Denver Law Review

Volume 28 | Issue 5 Article 5

January 1951

Summary of Denver Bar-Sponsored Bills Passed by General Assembly

Ira L. Quiat

Summary of Denver Bar-Sponsored Bills Passed by General Assembly

were not brought to the attention of the committee, with the result that provision for biennial publication was not included in the draft of the new statute. The statute rather provides for publication of the general laws enacted at each session "in the form of pocket parts or bound supplements to said revision." This provision should be corrected by amendment prior to time for such publication.

Each of the above three requirements is an absolute necessity unless the new statutes are again to fade into the historic process of deterioration with the accumulation of new statutes after 1953. Unless prompt attention is given to these matters by the bar, it is almost certain that a periodic upheaval will again become necessary at some time in the not-too-distant future.

SUMMARY OF DENVER BAR-SPONSORED BILLS PASSED BY GENERAL ASSEMBLY

IRA L. QUIAT

Chairman, Legislative Committee, Denver Bar Association

The Legislative Committee [1] of the Denver Bar Association drafted and sponsored about a dozen bills before the first regular session of the General Assembly, which concluded on March 21. Most of them were enacted into law and are now in effect. These measures, briefly summarized, are as follows:

S.B. 286—DETERMINATION OF DESCENT OF REAL ESTATE

This act rewrote Sections 28 to 34 inclusive of Chapter 176, 1935 C.S.A. Under the old law it was the duty of the attorney bringing the action to set forth in the petition all the lands of which the decedent died seized. In most cases this was an impossible requirement.

The lawyer had before him an abstract of title for certain property. He found that the heirs had never been determined. He did not know what other parcels the decedent possessed at the time of his death.

Under the new act the determination of descent may be had for all or any portion of intestate real property. The terms "lands, tenements, and hereditaments" are eliminated and the words "real property" or "land" is used throughout the act.

Section 29 now contains a simple form of notice which lawyers can follow and be assured that the act has been complied with. It is no longer necessary to serve a copy of the petition.

[1] Composed of Hazel M. Costello; George L. Creamer; Lawrence M. Henry; Harry A. King; Donald M. Lesher; Fritz A. Nagel, ex-officio; Ira L. Quiat, chairman; and Royal C. Rubright.

The service of the notice alone is sufficient. The notice contains ample information.

This act eliminates the necessity of naming all grantees, regardless of whether they have any interest or not at the time of the bringing of the action, for the court is only required to determine the heirs of the decedent and the present owner of the real estate.

The former provision that any person not personally served could appear and move to reopen the decree within two years has been reduced to six months. The decree will be fully effective as other judgments, six months after its entry.

The title of the proceedings is simplified and the old crude caption streamlined.

S.B. 287—MORTGAGES AND DEEDS OF TRUST

In 1927 the legislature provided for the outlawing of mortgages, deeds of trust, and other liens against real estate, unless extended.

However, the law did not contain any simple provision for an extension when the encumbrance secured numerous obligations. In order to extend a deed of trust and mortgage it was necessary for a beneficiary to sign an extension agreement.[2] It was a formidable task to obtain the signatures of hundreds of holders of bonds where a trust indenture secured many obligations. The new law permits the trustee named in the trust deed or mortgage to execute such extension for the benefit of the holders of the obligations secured by such instrument.

S.B. 322—NON-PROFIT CORPORATIONS

We have adequate laws concerning corporations for profit. Our non-profit corporation law, which has been on our statute books since Colorado has been a state, was a mere skeleton.

There was grave doubt about what powers a non-profit corporation had and more doubt as to manner and method of exercising some of these powers. For instance, could a non-profit corporation merge with another company? How would a non-profit corporation proceed to sell all of its assets? Would every member have to vote in favor thereof? Did a non-profit corporation have the right to have voting members and non-voting members? There are thousands of different setups for non-profit corporations, most of which were questionable under the old law.

Under the new law, a non-profit corporation can practically run its affairs in any way it pleases. It files its certificate of incorporation with the Secretary of State, and then it must record a copy of this certificate in every county where it owns real estate. Under the old law the only place the certificate of incorporation

[2] COLO. STAT. ANN., c. 40, § 123 (1935).

could be found was the office of the Secretary of State. A certificate of authority was recorded only in the county of the principal place of business of the corporation.

A lawyer examining the title to real estate of such organization outside of Denver, had no information as to the provisions of the certificate of incorporation available to him unless he made a trip to Denver. Now, in every county where the non-profit corporation has real estate a copy of the certificate of incorporation will be of record.

The by-laws of a non-profit corporation may now take care of a number of matters which formerly would have to have been provided for in its certificate of incorporation. This obviates continually amending the certificate to meet changing situations.

Such corporations may, either in their certificate of incorporation, or their by-laws, now provide for the following:

(a) The number and term of office of trustees, directors, or managers of the corporation, and the manner of their selection or election;

(b) The officers of the corporation and their term of office and the manner of their designation or selection;

(c) The kinds and classes of members and the rights and privileges of each; and

(d) The authority under which conveyance or encumbrance of all or any part of the corporate property may be made, and the persons who shall be authorized to execute the instruments of conveyance or encumbrance. If not contained in the certificate of incorporation or any amendment thereof, a certified copy of such authority shall be recorded in each county where the corporation owns real estate.

Either the certificate of incorporation or the by-laws may provide the authority for the amendment of the certificate of incorporation, for merger with another corporation, or for the exercising of any other corporate function, power, or right. Amendments to the certificate of incorporation must be filed with the Secretary of State, and recorded in the county in which such corporation has real estate.

Under Section 177 of Chapter 41 there was an express provision that the non-profit corporation statute was not applicable to religious, educational, benevolent, or charitable organizations, and a separate procedure of incorporating such companies had to be followed. Now such societies may be created under the new non-profit law, or under any other applicable law. Lawyers in examining titles to real estate owned by religious societies, in some instances, found that such religious organizations were purported to be incorporated under the old non-profit law.

S.B. 324—CONCERNING ESTATES

This law re-enacts the former statute concerning petitions to sell or mortgage real estate, and adds thereto a provision that after

a will is admitted to probate it is only necessary to set forth in the petition the names, residences, and post-office addresses of persons to whom the real estate is devised.

Many wills make minor bequests, and under the old law every legatee, devisee, and heir had to be notified even though they were in no way concerned with the sale of the particular parcel of real estate.

S. B. 325—CONCERNING REAL ESTATE

In 1929 the legislature enacted the Uniform Redemption Act (with minor changes) then recommended by the American Bar Association.

There was a serious question as to whether or not the old applicable redemption statute was a part of the contract by implication of a mortgage or deed of trust executed before the change. The decisions were not uniform on this point, and the legislature feared to repeal the old two systems of redemeption, one applicable to deeds of trust and the other applicable to judgments.

Twenty-two years have now passed and there is little possibility of such question concerning the foreclosure of a deed of trust or mortgage executed prior to the 1929 act arising.

This act, therefore, repeals all of the old provisions concerning redemption and leaves the 1929 statute in full force and effect. It is the only statute concerning redemption.

In addition to the sections for repeal, there are two additional sections, one of which expressly provides that certificates of purchase may be assigned, and the manner of such assignment, and the other section re-enacts a simplified form for a deed to be issued by the sheriff upon a sale under execution.

S.B. 327—CONCERNING TREASURER'S DEEDS

The Supreme Court in the case of *Colpitts v. Fastenau,* 117 Colo. 594, held that treasurer's deeds were to be liberally construed in compliance with Section 151 of Chapter 40. Lawyers who were required to pass upon the legality of treasurer's deeds in quiet title actions when examining abstracts breathed a sigh of relief. However, in the case of *Tewell v. Galbraith,* 119 Colo. 412, the Supreme Court adopted a strict construction concerning notices for application of a treasurer's deed and held by a 4 to 3 decision that if the notice didn't literally speak the truth as to a future event, then the treasurer's deed was void. In other words if the treasurer in his notice said that the deed would be issued on June 1, and for some reason the deed was not issued until June 2, that the notice prepared months before did not speak the truth. This statute about the notice to be given for a treasurer's deed requires a statement in such notice as to when the deed will issue. What does the word "issue" mean? Does it means the signing, or does it mean delivery?

There are many decisions both ways concerning the definition of the word "issue". If "issue" includes "delivery", then it also includes acknowledgment because the deed must be acknowledged before it is delivered. The notices issued by the treasurer of the city and county of Denver all read that they will issue at 5 p.m. on a certain date. Three things would, therefore, have to happen at 5 p.m. if the word "issue" includes delivery. The treasurer would have to sign, the notary would have to acknowledge, and the purchaser would have to be present to receive the deed—all at 5 p.m. Otherwise the deed may be void—a possibility—if our Supreme Court adhered to a strict construction.

This new law provides that the words "issue" and "execute" mean *the act of signing by the treasurer*. It is expressly provided that a delay in acknowledgment and a delay in delivery shall not affect the validity of the treasurer's deed.

S.B. 329—REGULATING APPEALS

By ordinance, under the 20th Amendment and the Charter of the City and County of Denver, our police courts and justice courts were converted into municipal courts. There was some doubt as to the manner and method of taking an appeal from a municipal court acting as a police court. The committee felt that the appellate procedure from the police court to the county court was meager.

This new law sets up a definite procedure of how appeals are made and perfected from a police court, whether it be denominated a municipal court or otherwise, to the county court.

It is unnecessary to set forth the details here. However, there are certain striking innovations which set at rest certain debated propositions.

A person could be charged with the violation of a number of ordinances in one complaint. It was regarded as one case. If the defendant were acquitted on some of the charges and convicted on others and appealed the case to the county court he found that he had to be tried again for all violations charged, including those of which he was acquitted in the police court.

The action brought for a violation of an ordinance is an action for a debt. The defendant, it is claimed, owes the municipality a certain sum for having violated an ordinance. It is not a criminal case, yet it has nearly all the aspects of a criminal case. Under the new law if the defendant is acquitted on any charge in the police court he cannot be tried again in the county court, even though he appeals the cause. The county court tries only those charges on which he was convicted.

The old applicable provisions provided that appeals would lie from all judgments of a police court to the county court where a case would be tried *de novo*. Therefore, if a man were acquitted on all charges in the police court the municipality could have appealed the case and there would be no former jeopardy. The

municipality can no longer appeal, but the right is preserved for the city to maintain any action to construe or interpret, or determine validity of, any ordinance.

H.B. 207 & 209—REDEMPTIONS BY PERSONS UNDER LEGAL DISABILITY

In 1947 the legislature amended Section 274 of Chapter 142 by placing a nine-year limitation from the recording of the deed in which a person under legal disability could make a redemption.

This left Sections 262 and 265 in conflict with amended section 274 of said chapter. H.B. 207 and 209, prepared by Albert S. Isbill of the Denver bar, made the necessary amendments so as to eliminate any conflict concerning redemptions by persons under legal disability.

OTHER ACTS OF INTEREST TO LAWYERS

The most substantial service performed by the Legislative Committee was the prevention of the passage of bills which the committee believed were ill conceived or dangerous. It would require too many pages to detail the bills stopped and the efforts and service required by the committee. There were over a thousand bills pending and the committee did not have sufficient time to check all measures. There probably have been some bills passed which may present peculiar problems in the future but that is an inherent danger incident to a democracy.

However, there are a few interesting changes which lawyers should be advised about:

A director of a corporation need no longer be a stockholder.

The homestead exemption of $2,000 was increased to $5,000.

The limit for the recovery in a death action has been raised from $5,000 to $10,000.

The provision in our probate law which prevented a fiduciary from leasing estate property for a period longer than five years has been amended so that there is no limit at the present time upon the term of a lease.

The prudent fiduciary test is now the law of the State of Colorado concerning investments for estate funds, and will be covered in some detail in a future issue of *Dicta.*

There have been some changes in criminal laws among which the most important is the provision which requires the accused who pleads insanity to be tried first on the offense charged, and if convicted, then to be afforded a trial on the issue of insanity.

Karl C. Falch and Lowell E. Richards, formerly of Holyoke, have announced the formation of a partnership with offices in the Woolworth Bldg., Sterling.