

June 2021

## Letters to the Editor

Dicta Editorial Board

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

---

### Recommended Citation

Letters to the Editor, 26 Dicta 227 (1949).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact [jennifer.cox@du.edu](mailto:jennifer.cox@du.edu), [dig-commons@du.edu](mailto:dig-commons@du.edu).

FEETE & (150) Feete" Center" No" (4) BARTEN "LOAD: No" (5) 'Vain: Wone :Hundred & Fiften (150) FEETE" Too: Cide-Stake "No (5) vain & LOad" orr PLASSER"—SVEEN" HUNDRED" Fiftety "FEETE" (750) Too Scide End "Stake" (7) Then Hundred "last SCENTER" STAKE BRENTH"& (150) To,;; STAKE",No" (S) Then "Too" CENTER "STAKE" NO" (1) Wone "Stake, off, Begging "OFF" Said" Minningg" Claim" "known" Mountvzell "Section" Eleven" (11) Townchiq Six" "(6). Range "SEVENTY (70) "West" iNN" Jefferson "County" Sta-it" "OFF" Colorado This "Load was Discovered" on" the 18 day' pf May, 1918, "Buy" Louisa Evline Briggedgettet OFF 26" St & 1317—26" St" ROOM "19" & 2424" BLAKE STREET" DENVER" Col.

### Letters to the Editor

#### **Affirmation Without Opinion and the Right of One Co-Tenant to Sue Another In Conversion**

It is submitted that as a proposition of law one co-tenant does not have a right of action for conversion against another in this state at the present time. Following what is obviously an inept and thoroughly discredited practice of affirming decisions without written opinion, the Supreme Court recently upheld a decision of the district court in the case of *Weber vs. Seilbach et al.*, 118 Colo. 578, allowing such a suit.

A complete transcript of the whole record and the entire testimony in the case, together with lengthy and detailed law briefs with full specifications of error, were filed in the Supreme Court. The only result was an evasion of the argument entirely by the terse affirmation of what appears to us to have been an unwholesome and indefensible verdict and judgment in the trial court.

The right to maintain the suit in the district court at Greeley was attacked at the outset by a motion to dismiss. This right was contested throughout the entire suit. It was directly in issue in the case, was pointed out on the motion for a new trial, and by the specification of points to the Supreme Court. Even after the case had gone to decision, the error was again pointed out in a petition for a rehearing, but the Supreme Court steadfastly refused to discuss or rule upon this point.

*(Mr. Weber thereupon submitted his brief, too long to be reprinted here, on the point of law which was urged as ground for dismissal. In substance, the brief supported the proposition that since Section 3603 of the Revised Statutes of 1908, permitting one co-tenant to sue another, had been repealed by Section 11 of the Laws of 1932 at page 456, then the general*

*common law rule should prevail that trover will not lie in favor of one cotenant against another.)*

Many of the younger members of the Colorado bar may make the same mistake that I made several times early in my career, i.e. assume that because a certain Supreme Court decision exists which by its terms unequivocally lays down a proposition of law, then that is the law, and clients may be safely advised accordingly. This writer is one who has lived to learn differently, and to know that the appellate court will sometimes for reasons of expediency, or, because it believes a just result is obtained by ignoring or overruling its former decision, completely disregard its own precedent.

The device by which this evasion is accomplished is known to the initiate as "Affirmed Without Written Opinion." It is my position that such affirmations, when they ignore former decisions of the high court, or, override them without distinguishing those decisions from the case at bar, tend to make the court appear whimsical and inconsistent, and, in the end, destroy the prestige of the court.

OLIVER W. WEBER,  
Boulder.

### Is Double Mileage Authorized In Serving Writs?

Mr. George Fischer, County Attorney  
Adams County  
Brighton, Colorado

Re: Two mileage fees to be paid Sheriff by litigant for serving process 15 miles, i.e.

2 writs, same address at 75c	1.50
30 miles roundtrip at 8c	2.40
30 miles roundtrip at 8c	2.40
	<hr/>
Total	6.30
Paid	3.90
	<hr/>
Balance objected to	2.40

In response to your letter . . . when I objected to paying the above \$2.40 to the sheriff, I thought he was charging double mileage because two writs were served—and I quoted the eighth paragraph of Sec. 16, C 66 as for-bidding it.

However, my note to him stated that if he thought I was wrong an additional check would be sent. He apparently thinks me wrong, so I am sending him an additional check—but with the understanding that if you and he subsequently are convinced that opinion is against you, you will return the \$2.40.

Now to answer the unexpected question you raise of double mileage being otherwise authorized: You apparently urge that a litigant must pay one mileage pursuant to Sec. 16, C 66 and a second mileage pursuant to Sec. 76, C 66. (Facetiousness is here irresistible—and one must add: “nice work if you can swing it—this would pay for a number of deputies—but things are getting tough all over”).

To respond that this contention is unheard of—is true enough, though not a legal response. However, annotations to Sec. 76 refer one back to Sec. 16, where the annotations thereunto refer to Sec. 76 as providing a “separate and distinct mileage” and cite 21 Colo. 158. Language there at pp. 167, 168 suggests, rather than the radical departure from normal of a double mileage, that Sec. 16 (the fee act) was meant to prescribe what the litigant pays and Sec. 76 (the salary act), to prescribe what the officer keeps.

This language is as follows: “\* \* \* in the main, the one relates to fees, the other to salaries. The former prescribes what charges the officers may make, and what fees they may collect, out of which their salaries are to be realized; the latter fixes the salary and the maximum of the total remuneration. \* \* \* The salary act was intended to provide a compensation to public officers, and among them to a sheriff, for the performance of official duties. Such compensation, however, must be paid out of the fees prescribed, and out of them only. \* \* \*”

As two lawyers are no more likely to agree than when others argue religion—and as I would like to create some sort of issue without the expense of litigation—I will enclose a copy of this to DICTA. Also, an information copy to Judge Davies.

GEORGE LANGDON COOPER,  
Fort Morgan.

### **Martindale-Hubbell Changes Due**

Information regarding changes in listings in the Martindale-Hubbell Law Directory (1950 edition) for subscribers as well as non-subscribers, including the address of a former firm member or associate if known, should reach the publisher at Summit, New Jersey, not later than September 20th. If so requested, this information will be held in confidence until the publication date which will be about January 1st, 1950.

---

Charles J. Traylor of the law firm of Adams, Heckman & Traylor, Grand Junction, has been appointed by Governor Knous as a member of the Colorado Board of Veterans Affairs.

---

H. Lawrence Hinkley, former Attorney General, has announced the removal of his law offices to 635 Majestic Building, Denver.



## ***Fish Story?***

**Use  
Long Distance!**

- Half the fun of having a vacation is telling about it. What's more the folks at home will be so glad to hear your voice they'll believe just about anything you tell them.
- No matter where you spend your vacation there will always be a telephone nearby.
- Keep in touch with home by Long Distance.

**The Mountain States Telephone & Telegraph  
Company**

*Attorneys' Business Always Welcome*

## **MALONE DRUG COMPANY**

**100 South Broadway — DENVER**  
(Broadway and Bayaud Streets)

J. C. MALONE, Manager

### **• COMPLETE PRESCRIPTION SERVICE •**

Drugs - Sundries - Cigarettes - Tobaccos - Beer - Liquors

**Phone SPruce 6226**

Free Deliveries in the City of Denver

*Dicta Advertisers Merit Your Patronage*