

June 2021

Additional Committee Appointment

Dicta Editorial Board

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such legislation was special as to Denver and therefore contrary to article V, section 25 of the Constitution of Colorado.

Article V was part of the original constitution adopted in 1876. Article XXII, authorizing the liquor traffic in Colorado and providing that the general assembly should regulate it, was adopted in 1932. Article XXII is not mentioned or referred to in the Reed decision. *Walker v. People* (1913), *supra*, holding that article XX gives Denver no right to control liquor within its borders; *City of Colorado Springs v. People* (1936), *supra*, and *Denver v. People*, (1939), *supra*, (the latter two decisions holding that article XXII gave the general assembly complete, plenary and all-inclusive power over liquor regulation in all of Colorado) were neither applied, distinguished, modified, overruled or commented on.

And so far as article V, section 25 is concerned, it has been construed by the Supreme Court in a number of cases beginning in 1884¹² and continuing down to 1943,¹³ in all of which it has been held that the question of whether a general or a special law can be made applicable to a given situation is for legislative determination and that courts can interfere only where there is a clear abuse of discretion by the legislature. No such abuse is found by the court in the Reed case, but that portion of section 9 of the Liquor Code was, nevertheless struck down.

Has the doctrine of *stare decisis* been abandoned in Colorado?

Additional Committee Appointment

A. THAD SMITH, 1011 University Bldg., Denver, has been appointed a member of the Committee on Legal Institutes of the Denver Bar Association by President Horace F. Phelps.

Personals

EDWARD A. WALSH has become a member of the firm of Miller and McKinley with change of name to Miller, McKinley and Walsh. Other members of the firm are David J. Miller and Richard McKinley. The firm will office in the Coronado Bldg., Greeley.

WILLIAM L. BRANCH has opened his office in the E. & C. Bldg., Denver. His practice is restricted to matters of taxation.

FRANKLIN A. THAYER, formerly Veterans Service Officer of Colorado and National Service Officer for the Disabled American Veterans has opened his office at 403-404 Symes Bldg., Denver.

LAWRENCE M. HENRY, member of the House of Representatives of the Colorado General Assembly, and former deputy clerk of the county court, Denver, has opened his office for the practice of law at 618 Symes Bldg., Denver.

12. *Brown v. Denver* (1884) 7 Colo. 305.

13. *McClain v. People* (1943) 111 Colo. 271.

Letters to the Editor

Editor:

I have just concluded reading the January, 1948 issue of DICTA, including article on "The Responsibility of Lawyers", all with a great deal of interest. The latter subject directs my attention again to a matter which should be a concern to all lawyers, namely the current practice of the Supreme Court affirming trial court decisions without written opinion. If such affirmances were limited to frivolous appeals, the practice would be justified as a rebuke to the lawyer taking the appeal. However, when a civil liberty or property right of consequence is at stake, and issues are debatable and parties are required to print records and briefs, failure of the Supreme Court to thereafter write an opinion gives cause for just complaint. Every lawyer should be interested in his cause, and there are few lawyers who advise an appeal to the Supreme Court who do not have faith in their own position on the issues. After spending his client's hard-to-get money in printing records and briefs, on recommendation that an appeal be taken, what can he say to that client when so little regard appears to have been given to the case in the court of last resort? Either the lawyer will suffer loss of confidence in his community, or the client and his friends will have cause to charge that justice is something too remote, or comes at too high cost, for the ordinary individual.

In last night's issue of the Greeley Tribune the editor had an editorial based on the December number of the Journal of American Judicature Society, and study of disposition of civil cases in State Supreme Courts. I assume that some lawyer other than the writer of this letter furnished our city editor with a copy of that journal, and that he too is concerned. From the editorial it appears that the Colorado Supreme Court is further behind in handling of appealed cases than any other state Supreme Court in the 48 states. And this too, notwithstanding the number of cases affirmed without written opinion, and the few in number appearing in Pacific Reporters.

With the foregoing in mind, what reason has the Colorado Bar Ass'n. to expect approval of its proposals to raise judicial salaries and change present methods of nominating candidates for judicial office? If lawyers lose confidence in courts and judges, what may we expect of those already critical of our profession as a whole?

I personally think that we lawyers have a greater responsibility to the public and to our profession, right now, than in urging change in the system or salary of the judge. We should make known our determination to make more effective the present judicial agencies, and more responsive to appeals to right, justice and logic, than seems evident in some of our courts. I also think it was a serious mistake for the Supreme Court to call upon district judges for help in writing opinions. It would appear one result naturally

follows, an inclination to go along with the original findings of the district judges, but overlooking the fact that most district judges have to render snap judgment on presented issues, as compared to the opportunity afforded Supreme Court judges to study and reflect before deciding.

Respectfully submitted,

HERBERT E. MANN.

Admitted to a Higher Court

HARRY WARREN ROBINSON, Denver, died March 22 at the age of 75 after a long illness. He was born in 1873 in Des Moines, Iowa, and was graduated from the University of Michigan. He came to Denver in 1899, and was soon thereafter admitted to the Colorado bar. He was a member of Beta Theta Pi, University Club and Mile-Hi Club. He was well known as a mining corporation attorney.

EARL TYNDALL SNYDER, well known Greeley attorney, died March 25 at the age of 63. He was a chairman of the executive committee of the board of trustees of Colorado State College of Education at the time of his death. Since 1941 he has practiced in partnership with William R. Kelly. He served a term as district attorney of the Eighth Judicial District. He was a graduate of Colorado University School of Law. He was a Rotarian, Mason and Congregationalist.

CASS M. HERRINGTON, Denver, died March 16 as a result of injuries sustained in an automobile accident north of Gallup, New Mexico, the preceding Sunday. He was 51. Born in 1897, he was graduated from Middlesex School, Concord, Mass., Harvard University in 1914, and Denver University School of Law in 1917. He was a Mason.

HARRY S. SILVERSTEIN, well known Denver attorney, died of a heart attack February 28. He was admitted to the bar in Denver in 1896 and served as assistant district attorney from 1906 to 1914. He was born in Syracuse, N. Y., in 1873 and came to Colorado in 1887. He was a graduate of Yale in 1894. At the time of his death he was practising in partnership with his son, Harry S. Silverstein, Jr.

Lawyers in the Public Service

THOMAS GILLIAM has been appointed deputy district attorney by Denver District Attorney James T. Burke.

Amendment to Rules of Civil Procedure

The Colorado Supreme Court has adopted the following amendment to the Rules of Civil Procedure, effective June 1, 1948:

Rule 115 (7). Abstracts, Briefs, Motions and Withdrawal of Papers.
(h) Printed or Typewritten Abstracts and Briefs.

All abstracts of record and briefs shall bear, on the front cover, the number and title of the case, the court to which the writ of error lies, the name of the trial judge, and the names and addresses of attorneys filing the same. Typewritten briefs shall be legible and upon good paper eight and one-half inches by thirteen or fourteen inches. Except as otherwise provided all briefs shall be printed and shall be on white wove antique finish book paper weighing sixty pounds to the ream, twenty-five by thirty-eight inches. They shall be printed on pages nine and one-quarter inches by six and one-eighth inches when trimmed, in plain face eleven or twelve point type two point leaded, with face of type page twenty-four by forty-five ems pica, including the running head. Extracts and quotations must be in the same type indented two ems. Briefs and abstracts not in conformity herewith shall not be accepted by the Clerk for filing except upon order of the court.

Law Violators and the Army

Current court trends in certain sections of the country to dismiss charges against law violators who agree to enlist in a branch of service is frowned upon by the armed forces.

Lieutenant General Walton H. Walker, in a statement issued from Fifth Army Headquarters in Chicago, Illinois, clarified the position of the Department of the Army in the matter of enlistment of felons. He emphasized that it is the policy of the services not to accept men who have been serious or frequent offenders.

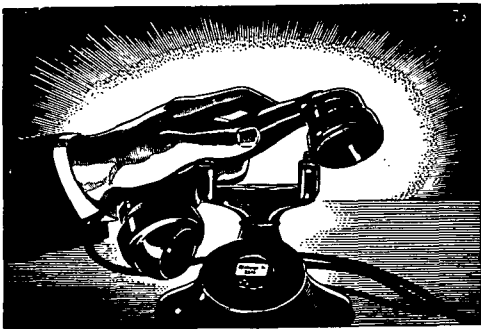
"It is regrettable," he said, "that in some instances jurists have attempted to transfer the responsibility for men with criminal records to the armed forces by dismissing charges upon promise to enlist." He added: "There have been instances where persons on a quasi-parole basis have been encouraged to enlist in a branch of the services rather than complete prosecution."

The Fifth Army Commander stressed that the services are not to be misrepresented or misconstrued as an alternative to penal incarceration, or processes of law. He said: "It is not the mission of the services to take over the job of rehabilitation of felons in lieu of imprisonment or probation by local civil authorities. Service in the Army is a privilege reserved for qualified individuals, ready and able to train for and maintain the military establishment in the interest of our national security."

Civil offenders, he explained, are not eligible for enlistment until such

a time as civil authorities have completely relinquished control, and then only following a probative period as law-abiding members of a community.

Army regulations, he said, bar enlistment of certain questionable categories. These include persons with a record of criminal tendencies, questionable moral character, a long history of anti-social behavior, or traits of character which render them unfit to associate with other men. An exception to the rule must be able to stand up before complete investigation by local enforcement agencies. In such instances, the commanding general of the army takes responsibility for the final decision, he said.



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