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# Supreme Court Decisions

Dicta Editorial Board

# Supreme Court Decisions

*The editors announce* that beginning with the October issue every case decided by the Colorado Supreme Court since the last preceding issue will be mentioned under this section, along with a brief notation as to its subject matter and holding. This, it is hoped, will prove useful in keeping the bar and bench in touch with all the current unreported cases. The practice of digesting and commenting upon peculiarly significant and interesting decisions will not be discontinued, although shortage of space may require some abbreviation.

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No. 14760. *Livingston v. Utah-Colorado Lamb, Etc. Co., Decided June 10, 1940. Exemplary Damages Are Not Recoverable in Tort Case Where Jury Finds No Actual Damages.*

The general rule is recited to be that exemplary damages are not recoverable in the absence of actual damages. Colorado, however, is committed to the liberal view that upon a showing of actual damage, even in the absence of proof or finding as to its amount, recovery of punitive damages will be sustained. *McConathy v. Deck*, 34 Colo. 461, 83 P. 135, 4 L.R.A. (N.S.) 358, 7 Ann. Cas. 896; Authorities to the contrary are noted.

It is necessary to distinguish this case, where the finding was of no actual damage, from a case of mere failure to find or assess actual damages.

Judgment below on verdict for no actual damages and $100.00 punitive damages. Reversed.

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No. 14690. *Estate of Sabray Morrish; Wheeler v. Morrish, Decided June 24, 1940. "Person Aggrieved" With Respect to Appeals from Judgments of the County Court in Estate Matters, as the Term Is Used in Ch. 46, Section 165, C.S.A., Includes the Widower and Sole Heir of the Deceased,* who may carry an appeal from judgment allowing a claim, although not technically a party to the County Court action. District Court accepted jurisdiction of the appeal. Affirmed.

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No. 14763. *Denny v. People, Decided July 1, 1940. A Sealed Verdict in a Felony Trial,* does not satisfy the requirements of Ch. 48, Section 493, C.S.A. where the return of the same was delayed by the action of the trial judge in instructing the jury in the absence of the de-

fendant and his counsel that "Opening of Court for this case will be January 30, 1940, at 10:00 A. M." A week of unexplained delay. Conviction below of larceny from the person. Reversed.

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No. 14741. *Brannaman, et al. v. Richlow Manufacturing Company, Decided July 1, 1940. Taxation Under State Unemployment Compensation Act.* Held that the non-paid secretary of plaintiff corporation, is not an employee; therefore the corporation had less than eight employees in 1937 and 1938 and was not subject to the tax paid by it under protest.

The State contends:

(a) That the secretary is included under Section 19 (g) (1) defining employment: "Employment means service performed for wages or under any contract of hire, written or oral, express or implied."

(b) That she is included by Section 19 (f) (7) by reference to the federal definition of "employee" contained in Section 1607 (i) title 26 U.S.C.A.: "The term 'employee' includes an officer of a corporation."

The court indicates some doubt as to the constitutionality of the reference definition supposed under contention (b) above, if it were indeed intended; but holds that in any case the State definition controls and that it does not include the secretary. Judgment below invalidating the collection of the tax. Modified and affirmed. Bock, J., dissents.

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No. 14789. *Adams, et al. v. Industrial Commission of Colorado, et al. Decided August 7, 1940. Course of Employment Under the Workmen's Compensation Act.*

Claimant was riding at the time of his injury with the driver of employer's delivery truck. Testimony conflicting as to why he was there, claimant asserting that it was to learn the route of the truck in order to take over the delivery upon or in case of the absence of the regular driver; employer that it was on mere joy ride.

On such conflicting evidence the finding below that claimant was injured in the course of employment will not be disturbed. Judgment for claimant affirmed.

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No. 14604. *Townsend v. Heath, et al., Decided June 10, 1940. Oral Joint Contracts Are Not Joint and Several* despite Ch. 92, Sec. 4 of C.S.A. and Section 14 of the Code. Dismissal below as to other joint contractors and judgment for plaintiff against one defendant, reversed.

No. 14650. *Board of County Commissioners of Jefferson County, et al. v. The Rocky Mountain Water Co. Decided June 10, 1940. Injunction Against Enforcement of Confiscatory Water Rate Allowed and Affirmed, the Supreme Court Refusing to Suggest a Rate.*

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No. 14777. *Monte Investment Company v. Derby. Decided June 10, 1940.*

Appeal by defendant from judgment of Justice of the Peace in unlawful detention action, without filing the additional bond for use and occupation required by Ch. 70, Sec. 23 C.S.A. must be dismissed on motion. The judgment for defendant is reversed.

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No. 14759. *Snyder v. Schmoyer. Decided June 17, 1940.*

1. District Court has jurisdiction on Habeas Corpus writ by one parent against another for the person of their child.

2. Dependency petition to give Juvenile Court jurisdiction must be filed *bona fide*, for some real, not fancied, cause and not as an excuse to relitigate questions previously decided by another Court. Decree ordering custody of the child given to the father according to the judgment of the Montana Divorce Court.

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No. 14632. *Cline, et al. v. Friend. Decided June 24, 1940.*

Jurisdiction of damages on appeal bond conditioned to pay damages incident to delay as assessed by Supreme Court does not rest in the district court but in the Supreme Court.

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No. 14597. *School District v. Faker. Decided July 1, 1940.*

A school Board and its employee, a teacher, may compromise and settle the latter's right to a pension.

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No. 14617. *Coates v. People. Decided July 1, 1940.*

Sentence of death for murder in the first degree sustained. Certain errors in the admission of evidence held non-prejudicial and judgment affirmed.

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No. 14387. *Otto Lbr. Co. v. Water Supply and Storage Co. Decided July 1, 1940.*

Petition for change of point of diversion of water. District Court held to have jurisdiction of petition by Wyoming Corporation despite recent Colorado vs. Wyoming water litigation. Reversed.

No. 14627. *Midwest Mutual v. Heald. Decided July 17, 1940.*

Action on written contract for attorney's fees. General allegation in complaint of performance of conditions precedent and no specific denial. Judgment for plaintiff affirmed.

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No. 14657. *Sweeney v. Peterson, et al. Decided June 17, 1940.*

Reformation of trust on ground of mistake of trustor at the instance of a donee who is not the "natural object of the donor's bounty", here a mere stranger, will be denied. Trial court denied relief. Affirmed.

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No. 14796. *Workmen's Compensation; Statute of Limitations. Decided August 7, 1940. Weidensaul v. Industrial Commission, et al. District Court, Denver. Hon. Stanley H. Johnson, Judge. Affirmed. In Dept.*

HELD: 1. Where claimant's doctor is told that employer would resist claim on ground claimant was an independent contractor and doctor fails to notify claimant and more than one year elapses before claim is made, it is fault of claimant since doctor was his agent.

2. There is nothing in the record to convince court that claimant should be excused from compliance with statute because of physical and mental incapacity. Record shows that while he suffered from shock for a few days after accident, he admitted he was mentally alert thereafter and that his niece volunteered to look after the matter for him.

3. Claimant has precluded himself from being covered by case of Colorado Springs v. Colburn, 102 Colo. 483, 81 P. (2d) 397, by admitting he entrusted the whole matter to his friend, the doctor.

Opinion by Mr. Justice Bakke. Mr. Chief Justice Hilliard and Mr. Justice Burke concur.

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No. 14627. *Attorney and Client; Contracts; Pleading. Decided July 17, 1940. Midwest Mutual, Inc. v. Heald. District Court, Denver. Hon. Henry S. Lindsley, Judge. Affirmed. In Dept.*

HELD: 1. In a suit on a contract for legal services, the allegation that the plaintiff "has duly performed all the conditions of said contract, on his part to be done and performed," while essentially a legal conclusion, is proper and in compliance with the Code of Civil Procedure ('35 C. S. A., Volume 1, Page 155, Section 72).

2. Although plaintiff had prepared the articles of incorporation for the corporators of the defendant corporation, he did not become the attorney for the corporation until about a year later. The contract was not entered into during the existence of the fiduciary relationship

of attorney and client, and therefore it was not incumbent upon him to prove the fairness and reasonableness of the contract or the reasonable worth of the compensation provided for.

3. The trial court did not abuse its discretion in refusing the defendant permission to file a second amended answer, tendered after the case had been called for trial and the jurors had been empaneled and sworn.

4. Although the contract gave the defendant the option of paying plaintiff in investment certificates rather than cash, under the facts, even if the alleged error had been properly assigned, the supreme court holds that the trial court did not err in entering a money judgment.

Opinion by Mr. Justice Bouck. Mr. Justice Young and Mr. Justice Knous concur.

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No. 14561. *Zoning. People ex rel. Grommon v. Hedgcock, etc. Decided May 24, 1940. District Court, Denver. Hon. Henry S. Lindsley, Judge. Reversed. En Banc.*

FACTS: A. Action brought to compel building inspector of the City and County of Denver to issue a permit for the construction of a "bungalow court" in a "Business B" district.

B. The lower court found that the design of the proposed improvement made it in fact an "automobile tourist camp" and refused the relief requested.

HELD: 1. It is admitted that under Section 3B of the zoning ordinance, the erection of a multiple dwelling, hotel, dormitory or boarding house or rooming house is a permitted use in a "Business B" district.

2. A structure having a central building, with a central heating plant, surrounded by sixteen apartments, with bath, kitchenette, living room, and bedroom in each, available to permanent tenants and transients, is a bungalow court and falls within the classification of a multiple dwelling and not an "automobile tourist camp."

3. It is of no consequence that the structure may or probably will be rented to transients.

4. " 'The power to limit the use of real estate in particular districts must be expressely granted or rise by necessary implication.' " "The police power, which is the legal basis for zoning regulations, must constantly be reconciled with the legitimate use of private property in harmony with such guarantees."

5. Section 4, Article VI of the zoning ordinances requires the issuance, in a "Business B" district, of a permit for the erection of any

structure intended or designed to be used for "* * * any use not provided for as a permitted use in any other district * * *."

6. The name used to designate the structure is immaterial.

Opinion by Mr. Justice Bock. Mr. Chief Justice Hilliard, Mr. Justice Young, Mr. Justice Knous and Mr. Justice Burke concur. Mr. Justice Bakke dissents.

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No. 14690. *Estates; Appeal by Heir; Bond. In re Estate of Marrish. Wheeler v. Marrish. Decided May 24, 1940. District Court Larimer County. Hon. Claude C. Coffin, Judge. Affirmed. In Dept.*

HELD: 1. "Any person aggrieved" may take an appeal from the county court to the district court; and this includes an heir who objects to a judgment of the county court on a claim against the estate.

2. There is no statutory provision requiring an order from the county court allowing such appeals if a bond is filed and approved within ten days after the order or decree of the county court has been rendered. It is only where time is asked "upon good cause" that any order of the court is necessary.

3. Although there may have been some informalities in connection with the giving of the bond, the sureties thereon apparently were responsible, and, the bond having been duly approved by the court, any imperfections could be corrected under the provisions of Section 168, Chapter 46, 1935 C.S.A.

Opinion by Mr. Justice Bakke. Mr. Justice Bouck and Mr. Justice Burke concur.

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No. 14632. *Appeal and Error; Damages; Bond. Cline, et al. v. Heron. Decided May 24, 1940. District Court, Denver. Hon. Joseph J. Walsh, Judge. Reversed. En Banc.*

FACTS: A. Lower court, in previous trial gave judgment for possession of real estate and damages to plaintiff. Defendant went to supreme court on writ of error and posted bond providing for the payment of the judgment, interest and costs and "any damages which may be awarded by said supreme court in consequence of the delay occasioned by said writ of error," etc.

B. The supreme court affirmed judgment of lower court, possession was returned to plaintiff and the judgment of lower court paid.

C. Thereafter plaintiff prosecuted proceedings in lower court and obtained further judgment for damages occasioned by defendant's possession of property during proceedings on writ of error.

HELD: 1. Lower court had no jurisdiction on latter matter

because condition of bond was that the subsequent damages, if any, were to be determined by the supreme court.

2. A motion or petition to assess damages should have been filed in the supreme court.

Opinion by Mr. Justice Young. Mr. Justice Bakke, Mr. Justice Knous and Mr. Justice Burke concur.

Mr. Chief Justice Hilliard and Mr. Justice Bock not participating.

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No. 14597. *School Teachers' Pensions; Compromise; School Districts. School District No. 1, Denver, etc. v. Faker. Decided July 1, 1940. District Court, Denver. Hon. Henry A. Hicks, Judge. Reversed. En Banc.*

FACTS: A. Suit brought under Declaratory Judgment Act to have determined whether, under the facts alleged, plaintiff, a school teacher, is entitled to a pension under Sections 250-254, Chapter 146, 1935 C.S.A.

B. Differences had arisen between teacher and school district and after much conflict and litigation a release agreement was entered into whereby her then pending mandamus action to reinstate her was dismissed with prejudice.

C. The teacher now seeks to avoid the effects of the release on the ground that the school district had no authority to compromise and enter into the release agreement.

HELD: 1. School districts may sue or be sued and they have the power to compromise actions and claims.

2. The law favors compromises and settlements of disputed claims.

3. The alleged statutory right of a teacher to a pension may be waived or released by her.

4. Whether teacher did or did not have proper legal advice at time of agreement can not control judgment of court in this action.

Opinion by Mr. Justice Bock.

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No. 14763. *Criminal Law; Sealed Verdicts. Denny v. People. Decided July 1, 1940. District Court, Denver. Hon. George F. Dunklee, Judge. Reversed. En Banc.*

HELD: 1. Where, in a criminal trial, it is agreed that the jury may bring in at opening of court a sealed verdict, it was error for the trial court to instruct the jury that the opening of the court would be January 30, 1940 (a week later than the verdict ordinarily would

have been returned), where such part of the istruction was included without presence, knowledge or consent of defendant or his attorney.

Opinion by Mr. Justice Bakke.

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No. 14617. *Criminal Law; Murder; Evidence; Motive; Witnesses. Joe Coates v. People. Decided July 1, 1940. District Court, Denver. Hon. Stanley H. Johnson, Judge. Affirmed. En Banc.*

HELD: 1. In a murder trial, it was permissible to show other crimes where they show a motive for the crime charged, that being one of the elements of the crime.

2. Evidence of assaults and threats prior to the killing are part of the res gestae and admissible; and although some of the evidence was immaterial and incompetent when the same elements of conduct continued down to the very evening of the scene, they constitute an inseverable chain of circumstances and are admissible.

3. Surprise, permitting cross-examination of prosecution's own witness by prosecution, ordinarily may not be claimed unless the testimony of the witness is affirmative, hostile or prejudicial to the party by whom he was called. But the rule is subject to some exceptions, for example, where it appears that a witness is giving testimony contrary to the reasonable expectation of the party calling him, such party should be allowed to cross-examine such witness for the purpose of refreshing his recollection. The trial court did not abuse its discretion under the facts in permitting the cross-examination.

4. While it may have been error for the court to permit the introduction in evidence of a statement made by one witness a short time after the homicide, it was not prejudicial.

5. " 'While in itself, as a general proposition, the circumstance that the court excluded similar evidence may not justify the admission of that which is improper, it may mitigate the transgression.' "

Opinion by Mr. Justice Bakke. Mr. Justice Bock and Mr. Chief Justice Hilliard dissent.

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No. 14751. *Unemployment Compensation; Employees. Brannaman, et al. v. Richlow Manufacturing Company. Decided July 1, 1940. District Court, Denver. Hon. Robert W. Steele, Judge. Modified and affirmed. En Banc.*

HELD: 1. Words and phrases are to be construed according to the common and approved usage of the language unless they have acquired a peculiar and appropriate meaning in law.

2. One who acts as a company's secretary, receiving no wage, and whose duties are limited to the performance of the formal functions

required by the statutes and the company's by-laws, and who performs no other service for it is not in the "employment" of the company within the meaning of the Colorado Unemployment Compensation Act.

3. While the state act adopted the definition of "employment" as set out in the Federal Act, it can not be said that where the state act specifically defines a term, the Federal Act may broaden or restrict the state definition.

4. It was not the intention of the state legislature to repeal its definition of "employment" by adopting Section 19 (f) (7) of Chapter 167A, 1939 Supp. 1935 C.S.A.

5. The allowance of interest on the refund of the tax paid was erroneous. (Section 14 (c) of the Act.)

Opinion by Mr. Justice Knous. Mr. Justice Bock dissents.

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No. 14613. *Negligence; Physicians and Surgeons. Pearson v. Norman. Decided July 1, 1940. District Court, Pueblo. Hon. Harry Leddy, Judge. Reversed. In Dept.*

HELD: 1. In an action against a physician for negligence in diagnosis and treatment of a spinal injury, it was error for the trial court to non-suit the plaintiff where there was evidence of plaintiff that defendant told him there was no fracture and sent him home and gave him no further treatments, and where evidence showed there was a fracture and the plaintiff did not get well. It was a matter for the jury.

2. Negligence may consist of either wrongful action or wrongful inaction.

Opinion by Mr. Justice Young. Mr. Chief Justice Hilliard and Mr. Justice Knous concur.

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No. 14745. *Workmen's Compensation. Industrial Commission v. McKenna, et al. Decided July 1, 1940. District Court, Lake County. Hon. William H. Luby, Judge. Affirmed. In Dept.*

HELD: 1. There is no provision in the law requiring widow to permit autopsy on body of deceased husband in order to be entitled to benefits of workmen's compensation.

2. Acute heart dilation brought on by overexertion is an accident within meaning of statute.

3. Circumstantial evidence and opinion evidence of a qualified physician, uncontradicted, is competent to establish the fact.

Opinion by Mr. Justice Young. Mr. Chief Justice Hilliard and Mr. Justice Knous concur.

No. 14387. *Water Rights. Otto Lumber Company v. Water Supply and Storage Company. Decided July 1, 1940. District Court, Larimer County. Hon. Frederick W. Clark, Judge. Reversed. En Banc.*

HELD: 1. A statutory proceeding for change in point of diversion has a limited scope and an extraneous issue cannot be litigated therein.

2. A decree must be accepted at its face value. If the decree for some reason other than lack of jurisdiction appearing on its face, should be vulnerable to attack, the attack can not be collateral, but must be made directly in an appropriate action other than the statutory proceeding itself.

Opinion by Mr. Justice Bouck. Mr. Justice Young dissents.

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No. 14667. *Instructions. Jackson v. Trainor. Decided July 1, 1940. County Court, Crowley County. Hon. E. M. Stroud, Judge. Affirmed. En Banc.*

HELD: 1. As a general rule, in instructing the jury, non-direction constitutes prejudice only if a proper instruction is tendered by the complaining party to fill the alleged gap.

Opinion by Mr. Justice Bouck.

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No. 14757. *Criminal Law; Operating Auto Under Influence of Liquor; Principal and Accessory. Quintana v. People. Decided July 1, 1940. District Court, Boulder County. Hon. Claude C. Coffin, Judge. Reversed. En Banc.*

HELD: 1. Where it appears that two parties, P. and the defendant, were in an automobile which struck another car causing the death of an occupant of the latter, and that some time later both parties, under influence of liquor and covered with blood were found, separately, away from the scene of the accident; where it appears that both had been in the car, both were intoxicated, neither knew much about the accident, and each accused the other of driving the car, and where it appears that the car was owned by P.'s father, and P.'s driver's license was found in the car, there might be sufficient evidence that P. was the principal, but there is no competent evidence that would establish defendant as a principal.

2. It is not sufficient to make the defendant an accessory to show only that he was in the car and under the influence of liquor at the time of the accident. There was nothing in the evidence to show that he gave any encouragement, by word or act, to the commission of the offense of causing a death by operating a car while under the influence

of liquor in a careless and reckless manner, and with wanton and reckless disregard of human life and safety.

3. Under such facts, where both are tried together and convicted, there may be sufficient evidence to establish that defendant was an accessory during the fact, but he can not be considered as a principal and punished as such. The penalty being different, it is a distinct offense.

Opinion by Mr. Justice Bock. Mr. Justice Bouck dissents.

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No. 14670. *Constitutional Law; Pensions for Justices of Supreme Court; Pensionable Status; Severability; Statutory Construction. Bedford, etc. vs. White and Adams. Decided April 8, 1940. District Court, Denver. Hon. George F. Dunklee, Judge. Reversed. En Banc.*

HELD: 1. Supreme Court justices who reached the statutory age of retirement while in office and while the act was in effect, may receive pensions from the state.

2. A pensionable status as to original grant will support a claim to a later increase.

3. If the official was not in office when the act became operative he must at least have reached the specified age while in office, or if not reaching that age until out of office, the act must have been applicable while he was in office in order to establish a "pensionable status".

4. The claimants in this case are not entitled to the pensions since neither was in office when the legislation became effective, and neither reached the statutory age until after the expiration of the service; and the pension act could have no possible effect on inducing them to enter the service, remain in it or retire from it.

5. As to these claimants the pension is either extra compensation after the service has been rendered, a violation of Section 28, Article V, State Constitution, or an appropriation for a benevolent purpose, in violation of Section 34, Article V, or both.

6. As to the status of former Justice Garrigues, no decision made since he is not a party, except to point out distinctions to effect that while he was not in office when act was passed, he did reach statutory age before retiring, and also, his pension has been paid for a long period of time without question.

7. Persuasive argument for the constitutionality of an act, where the question is a close one, is a "contemporaneous construction," or long continued construction and action by other departments of the government charged therewith.

8. The act of 1925 has never been questioned, and the act of 1939 is a mere extension of it. "The conclusion is irresistible that had the law makers known that their attempted inclusion of" a class of people into which the claimants fall "was invalid they would have passed the bill with that class excluded. Legislative intent is thus clear and in such case the invalid provision of the statute falls and the valid stands. This is a well known rule of severability."

9. The rule of severability is equally applicable where the valid and void provisions of an act are found in the same section.

10. Where the enacting words of a later act are, "amended to read as follows", and the repealing section is "all acts and parts of acts in conflict", the rule as to such legislation is that: "the portion of the original which is reenacted in substance is not repealed, but the amendment is construed as an uninterrupted continuation thereof. Substantial changes, new matter, and repeals by omission, are considered as new legislation and hence to be construed as such."

11. The Supreme Court Pension Act of 1939 is invalid only so far as it includes those not included in the act of 1925, not in office when either was effective and not in office when they reached the age provided by either.

Opinion by Mr. Justice Burke. Mr. Justice Young, Mr. Justice Bakke and Mr. Justice Knous dissent.

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No. 14634. *Trusts; Receivers; Equity; Jurisdiction. Melville et al. v. Weybrew et al. Decided April 8, 1940. District Court, Denver. Hon. Henry A. Hicks, Judge. Affirmed. En Banc.*

FACTS: A. Plaintiffs, alleging themselves to be holders of certificates of beneficial interests in the defendant District Landowners Trust, filed a complaint seeking dissolution of the trust and distribution of its assets to the beneficiaries on the ground that the alleged purpose of the trust was to secure certain water rights or construct an irrigation system and that because of its inability to perform such service, the trust failed and no longer needs to continue its existence.

B. Certain other charges were made against the trustees, such as commission of ultra vires acts and misapplication and conversion of funds. An accounting was sought.

C. Also a petition for appointment of a receiver pendente lite was filed. The trial court granted the petition for a receiver and matter was taken to Supreme Court under Rule 18.

HELD: 1. The district court has jurisdiction in fields of equity; and the jurisdiction over trusts, being always within the domain of a

court of equity, such court has the power to terminate a trust and have the property distributed where the trust is impossible of fulfillment.

2. A court of equity has inherent power to displace trustees by substituting a receiver whenever the case is brought within the general equitable principles concerning the appointment of receivers.

3. A receiver may be appointed for a trust, where action is pending, to determine the distributive shares of the beneficiaries.

4. Appointment of a receiver ordinarily rests in the sound discretion of the trial court.

5. Where certain beneficiaries of a trust allege they have an equitable right in, and claim to, the subject matter, they have the right to maintain the action and ask ancillary equitable relief without the joinder of other beneficiaries under the trust.

6. A beneficiary of a trust may bring suit to terminate it, where the trust has expired, notwithstanding a provision in the declaration of the trust to the effect that he shall not do so "except, at the expiration of the term of this trust." He has a right to have the court determine whether or not the trust has expired.

7. Under the allegations, mere injunctive relief would not constitute adequate, complete and effectual remedy to plaintiffs.

Opinion by Mr. Justice Knous. Mr. Justice Bouck, Mr. Justice Bock and Mr. Justice Burke dissent.

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No. 14519. *Insurance; Date of Policy; Grace Period; Extension Insurance. Business Men's Assurance Co. v. Davies, et al. Decided April 8, 1940. District Court, La Plata County. Hon. John B. O'Rourke, Judge. Reversed. In Dept.*

HELD: 1. The effective date of a policy of life insurance is that date agreed upon and long recognized by the parties as shown by the policy, correspondence between company and assured and conduct of the parties.

2. Where a clause in the policy provides that if the cash or loan value is not sufficient to cover the next premium, upon failure to pay the premium, it shall automatically be extended from the date of default and for such period as would be paid by the cash surrender value, the grace period and the extension period run from the same date; the grace period does not begin to run after the expiration date of the extended insurance.

Opinion by Mr. Justice Bakke. Mr. Chief Justice Hilliard and Mr. Justice Burke concur.

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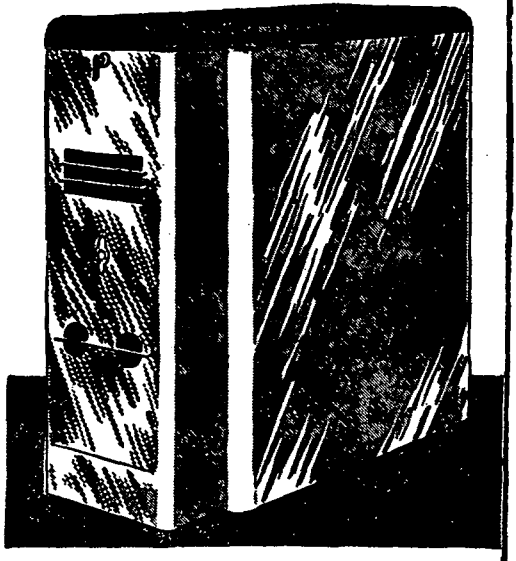

**Public Service Company of Colorado**

# A LAWYER'S VIEWPOINT

*The following excerpt is taken from an address before a meeting of the American Bankers Association by Mr. John H. Freeman of the law firm of Fulbright, Crooker and Freeman, of Houston, Texas, on the subject:*

# ADVANTAGES OF THE CORPORATE EXECUTOR AND TRUSTEE

"Action or lack of action by a corporate trustee in a given matter is not the result of impulse or of sudden notion—rather, it results from consideration, study and deliberate judgment, usually, of a group constituting a trust committee.

"This committee acts collectively; it approves or disapproves, authorizes or rejects, and the record of its acts is a permanent archive of the bank. Under its supervision and control are the various employees and officers who actually look after and handle the trust property—available to it are all of the information and data about any given question or matter that the various departments of the bank or trust company can assemble or provide."

*Each of the institutions named below acts as Executor and Trustee:*

THE INTERNATIONAL TRUST COMPANY
THE UNITED STATES NATIONAL BANK
THE AMERICAN NATIONAL BANK
THE COLORADO NATIONAL BANK
THE DENVER NATIONAL BANK

*Members of Federal Deposit Insurance Corporation*