the municipal court loses jurisdiction and all subsequent orders must be entered by the County Court. Procedendo is therefore limited to those cases in which the appeal is *not* perfected. Where the appeal is perfected, the case, *not* the appeal, may be dismissed if not prosecuted with due diligence by

the moving party. Since the so-called "appeal" is actually a trial *de novo,* the plaintiff below remains the moving party in the County Court, regardless of which party filed the appeal.

This decision was rendered when a plaintiff, who had won judgment below and who had been mailed notice under Rule XVI for failure to prosecute in the County Court, sought to have the appeal dismissed and the transcript of judgment sent back to the justice court by writ of procedendo. Relying on the Supreme Court's opinion in *Poudre River Oil Corp. v. Flake,* 102 Colo. 169, the court denied plaintiff's motion.

WILLIAM B. MILLER.

APPROVED LAW LISTS

The standing Committee on Law Lists of the American Bar Association provides the following roster of American law lists, the publishers of which have received certificates of compliance for their 1952 editions. The committee will be happy to reply to inquiries relating to law lists not on this roster.

American Bank Attorneys, Cambridge 38, Mass.
The American Bar, Minneapolis, 4.
American Lawyer's Quarterly, Cleveland 14.
Associated Commercial Attorney's List, New York City 6.
The B. A. Law List, Milwaukee 3.
The Bar Register, Summit, New Jersey.
Best's Recommended Insurance Attorneys, New York City 7.
Campbell's List, Winter Park, Florida.
Clearing House Quarterly, Minneapolis 3.
The Columbia List, New York City 7.
The Commercial Bar, New York City 17.
Corporation and Administrative Lawyers Directory, Chicago 4.
C-R-C Attorney Directory, New York City 7.
Forwarders List of Attorneys, Chicago 3.
The General Bar, New York City 18.
The Insurance Bar, Evanston, Illinois.
International Lawyers Law List, New York City 18.
International Trial Lawyers, Chicago 4.
The Lawyers Directory, Cincinnati.
The Lawyers' List, New York City 3.
Martindale-Hubbell Law Directory, Summit, New Jersey.
Rand McNally List of Bank Recommended Attorneysfi Chicago 5.
Recommended Probate Counsel, Chicago 4.
Sullivan's Probate Directory, Galesburg, Illinois.
The Underwriters List, Cincinnati, Ohio.
Wright-Holmes Law List, New York City 1.

State and Regional Lists published by the Legal Directories Publishing Company, Los Angeles 24, California.