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DICTA

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Dicta Observes

The case of Kolkman vs. People, 89 C. 8, 300 P. 575, is the subject of a very lengthy review in the February issue of the Journal of the American Judicature Society. The article is by Charles T. McCormick, Professor of Law at Northwestern University, who acknowledges his indebtedness to Mr. Harrie M. Humphreys, Secretary of the Colorado Bar Association, and Mr. Horace N. Hawkins of the Denver Bar, for information about the attendant circumstances of the case. Mr. McCormick opens his review with the suggestion that

> "A criminal case in Colorado last year is significant as a spark thrown off in the clash of forces now contending for dominance in the administration of justice."

This case contains an unusually frank and vigorous judicial dialogue on many of the central problems of court administration, and concludes with a comparison of French Kings with "Charley's hogs."

California Needs More Lawyers!

By a proposed amendment to the State Bar Act of California it is sought to admit on motion all veterans of wars of the United States. If the act is passed, picture Brig. General Wham heading a special detail composed of himself, defendant and witnesses, creeping silently through the trenches, after having laid down a verbal barrage in defending his sector, only to run full tilt into rebuttal troops of the plaintiff in command of Colonel Zowie, with everybody eventually a casualty from being "gassed."

The amendment is sponsored by a mechanical engineer-assemblyman.

AMOS STECK

THE BEST BELOVED MAN WHO EVER SAW THE ROCKIES

By William H. Robinson, Jr., of the Denver Bar

GOLD! The word was on the lips of everyone in this frontier town of St. Joseph, Missouri. Gold! The mad desire for the yellow metal could be read into everyone's actions. Gold! From half way across the continent they had come, and a like distance they had to go. Like some great magnet pulling to it thousands of particles of iron, the gold in California's hills was drawing to it men from all over the nation, from all over the world. Within three months after news of the discovery of gold had reached the East, between fifty and sixty thousand men had poured into St. Joseph, one of the main outlets for traffic across the barren plains. Of all types of men they were. Desperadoes, riffraff, men of culture and breeding. For instance, down in any of the numerous saloons which had mushroomed up overnight were men, perfect replicas of villains from a Hardy or Stevenson novel. And then over there, leaning against the door-jamb, bantering with the smithy, was a lean, tanned fellow with a quiet, friendly manner that won men to him. His name was Amos Steck, and like the rest of this mob, he was on his way to California.

By merely looking at him, one was aware that his life so far has been one of culture and of refinement. One is not particularly surprised to learn that he is the son of a Lutheran minister, Michael Steck, whose father before him, also a minister, had founded the Lutheran church in Western Pennsylvania; nor is one surprised to find Puritan strictness and sanctimoniousness conflicting with liberal and divergent philosophies in the makeup of the young man. The influence of his grandfather, who had emigrated from a small German town and who had embraced the ministry at an early age, and the domination of his father, who followed somewhat closely in the grandfather's mental paths, were continually struggling with the theories inbred by a wealthy and sophisticated uncle in whose home Amos had lived during the formative period of his life. These opposing forces hovered over the boy from the time of his birth, January 8, 1822, in a small

log cabin in Lancaster, Ohio, until the day of his death nearly eighty-seven years later. But whatever opposition there may have been in certain directions, there was a certain unity in others. The forbears had all been pioneers—the grandfather in establishing his church in the wilderness of a new land, the father in carrying forward the work on the untilled frontier, the uncle in building up a large and reputable mercantile business by the sheer force of his own personality.

Yes, of all types of men, these men assembled in St. Joe were. That tocsin cry of gold which sounded from the Pacific had brought these men together only to scatter them later like an autumn wind among the leaves. Among them there existed no sympathy nor understanding; their interests were identical in only one thing—the desire for gold. The scene presented this night of June 6, 1849, was one that has been duplicated on every new frontier in the rush for land, for precious metals, for oil, and for costly stones. Bustling, strained activity, rough manners and characters, lawlessness, lust, and greed. Every few days wagon trains of adventurers started out across the plains toward the coast, and on the morning of June 7, Amos Steck was driving an ox-cart in a caravan bound for California. His trip across half the continent differed little from those who traveled before and after under the curved bows and canvas top of the ox-cart. It is a tale oft told in many a book and in many a magazine. Perhaps it is only unusual in one particular; on a goodly share of the one hundred and forty-one days it took to make the trip, Steck drove with the reins in one hand and a book in the other.

He had always been a studious boy. The uncle, Caleb Cope, had taken the boy to his home in Philadelphia shortly after the father returned from Ohio to the Pennsylvania church the grandfather had founded. Amos received a liberal arts education far superior to the average one of that day. Books interested and fascinated him; consequently he proved a brilliant scholar. Upon the completion of his education, he entered the office of Richard Colter,[1] a prominent lawyer of the day, to study law. Within a year's time, Steck was admitted to the bar of the Court of Common Pleas in West-

[1]Colter was later made judge of the Supreme Court of Pennsylvania.

moreland County, Pennsylvania,[2] and a short time later his name appeared on the rolls of the state supreme court. He had practiced law in Pennsylvania for about six years when he suddenly left his home and work to follow the cry of gold. But even its alluring summons was not sufficient to wean the man from the habits of his youth. Books were the mightiest factor in the life of Amos Steck, and forever he remained as true to the printed page as it did to him.

The call of gold was that of a false siren; for though Steck diligently followed it, he never found its source; and so when it became a question of abandoning the quest or starving, Amos Steck, like those thousands whose names will never be known, sought a job. He found it at the Armador Mines, situated about twenty-five miles from Sacramento.[3] Then the spirit of adventure was downed before the longing for a school-day sweetheart. Steck began the long trip back to Pennsylvania; and soon after his return in 1854, he married Sarah H. McLaughlin.

Chafing under the restraint of the routine of civilization, Steck took his bride to Wisconsin in the following year; but the memories of the western country with its rugged mountains and peaceful valleys made him dissatisfied. In the late spring of 1859, he set out once again for the West. In May he arrived in the little settlement then known as Auraria, but later to be called Denver. That night as he gazed from his lodgings on the bank of Cherry Creek in Kansas Territory to the foothills and the snowcaps beyond, a sense of peace and quiet, of grandeur and beauty, and of a robust life to be lived here was awakened within him. Suddenly Amos Steck knew that he had found the place for which he had been searching. This land was to be his home. Steck loved this land; much later, when Colorado was a state, he said, "Colorado is the greatest state in the Union, it's got to be that, you know. It's got to be a big state of big men. It can't be stopped. Nature is with us in that. The children and the women and the men breathe a larger, deeper breath up on those hills and they must think large thoughts. I've seen Denver rise and fall, go down and get up again, but every time it rose, it went

[2]May 24, 1843.
[3]7 Dawson Scrapbook, 463.

on a notch higher, and even now it's only learning to climb." And Amos Steck believed those words.

Within a few days he secured employment as postal clerk for the Overland Express Company. Shortly afterward, when Denver was given a provisional post-office, Steck was appointed Provisional Postmaster for the United States mails.[4] In that day letters cost twenty-five cents to be delivered in Denver; and the receiver, not the sender, paid the postage. Steck retained the appointment until 1861, when William P. McClure succeeded him, and a regular post-office was established at Fifteenth and Larimer Streets.

In the spring of 1860, Mrs. Steck and her daughter, Isabella, arrived in Denver. The trip from Atkinson, Kansas, to Denver, a distance of six hundred miles, necessitated a journey of six days in the stage-coach. Perhaps the joy of seeing Mr. Steck was shared by mother and daughter equally with the joy of knowing that they would not have to face another day of biscuit (bright yellow because of the excessive use of soda), coffee, bacon, and canned fruit which had been the fare for every meal of every day at the stage-coach stations.[5]

Steck took his family to a one-story frame house he had rented near the present corner of Eighteenth and Curtis Streets. The house stood by itself on the bleak prairie. The closest house was several blocks away, and the nearest tree was six blocks south. Three fireplaces were built in the house, for coal was practically unknown in the region at this time; the only fuel was wood, and even it was very expensive.

The novelty of their surroundings must have been both trying and interesting to Mrs. Steck. Indians were frequent beggars at her door. Their children often were her daughter's only playmates. In place of gold and silver coins, Mrs. Steck had to use gold dust and privately minted gold coins for currency. She was forced to accustom herself to different people and different foods than she had known in Pennsylvania. But, like her husband, she soon grew to love the West.

As soon as McClure succeeded Steck as postmaster, the latter entered the practice of law in Colorado. Subscribed to the roll of the first session of the Supreme Court of the terri-

[4]Letter of Isabella Steck—4 Dawson Scrapbook, 71.
[5]Steck was paid $200 a month as postmaster.

tory is, among twenty-seven others, the name of Amos Steck. B. F. Hall was chief justice of the newly created court and his associate was S. Newton Pettus, whose only judicial service in the territory was this act of admitting attorneys to practice. Pettus returned to his erstwhile home in Pennsylvania shortly afterwards.

Hardly had Steck begun the active practice of law when he was elected the second mayor of Denver on April 1, 1863.[6] While he was mayor, Steck had the honor of sending the first telegraph message out of Denver. It was sent on October 10, to Mrs. Steck, who was visiting in the East.[7]

Serving only one term as mayor, Steck returned to the practice of law in 1864. When Lincoln was assassinated, Steck was chosen orator of the day, and the speech he gave on that occasion was said to be an eloquent and sincere tribute to the President. Shortly afterward, Steck was selected as Territorial Probate Judge for Denver. After his term as judge had expired, Steck turned his talents toward organizing a street railway company. His efforts were successful, and in the year 1871 he was elected its first president.[8] The track extended from Seventh Street to Sixteenth on Larimer, up Sixteenth to Champa, and out Champa to Twenty-seventh Street. About this time, Steck became interested in the Platte water canal. He worked hard on the project and his efforts were instrumental in securing this source of irrigation water for the city of Denver.

Along with this work, Steck assumed the duties of the Receiver of Public Money in the United States Land Office. This position he was forced to resign in 1874, because of a state-wide political upheaval which even affected the judges of the Territorial Supreme Court. Two years later, however, Steck was elected as a representative from Arapahoe County,[9] to the first general assembly of the newly admitted State of Colorado. He was re-elected to the House the following term. While in the House, he advocated equal suf-

[6]Charles Cook was elected as the first mayor in November, 1861, and re-elected April 1, 1862.

[7]Some accounts relate that this message was sent to the mayor of Omaha. The more reliable version seems to be it was sent to Mrs. Steck.

[8]Moses Hallet was also an officer. The first car was in operation December 17, 1871. (Rocky Mountain Herald, November 28, 1908.)

[9]W. F. Stone, History of Colorado (1918) Vol. 1.

frage for women. Judge M. DeFrance and Steck presented committee reports in favor of equal suffrage and made elaborate arguments in its favor. The measure, however, was defeated.[10]

Immediately after his term in the legislature was over, Steck was elected as County Judge for Arapahoe County. At this time the court house was situated at Fifteenth and Larimer Streets. In 1880 he ended his term as County Judge and entered the practice of law again. He opened his offices in the old Tabor Block at Sixteenth and Larimer Streets. Shortly thereafter, in 1888, he was pressed into public service. He was urged to run as Representative; his acceptance meant his election. When his second term was ended, he was selected as a delegate to the Republican National Convention which nominated Garfield. Hardly had he returned from the East when he was in the midst of a campaign for election as State Senator on the Republican ticket.[11] He served for two years as senator.

The last years of his life were spent in fighting litigation involving his home. In June, 1902, a suit was brought on the basis of a tax claim allegedly bought in 1893 (the time of the panic). The trial of the case was put off by various motions interposed by Steck. On May 29, 1905, the suit was tentatively set for trial. The indignation of the bar at this move to oust Steck from his home was widely and loudly expressed, so great was the respect of the lawyers for this old man. Offers were made by various lawyers to pay the tax claim. Due to one cause and another, the case was not tried until 1907, when Steck was forced to give up his home at the corner of Thirteenth and Glenarm Streets and move to a modest place at 143 South Logan Street.

Steck was also embroiled in the silver fight during his last years of life. A staunch advocate for bimetallism, he voted in 1900 for Bryan; and in 1904 he voluntarily entered his name on the rolls in favor of Parker for governor as against Peabody, the Republican candidate, calling upon the supporters of silver to do likewise.

At 7:45 o'clock on the evening of November 17, 1908, Amos Steck died in his home at 143 South Logan Street. He

[10]Denver at this time was part of Arapahoe County.
[11]Swords and Edwards—Sketches and Portraits of Ninth General Assembly.

was nearly eighty-seven years old. At his funeral on November 19 the Reverend Charles H. Marshall officiated. The remains were interred at Riverside Cemetery under the direction of the Colorado Pioneers, of which society Steck had been a member.

THE POLITICIAN

Steck was active in the political life of the state, but he was not a politician. True, he held the appointive offices of Postmaster, Receiver of Public Moneys, and delegate for Colorado to a Republican National Convention, that he was elected mayor of Denver, served as a representative in the first, second, seventh, and eighth general assemblies, and as a senator in the ninth and tenth, and that he was selected as county and probate judge; but he did not possess the cunning nor attributes of the politician. Perhaps no better summary of this fact exists than that to be found in the memoriam offered in the Supreme Court by Moses Hallet, E. T. Wells, and W. C. Kingsley:[12]

"Mr. Steck was versed in history as well as in laws, and he was of a philosophical turn of mind, of an ardent temperament, and of great colloquial powers; he was always ready to discuss all questions of the day. He was admirably fitted for public office, but seldom called on any important duty. The art of politics was entirely beyond his frank and open mind. Of majestic probity and unflinching courage, he was always ready to maintain the truth and beyond that high ensign he was utterly careless of results."

THE LAWYER AND JUDGE

Dating from that day in 1843 when he was admitted to the bar, Amos Steck's career was a long and honorable one, but it was not a spectacular or a great one. It is a career whose counterpart may be found in the life of the average successful lawyer. He was the attorney in a few big cases; he rarely appeared before the Supreme Court of the state, and seldom in the District Court. His work was chiefly that of a counselor. On the occasion of his death, his legal talents were thus summarized:[13]

"Always a lawyer, Mr. Steck was never active in the forum. We know that this was not from lack of ability or learning, and we are at

[12]Report of Committee on Death of Amos Steck, November 19, 1908—in files of Clerk of Supreme Court of Colorado.

[13]Field and Farm, February 21, 1920.

liberty to assign those reasons which appear on the surface. Perhaps the roving life of the plains and the excitement of the frontier in the states made him intolerant of the court room. Possibly he had no taste for the controversies of the forum. Whatever the reason, it is certain that through his diffidence or dislike, the courts were in a large measure deprived of the services of an able and honest lawyer."

The biographer wonders if the reason for the inactivity of Steck, as a lawyer, might not be attributed in part to a statement made by him shortly before his death. "Laws are framed," he said, "so that they will operate in favor of the capitalist and against the man of property. Legislatures are called for that purpose and the will of the monopolist is faithfully carried out by them." But then one remembers that this statement was made when Steck was involved in litigation concerning his home, and some of the bitterness engendered in that situation may have crept into his speech. Then again it was an era in which a "trust buster" was a hero and big business was a bogey. Whatever the reason, Steck's attitude in many respects is an enigma.

His services as a judge were highly successful. His decisions were uniformly sustained by the state Supreme Court. He brought to the bench a gracious charm and a ready wit. It is related that during a recess of court, Steck was telling some of the lawyers how he paid $125 a cord for wood when he first came to Denver. His listeners doubted his story, and the judge was highly provoked. Shortly after the trial of the case had been resumed, he noticed that George A. Crotfiel had entered the room. The judge suddenly stopped the trial and called Crotfiel before the bench. Interrogating Crotfiel as if he were a witness, Judge Steck proceeded to secure a confirmation of the story that wood cost $125 a cord in the early days. Then the judge whirled around to the doubters and said, "Now, you scamps, you see I wasn't such a damned liar as you thought I was. Proceed with the case."[14]

Another anecdote illustrates his broad-mindedness. Shortly after his term as county judge had ended, a friend overheard Steck vehemently asserting:

"The Supreme Court will reverse it, will reverse it, I tell you."

"A decision of yours?" a friend facetiously inquired.

[14]Denver Times, May 31, 1905.

"Yes, and a most damnably iniquitous decision it was, too," replied the judge.

It might be said that the bench was more suited for his abilities than the bar, but in neither position was he entirely happy. Strife irritated him, and the restraint demanded by his profession chafed his free nature.

THE MAN

"There's always work for a man, and life is always worth living."[15] That statement contains the philosophy of Amos Steck. He was a man of cheery and generous disposition which he attempted to hide behind a blunt exterior. This bluntness, like an apple ripening on the bough, wore away as Steck advanced in age. But the man was ever quick and impulsive; and when his compassion was touched, he was the most tender of all men.[16] A man of culture, he was well read in the classics and in history. His remarkable memory enabled him to quote pages from his favorite authors. He studied the Bible as though it were a history and his knowledge of the narration and characterization in the Book was encyclopedic. As a result of his wide reading and his varied experiences, he was an interesting raconteur. The vigor and health of his youth he retained in his old age; and not a day went by but that he visited his friends in the downtown offices.

His philosophy sustained him throughout the rise and fall of his fortunes. When he first came to Denver he rented his home; later he built a house where the Ernest and Cranmer Building now stands. Steck purchased that land for $37.50, and the seller was pleased with the bargain. In 1886 Steck sold this land for $62,500 and moved to a pretentious home at Thirteenth and Glenarm Streets. At the time of his death the Curtis Street property was worth $500,000.[17] The comfortable fortune that Steck had made was swept away in the panics of 1873 and 1893. He died a relatively poor man. In spite of the exit of his fortunes, he was ever cheerful. T. J. O'Donnell[18] was able to say truthfully that Steck knows

[15] 65 Dawson Scrapbook, 35.
[16] O. L. Baskins, History of Denver (1891) page 588.
[17] Denver Post, November 18, 1908.
[18] 65 Dawson Scrapbook, 37.

"more people than any other (man) in the Rocky Mountain region, and is the best beloved of any man who ever saw the Rockies."

So great was the love that the people of this region had for Steck that elaborate funeral arrangements were made and places of business were closed during his burial. In respect to his memory, all courts in Denver were closed for one hour on November 18, and all courts in the state recessed for his funeral on the following day. His gift of three lots to the Denver school board in 1872 stands as a physical monument to the memory of Amos Steck; but the undying monument he left was erected in these words:

"The record of Mr. Steck's achievements is not commensurate with his talents, but we do well to pause in commendation of his virtues which were largely conspicuous in his daily life. He was kind and affectionate, bluff and hearty, truthful and honest in all things. Such integrity as he lived and exemplified is worthy of a monument in these days."[19]

[19]Supra note—12.

A CLEVER TRIAL LAWYER

By F. L. Grant, of the Denver Bar

IN the early nineties, while attending law school, I spent my summer vacations in the offices of Simonson, Gillette, and Courtright, a firm prominent for many years in the legal profession at Bay City, Michigan. The firm had been together for about twenty years, and its senior member, John E. Simonson, familiarly known as "Johnnie" Simonson, was noted throughout the state as an astute trial lawyer. His work grew so laborious and he gave it such conscientious attention that his health broke under it, and he was compelled to seek the climate of Colorado, and practiced in Denver for a few years, but had lost his capacity for hard work, his pep and resourcefulness, and was finally obliged to quit and is now living in Bedford, Virginia.

Among the members of the Bay City bar, at the time I speak of, was Judge Maxwell, a brother of the Maxwell on Code Pleading. He was the opposite physically of Mr. Simon-

son, standing well over six feet, and weighing easily in excess of two hundred pounds, while Simonson weighed about one hundred twenty-five, and was of slight build.

A story is authentically related wherein Judge Maxwell represented the plaintiff and Mr. Simonson the defendant in the trial of a case to a jury. I do not now recall the nature of the controversy, but Judge Maxwell in addressing the jury strode back and forth gesticulating vigorously and most emphatically and exhorting in stentorian tones so that the very walls seemed to vibrate with the oratorical reverberations. The very vociferousness of the address seemed to impress the jury and it didn't seem possible for Mr. Simonson to successfully meet so seemingly overwhelming an argument, but Johnnie was equal to the situation and displayed the shrewdness which had made him famous as a trial lawyer.

He waited patiently for the resounding echoes of his opponent's peroration to die away. Then rising slowly and deliberately from his chair he walked rather hesitatingly towards the jury and stood for a few moments apparently studying the faces of each juror, until they wondered why he did not speak. Suddenly he ripped off his collar, his necktie, pulled off his coat and vest, waived his arms frantically about, all the while uttering no word, then turned a handspring, and after again wildly swinging his arms about, resumed his clothes and then said to the jury in a very quiet, almost subdued voice: "Gentlemen of the jury, I have answered the argument of my worthy opponent," and sat down.

It so completely knocked the wind (literally speaking) out of Judge Maxwell's opening argument that the jury paid little or no attention to his closing, and after a few minutes deliberation brought in a verdict for the defendant.

Editor's Note: This reminds us of what might occur in case Charlie ..... and R. H. ..... might tangle in Denver District Court. (Supply your own names).

The firm of Fillius, Fillius and Winters, attorneys at law, Midland Savings Building, Denver, Colorado, has been dissolved. George P. Winters and Fritz A. Nagel have formed a partnership under the firm name of Winters and Nagel for the practice of law.

EXEMPTION OF AUTOMOBILES FROM LEVY UNDER EXECUTION OR ATTACHMENT

By George A. Trout, of the Denver Bar

TODAY, when a lawyer secures a judgment on behalf of his client, he often finds that his work has just begun. Many judgment debtors, who, in more prosperous times, would pay without complaint, now say, either by their words or actions: "Try to collect. You can't find anything on which to levy." Confronted with this problem the lawyer sets out to discover any assets which may be applied to the satisfaction of his claim. Usually he finds the judgment debtor has an automobile. Less often he finds that the automobile is free from chattel mortgages or other liens, so that a substantial sum may be realized upon execution sale. When the automobile is found to be free from such mortgages and liens the question arises as to whether or not the judgment debtor may claim exemption under the provisions of Section 5915, Compiled Laws, 1921, the pertinent parts of which are as follows:

"*Other property exempt from execution.*—Sec. 19. The following property when owned by any person being the head of a family and residing with the same, shall be exempt from levy and sale upon any execution or writ of attachment, or distress for rent, and such articles of property shall continue exempt while the family of such person are removing from one place of residence to another within this state:

* * * * * * *

"Sixth—The tools and implements, or stock in trade of any mechanic, miner, or other person, used and kept for the purpose of carrying on his trade or business, not exceeding two hundred dollars in value.

"Seventh—The library and implements of any professional man, not exceeding three hundred dollars.

* * * * * * *

"Ninth—One cow and calf, ten sheep, and the necessary food for all the animals herein mentioned for six months, provided or growing, or both; also, one farm wagon, cart or dray, one plough, one harrow, and other farming implements, including harness and tackle for team, not exceeding fifty dollars in value.

"Provided. * * * and, Provided, also, further, That the tools, implements, working animals, books and stock in trade, not exceeding three hundred dollars in value of any mechanic, miner or other person not being the head of a family, used and kept for the purpose of carrying on his trade and business, shall be exempt from levy and sale on any execution or writ of attachment while such person is a bona fide resident of this state."

The right of a judgment debtor to claim exemption of an automobile under the provisions above, and the like right of a defendant whose property has been attached before judgment, which is governed by the same provisions and principles, is the subject of this article. Particularly, is an auto-

mobile a tool or implement of a mechanic, etc., under section six and the provision concerning persons not the heads of families? Is it an implement of a professional man? And is it a farm wagon, cart or dray, or other farming implement?

The Colorado Supreme Court has considered only whether an automobile is a farm wagon. The case of People v. Corder, 82 Colorado 318, was an action against a sheriff for a wrongful levy on exempt property. A demurrer to the complaint was sustained and judgment of dismissal was entered. The judgment of the district court was reversed on writ of error, and the Court said:

"We agree with plaintiff in error that the word 'farm wagon' ought to be regarded as including a farm wagon moved by mechanical as well as by animal power. Stichter v. Bank (Tex. Civ. App.), 258 S. W. 223, holds that a Ford truck is exempt as a 'wagon' under the Texas statute, and we see no reason why such a vehicle might not be a farm wagon if used as such, and since the complaint alleges that the automobile in question was a farm wagon, we think that that allegation is of an ultimate fact which must be taken as admitted by the demurrer. If the defendants traverse it, it is a question for the jury."

The automobile claimed to be a farm wagon in this case was a five-passenger Buick touring car valued at $1,200.00.

The Texas courts, in conformity with the case of Stichter v. Bank, quoted in People v. Corder, supra, consistently have held that an automobile is a buggy or carriage within the meaning of the exemption statutes. Laning v. Langford Inv. Co. (Tex. Civ. A.), 36 S. W. (2d) 1079, Malone v. Kennedy (Tex. Civ. A.), 272 S. W. 509, Hammond v. Pickett (Tex. Civ. A.), 158 S. W. 174, Parker v. Sweet, 60 Tex. Civ. A. 10, 127 S. W. 881. In the case of Stichter v. Southwest National Bank, supra (quoted in Corder v. People), the claimant was not only allowed his Ford truck as a farm wagon but a Cadillac automobile was exempted as a family carriage.

An Iowa farmer, the head of a family, was the owner of a wagon, a Sampson truck and a Ford automobile. The automobile and truck, with other property, were seized by the sheriff under a writ of attachment. He claimed, and the lower court held, that the Sampson truck was a proper tool or implement, and that the Ford automobile was an exempt vehicle under the exemption statute. The Supreme Court of Iowa reversed the district court, holding that both exemptions were improper, and remanded the case with instructions to allow

the claimant to make an election between the wagon, Sampson truck or Ford automobile, any one of them being exempt as a vehicle. Farmers Elevator and Live Stock Co. v. Satre, 196 Iowa 1076, 195 N. W. 1011. The statute used the words: "wagon or other vehicle."

The same court held in Wertz v. Hale, 234 N. W. 534, that it could not extend the plain terms of the statute so as to exempt to a debtor a team, wagon, and harness, and also an automobile.

The Iowa Supreme Court had previously held that under a code provision granting an exemption of a team and wagon or other vehicle with the proper harness or tackle, an automobile was exempt, being a vehicle within the meaning of the statute, even though moving by its own motive power. Lames v. Armstrong, 162 Iowa 327, 144 N. W. 1, Waterhouse v. Johnson, 194 Iowa 343, 189 N. W. 669, Weaver v. Flocke, 195 Iowa 1085, 192 N. W. 123.

An automobile belonging to a bankrupt, who had no other carriage, was a "'carriage" within Sess. Laws, Okl., 1905, c. 18, s. 1, Subd. 10, exempting to a debtor one carriage or buggy. Patten v. Sturgeon, 214 F. 65, 130 C. C. A. 505.

The Supreme Court of Utah in Spangler v. Corless, 61 Utah 88, 211 P. 92, 28 A. L. R. 72, held that an automobile used by a physician in making professional visits was within a statute exempting from execution one horse with vehicle and harness or other equipments used by a physician in making his professional visits.

On the other hand the Minnesota Supreme Court in Whitney v. Welnitz, 153 Minn. 162, 190 N. W. 57, 28 A. L. R. 68, held that an automobile was not exempt from levy and sale on execution against the owner, either as a "wagon, cart or dray." The court said that an automobile was primarily a pleasure vehicle, and not adapted for the purpose for which the exemption was granted. It further stated that the statute at one time had contained the word "vehicle," but it had been stricken by amendment, and this should be taken into consideration.

The Court of Appeals of California appears to have reached a conclusion directly contrary to the decision in

Spangler v. Corless, supra, for in Conlin v. Trager, 84 Cal. A. 730, 258 P. 433, it held that an automobile was not "other equipment" under a statute exempting "one horse with vehicle or other equipment used by a physician," etc., holding that "other equipment" clearly referred to other equipment which could be used with a horse.

The Court followed Crown Laundry, etc., Co. v. Cameron, 39 Cal. A. 617, 179 P. 525, where exemption of a Ford automobile was denied a laundry driver, using it continuously in his work, on the ground that a motor drawn vehicle was not a cart, wagon, dray, truck, coupe, hack or carriage, as the statute plainly said that such exempt vehicles were those which might be drawn by "one or two horses."

The Supreme Court of Tennessee in the case of Prater v. Reichman, 135 Tenn. 485, 187 S. W. 305, denied the exemption of an automobile for reasons similar to those expressed by the Minnesota Supreme Court. The opinion was written in 1916, and the court said of an automobile:

"It is a vehicle whose owner is usually well able to pay his debts."

One wonders whether any court now would make the same comment.

It would appear that in a majority of the jurisdictions where the question has been presented an automobile is a vehicle, carriage or wagon within the meaning of the exemption statutes, and that the Colorado Supreme Court is with the majority in holding that it is a matter of fact as to whether or not an automobile is a "farm wagon." Those courts which hold to the contrary do so on the ground that a self-propelled vehicle was not in existence or contemplated when the statutes were passed, and their meaning should not be extended by inference. They also say that the context of the statutes specifically limits the exemptions to vehicles drawn by animals, but the difference between these statutes and those wherein the contrary has been held is so slight that the conclusions can hardly be explained on the grounds mentioned by the courts.

At this point it is appropriate to mention that even when statutes specifically mention automobiles they are not always exempted from execution or attachment. Their use may not

be such as to bring them within the contemplated exemptions, or the owner may not come within the classes of persons exempted. Such an instance is shown in the case of Meyers v. Rosenzwaig, 27 Arizona 286, 232 P. 886, where an automobile used by a real estate agent in his business of finding purchasers and making sales and transfers, collecting rents, and looking after mortgages and insurance was held not exempt under the Arizona Civil Code, 1913, par. 3302, sub. 12, a real estate agent not being a laborer, and not being enumerated under the professionals. The words "or other laborer" were said to be intended to describe persons in the same class as those enumerated.

A different and more difficult question is whether an automobile may properly be classified as a tool or implement.

The nearest Colorado holding found upon that question is in the case of Watson v. Lederer, 11 Colorado 577, an action brought against a constable by an assayer for the seizure of a horse, harness and wagon, claimed to be exempt under Gen. St. p. 602, and the proviso thereof identical with the proviso of the present statute referring to a person not the head of a family. From a judgment of non-suit by a justice of the peace plaintiff appealed to the county court where he received judgment. The defendant appealed to the Supreme Court from the county court judgment. It appeared that plaintiff was accustomed to drive to different mines with his horse and wagon for the purpose of obtaining samples of ores. The court said:

"It appears that the horse, harness and wagon were as essential to his business as the assaying apparatus. The whole property owned by him was therefore exempt, provided it did not exceed $300 in value."

The decision is somewhat unsatisfactory when applied to this discussion for two reasons. First, the judgment of the county court was reversed, as there was nothing to show the value of certain property released by the officer from the levy, and its value alone might have reached the limit allowed by the statute. Second, the horse alone, might properly come under the definition of a working animal. The buggy and harness were not expressly said to be tools or implements, although that conclusion is inferred.

An automobile truck used in his business by a fuel dealer was held exempt from sale under execution as a "tool" in

Federal Agency Inv. Co. v. Baker, 122 Kan. 460, 252 P. 262. A sedan owned by the same debtor was held not exempt, there being no proper showing as to its use.

An automobile, when used as an "implement" by a farmer in conducting his farming operations, was held exempt from levy or execution in Printz v. Shepard, 128 Kan. 210, 276 P. 811.

A foreman on construction work, who used his automobile to transport workmen and tools back and forth on out-of-town jobs, and whose position as foreman partly depended upon this use, was held entitled to exemption of the automobile in Dowd v. Heuson, 122 Kan. 278, 252 P. 260.

The Arizona statute, subdivision 12, paragraph 3302, Civil Code, 1913, exempted from execution, attachment or sale on any process (among other things) "one automobile by the use of which * * * a chauffeur * * * habitually earns his living. Mack levied on an automobile owned by Boots who moved to vacate the levy. The evidence was that Boots was a machinist, doing various sorts of repair work, and that he used the automobile to convey himself to and from his work, to haul people who were helpers, and to haul his tools and machinery, for which uses his employer paid him about $20 per month, and also paid for his automobile upkeep. The court, in Mack v. Boots, 29 Ariz. 16, 239 P. 794, held that the use of his automobile was only incidental to his main trade or business—that of a machinist, and that his claim for exemption should have been disallowed, the case being remanded for further proceedings. But the court said:

"Under subdivision 5, par. 3302, supra, the tools or implements of a mechanic or artisan necessary to carry on his trade are exempt. We think a machinist is a mechanic and as such could claim the exemption of said subdivision 5."

But the court did not clearly state that the automobile would be exempt as a "tool or implement," or whether it was meant that the claimant could apply for the release of his other tools under this section.

In the case of A. Wilbert's Sons Lumber Company v. Ricard, In re Ricard, 167 La. 416, 119 So. 411, it was held that the exemption statute (Civ. Code Art. 2705, and Code Prac. Art. 644) did not require a showing that the trade, calling, or profession in which a tool or instrument is used was the exclusive means by which a debtor obtained a living to

entitle him to exemption thereof from seizure. The Court of Appeal was held not justified in denying the exemption of a motor truck, used by the lessee of a farm to transport slaughtered beeves to market as an instrument necessary for the exercise of the trade or profession from which he gains his living, on the assumption that he made his living on a farm and his other trade or calling was a mere speculative side line.

A bus used to transport school children was held to be a "tool" or "instrument" within the Louisiana statue in the case of Hammer v. Johnson (La. App.), 135 So. 77, the court being satisfied from the evidence that the defendant depended upon the compensation yielded him by the operation of his truck as a school bus for his living.

An automobile was said to be a tool or instrument of a county doctor under the same statute in Webb v. Lacarde (La. App.), 135 So. 262.

The Supreme Court of Iowa has reached a different result on the ground that it is not warranted that automobiles should be exempted as tools or instruments when there is in the statute a specific classification under which they clearly belong, to-wit: vehicles. Farmers' Elevator and Live Stock Company v. Satre, supra; Wertz v. Hale, supra.

The defendant in the case of First State Bank of Perkins v. Pulliam, 112 Oklahoma 22, 239 P. 595, claimed exemption of a Ford automobile on the ground that he was a "veterinary" and "oil scout," and it was necessary for him to use the car in his business, and he was the head of a family. The Oklahoma statute (Sec. 6604, Comp. Okl. St. 1921) specifically provided that "automobiles and other motor vehicles shall not be exempt from attachment, execution and other forced sale." The court held that the automobile was not entitled to exemption as a "tool" or "apparatus," and said that although it had heard Ford automobiles called many names, that it had never heard these terms applied to them.

In proceedings by judgment creditors against a judgment debtor for the sale of an automobile under execution the judgment debtor claimed exemption which was denied by the trial court. The judgment of the trial court was affirmed in Gordon v. Brewer, 32 Ohio A. 199, 166 N. E. 915, the

court holding that while the automobile was a convenience it was not a necessity, and that to exempt it would subject the meaning of the phrase "implements of trade" to a variety of uncertainties and change with every set of circumstances.

The Supreme Court of the Province of Alberta, in Burns v. Christensen, 16 Alberta L. R. 394, 28 A. L. R. 77, held that an automobile of a licensed professional chauffeur was not within a statute exempting the tools and necessary implements to the extent of $200 used by the execution debtor in the practice of his trade or profession.

Likewise the Supreme Court of Quebec, in the case of Robitaille v. Asselin, 49 Quebec Superior 1, held that an automobile of the value of $1400, even if it was the only vehicle which the party owned, was not exempt because of the fact that he used it to earn his living as a cabman.

From the foregoing cases it is evident that there is considerable difference of opinion as to whether or not an automobile is a tool, implement or instrument of trade. The Supreme Court of Kansas and the Supreme Court of Louisiana have allowed automobiles to be exempted as tools or instruments. The Supreme Court of Arizona denied the exemption of an automobile because the owner was not regularly engaged as a chauffeur, but suggested that it was entitled to exemption as the tool or implement of a mechanic. The Supreme Court of Iowa has denied the exemption as a tool or implement, for the reason that the statute specifically exempts vehicles, and an automobile is a vehicle, hence not entitled to any additional classification. The Supreme Court of Oklahoma held that an automobile cannot be exempted as tool or apparatus where the statute specifically prohibited the exemption of automobiles. The Court of Appeals of Ohio has ruled that the classification of an automobile as a tool or implement would be too uncertain and dependent upon the facts of each case to allow its exemption as tool or instrument. The provinces of Alberta and Quebec hold an automobile does not come within the meaning of tool or implement, as the words refer to a number of articles (being plural in the statute), the gross value of which is less than the statutory exemption.

Logically, and literally, an automobile cannot be said to

be a tool or implement of trade, and the courts which have refused its exemption as such have reached a more reasonable construction of the term, and one probably more in accord with the intention of the legislatures. The courts which have reached the opposite construction have, in a large measure, done so to give effect to the beneficent intention of the exemption laws, and have followed the usual rule that such statutes should be liberally construed. They also have the support of a respectable number of cases of the pre-automobile age, exempting vehicles of various sorts as tools or implements. (See examples given in 25 C. J. 51, and notes.) These cases hold that whether a particular implement is or is not necessary to the debtor depends in a large measure upon what his trade, profession or business may be. 25 C. J. 51. The holding of our Supreme Court in Watkins v. Lederer, supra, is not sufficiently definite to lend much aid, and when the question is directly presented the Supreme Court may flatly say that an automobile is not a tool or implement, or it may examine the facts and determine the case upon the use to which the machine is put by the claimant, and whether it is reasonably adapted to and necessary for him to do his work, if his occupation is within the favored classes.

No case has been found exempting an automobile or automobiles as "stock in trade," but it does not seem unreasonable to say that some used car lot proprietor might claim one or more machines kept by him for sale, providing their value did not exceed the statutory exemption.

The value of the property claimed to be exempt may become a material matter when claim for exemption is made by the debtor. This has been considered only once in connection with an automobile in Colorado. That was in the case of People v. Corder, supra. As before noted, the debtor claimed exemption of a Buick touring car valued at $1,200 as a "farm wagon." The court said the clause "not exceeding $50 in value" qualified the words "other farming implements," and had no reference to what preceded them, so that the automobile would be exempt regardless of value if it was shown to the satisfaction of the jury that, in fact, it was a farm wagon. This seems to be the finding in similar cases when there is no limitation of value in the statute. It was argued in

the case of Spangler v. Corless, supra, that exemption of a very expensive automobile might be claimed by some debtor. The court answered the argument by saying that the debtor might also make claim for exemption of a $5,000 carriage, silver-mounted harness, and a horse worth as much more, but that the value still would be immaterial. The Supreme Court of Iowa expressed the opinion that some limitation of value upon automoble exemptions should be set by the legislature. Waterhouse v. Johnson, supra. These courts do not seem to have considered the fact that the model, type and value of the automobile would be a material element in determining its reasonable adaptability or necessity for the use claimed in the exemption. This would be particularly true in Colorado where all the classifications under which exemption of an automobile might be claimed except that of "farm wagon" probably are subject to a limit of value set forth in the statute.

The Supreme Court of Colorado has made statements indicating it would not exempt a tool or instrument, or stock in trade, exceeding the value set by the statute. In the case of Watkins v. Lederer, supra, it said the essential difference between the provision and the last four sections of the act was the "amount or value of the property exempted" and held that the whole property of the assayer was exempted "provided it did not exceed $300 in value." Likewise, in Martin v. Bond, 14 Colorado 466, stock in trade was said to be exempt "to the extent specified in the statute." In Harrington v. Smith, 14 Colorado 378. the court said where the execution debtor has only a precise number "or property of the exemption value" under the statute, then and in such a case a levy and sale under an execution is absolutely illegal.

The only cases found where the value of automobiles was taken into consideration were the Canadian cases of Burns v. Christensen, supra, and Robitaille v. Asselin, supra, where the court held a single chattel exceeding in value the limit set in the exemption statue could not be exempted as a tool or implement.

Horses exceeding in value the amount of exemption were held not to be exempt in Everett v. Herrin, 46 Maine 357, and State v. Jungling, 116 Missouri, 162, 22 S. W. 688.

A different conclusion was reached in Lovell v. Richings (1906), 1 K. B. 480, 75 L. J. K. B. 287, 94 L. T. 515, 54 W. R. 392, 22 T. L. R. 316 (considered and distinguished in Burns v. Christensen, supra). The action was for distress for rent on a stable which was occupied by a cab driver. The only article on the premises proved to be a cab of the value of more than five pounds, which was seized. It was held that the cab was privileged from seizure under S. 147 of the county court's act, 1888, as an implement of the man's trade, and the fact that it was above the value of five pounds, the upper limit set by the statute, did not exclude the operation of the exemption.

The cases of Smith v. Pueblo Credit Association, 82 Colorado 364, and Blum v. Kasick, No. 13,042, decided by the Supreme Court of Colorado March 7, 1932, have not been discussed. The former was an action against a sheriff for treble damages for wrongful attachment of an automobile valued at $175. The ground for which exemption had been claimed did not appear. The court said that the question of whether the automobile was lawfully exempt was not before it, as that had been determined between the parties in the previous action. The latter case was similar. Judgment had been entered in the district court of the City and County of Denver and in pursuance of a writ of execution therein the sheriff of Boulder county levied on the claimant's automobile. He filed a claim for exemption with the sheriff on the ground that it was used in his business. Without notice to claimant the district court of the City and County of Denver heard this claim, and denied his claim for exemption. The Supreme Court held that under these circumstances the District Court of Denver was without jurisdiction to enter such an order, and had no summary power to determine the claim. The judgment debtor was said to have two remedies. He could submit to the jurisdiction of the court out of which the execution issued and ask that it determine his claim, or he could notify the sheriff in possession of the property claimed to be exempt of such claim, and demand its return, and, in the event of sale thereafter, he could pursue the remedy provided by statute for such illegal sale.

From the foregoing it will be seen that in Colorado it

is a question of fact, for the jury, as to whether or not an automobile is a "farm wagon." Whether or not it is a "tool or implement" has not been directly decided, but the indications are that such determination is one of fact, hinging not upon its character as a vehicle, but upon the use for which exemption is claimed, and the suitability and adaptability of the automobile for that use—and its actual employment therein. As a "farm wagon" the Supreme Court has held the automobile's value immaterial. If the court follows its statements in other cases, and similar holdings of other American courts, if exemption is claimed under any other statutory ground, only such automobiles as are worth less than the amount exempted would be privileged from seizure, and an automobile exceeding in value the statutory amount would be subject to attachment or levy.

DICTA,
Louis A. Hellerstein, Editor in Chief,
1020 University Building,
Denver, Colorado.

Gentlemen: Error of law: In the January number, your digester understood the 3rd rule announced in Wolford vs. Bankers Co., to be: "The contention that an office in a private corporation is a franchise is untenable." Not so. The court holds it *is* a franchise, hence *quo warranto* is the remedy. See also Grant vs. Elder, 64 Colo. 104.

Yours truly,

NISI PRIUS.

SPECIAL NOTICE

Pursuant to the By-Laws, President Albert J. Gould, Jr., has appointed the following Nominating Committee to nominate a President, two Vice-Presidents and two Trustees: William E. Hutton, chairman; Dexter G. Blount, Elmer L. Brock, Simon J. Heller, Ernest L. Rhoads. The By-Laws provide that members desiring to suggest names for the consideration of the Committee shall forward the same to the Secretary. February 25, 1933.

JOHN A. CARROLL, *Secretary*,
THE DENVER BAR ASSOCIATION.

Joseph Mosko and Gordon Slatkin announce that they have formed a partnership under the firm name of Mosko & Slatkin.

Supreme Court Decisions

CRIMINAL LAW—RECEIPT OF DEPOSIT A CRIME—WHEN—*Cole et al. vs. The People*—No. 13174—*Decided January 7, 1933*—*Opinion by Mr. Justice Butler.*

I.

Defendants were convicted under the statute which makes it a crime for any officer, director or employee of a bank to receive or to assent to the reception of a deposit of money by the bank with the knowledge of the fact that the bank is insolvent.

II.

Objections to the conviction are:

(a) The contention that the act in question is void because it creates a new felony and that that subject is not mentioned in the title is untenable. "The word 'subject' as used in the constitution signifies the basis or principal object of the act. * * * Any matter or thing which may reasonably be said to be subservient to the general subject or purpose will be germane and properly included in the law, and the law will not, by reason of such inclusion, be rendered unconstitutional as embracing more than one subject. * * * The penal provision in the act * * * is germane to the general subject expressed in the title."

(b) The contention that a new crime can be created only by amendment of the criminal code and that the act in question does not purport to amend the criminal code is without merit.

III.

The contention that the information is "too uncertain, inconsistent and repugnant to inform the defendants of the nature and cause of the accusation or to support a judgment" because the information charges two separate and distinct crimes,

1. Receiving a deposit with knowledge of the bank's insolvency;
2. Larceny,

is not sound. The allegation of larceny has no proper place in the information, but its insertion did not tend to prejudice the substantial rights of the defendants on the merits, and, therefore, is no ground for the reversal of the judgment.—*Judgment affirmed.*

CRIMINAL LAW — FRAUDULENTLY OBTAINING MONEY — CHECK CASHED OUT OF STATE—JURISDICTION—*Updike vs. People*—No. 12989—*Decided January 7, 1933*—*En banc*—*Opinion by Mr. Chief Justice Adams.*

1. In a prosecution for fraudulently obtaining "$5,000.00 of the personal property, goods, chattels and monies" of complaining witness, proof was that the thing obtained was a check of said amount, mailed by witness in Colorado to defendant in Idaho and deposited there by

defendant as a cash item. Although the information made no specific reference to a check, there was no variance between allegation and proof.

2. The crime was committed where the check was fraudulently obtained, not where it was cashed for money or otherwise disposed of; and, for purposes of jurisdiction, deposit of the check in the mails was a delivery to defendant. Endorsement of the check by defendant in another state, and endorsement by successive banks, had no bearing on the question of jurisdiction or venue.

3. Courts of this state had jurisdiction to try the offense, even though the fraudulent representations were made from out of the state, the injury having been done here.

Mr. Justice Butler, with whom Mr. Justice Campbell and Mr. Justice Hilliard concurred, dissenting:

1. The crime of obtaining property by false pretenses is committed where the property is obtained by defendant. The money for the check was obtained by defendant out of this state. Consequently, the crime of obtaining money by false pretenses was not committed in Colorado and the trial court had no jurisdiction.

2. The court rejected evidence offered for the purpose of proving that defendant had deposited the check in his Idaho bank as a cash item, and not merely for collection. Such ruling was error, because that evidence showed that the check was collected by the bank as owner, not as agent for defendant, and that defendant had obtained the money in Idaho, not in Colorado.—*Judgment affirmed.*

DIVORCE—ALIMONY—MODIFICATION—*Neuhengen vs. Neuhengen*—No. 13216—*Decided January 16, 1933—Opinion by Mr. Justice Hilliard.*

1. At the time divorce decree was entered, husband and wife entered into a voluntary agreement with respect to payment of alimony, approved by the court, whereby husband was to pay $50 per week for alimony and support of minor child. Thereafter at successive hearings the payments were reduced from time to time, the final reduction being to $100 per month. Husband had remarried.

2. In exercising jurisdiction to modify a decree for payment of alimony, court should proceed with caution, and unless it clearly appears that the order of which modification is sought is no longer fair and just, the application should be denied.

3. Where the evidence shows that the husband was earning approximately $300 per month, an order modifying payments of alimony and support of child to $100 per month is unreasonable, and an order making such reduction should be set aside.—*Judgment reversed.*

WITNESSES—EXAMINATION OF ADVERSE PARTY UNDER STATUTE—WHERE PROPER—TRIAL OF ACTION DEFINED—EXAMINATION BEFORE NOTARY PUBLIC DISTINGUISHED—*May Taylor et al. vs. Frank N. Briggs et al.*—No. 12937—*Decided January 7, 1933—Opinion by Mr. Chief Justice Adams.*

1. Plaintiffs were adjudged guilty of contempt of court for their refusal to comply with an order of court to submit to cross-examination as adverse parties before a notary public in response to a subpoena duces tecum issued by the notary. Plaintiffs had objected to the procedure on the ground that Section 6570 of the Compiled Laws of 1921, authorizing cross-examination of an adverse party to a suit "upon the trial thereof" did not authorize such an examination before a notary public.

2. Section 6570, Compiled Laws of 1921, does not authorize compulsory cross-examination of an adverse party before a notary public.

3. The taking of a deposition before a notary public is not the trial of an action or proceeding referred to in Section 6570, Compiled Laws 1921.—*Judgment of contempt reversed, cause remanded with instructions.*

APPEAL AND ERROR—*Docketing case after expiration of year—Rogers vs. Pihlstrom*—No. 13206—*Decided January 23, 1933—Opinion by Mr. Justice Hilliard.*

1. Judgment was entered in the court below November 6. 1930. Case was docketed on error in the Supreme Court November 10, 1932.

2. Under rule 18 proceedings in error must be brought within one year after rendition of judgment in the court below.

3. Motion to dismiss writ of error held good.—*Proceedings dismissed.*

WATER RIGHTS—SELF-REGISTERING DEVICES—INSTALLATION COMPELLED WHEN—ORDERS OF STATE ENGINEER—No. 12736—*Hinderlider et al. vs. Everett et al.—Decided January 23, 1933—Opinion by Mr. Justice Campbell.*

1. The statute of 1929 providing that water users, upon orders of the State Engineer, shall install self-registering automatic gage height recording instruments, and maintain them at their own expense, and which also provides for appeals from the orders of the Engineer to the District Court, is constitutional and expressly provides for due process of law.—*Judgment of the District Court reversed.*

CARRIERS—BY MOTOR VEHICLE—PRIVATE CARRIER WHEN—CONSTRUCTION OF ACT—No. 13108—*Bushnell v. The People—Decided January 30, 1933—Opinion by Mr. Justice Moore.*

1. The statute of 1931 regulating public and private motor carriers, distinguishing between them, providing for fees and taxes and classifying the types of private carriers is held constitutional.

2. The statute defines a Class A Private Carrier as one which operates over "substantially regular or established routes or between substantially fixed termini." It is contended that this provision makes a common carrier out of a private carrier through legislative fiat. The contention is unsound. The act provides, "nor shall anything herein contained be construed or applied so as to compel a private carrier by motor vehicle to be or become a common carrier." Other acts which

have been held unconstitutional have excepted some type or types of business from compliance, and were thereby discriminatory. This is not the case with the Colorado act. "The various classifications so made are reasonable and not arbitrary. If these acts be so administered as to deny any motor vehicle operator his rights under the law, the courts are always open to redress such wrongs."—*Judgment affirmed.*

Ludlow v. The People—No. 13140—*Kimble v. The People*—No. 13141—*McDill v. The People*—No. 13159.

These above cases are companions to the Bushnell case, all involving the same point. The McDill case was based upon a different set of facts, thereby distinguishing it. The application of the law is, however, the same.

N. B.: These opinions were all handed down by Mr. Justice Moore, all decided Jan. 30, 1933.

INSURANCE—ACCIDENT POLICY—OCCUPATIONAL USE OF EXPLOSIVES—DENIAL OF LIABILITY—*Loyal Protective Insurance Co. v. Huffington*—No. 13229—*Decided January 30, 1933—Opinion by Mr. Justice Burke.*

1. An accident policy provided that no payment should be made to insured for injury while engaged in the "occupational use of explosives." Insured, a farmer, usually removed rocks from his fields by hauling, but on rare occasions was compelled to resort to blasting. While so engaged, he was injured by a dynamite charge. Such use of explosives was held not to be occupational, but was occasional and incidental, and pertained to another occupation for which recovery was authorized by the policy.

2. Denial of liability by an insurer, on a ground other than want of notice, proof of loss, or premature suit, waives the right to insist upon such requirements.—*Judgment affirmed.*

MUNICIPAL CORPORATIONS—LIABILITY OF CITY FOR INJURIES—*City of Pueblo vs. Sinclair*—No. 12879—*Decided February 14, 1933—Decided by Mr. Justice Campbell.*

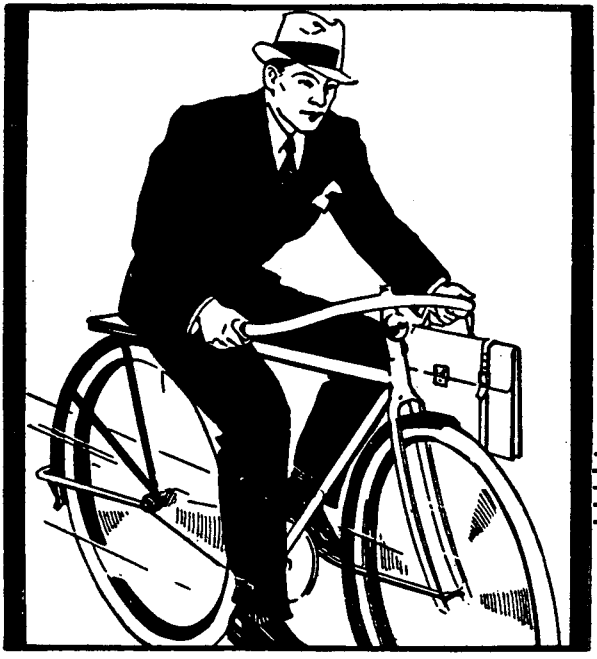
Mrs. Sinclair sued the City of Pueblo to recover a judgment for injuries she sustained in falling into a hole in one of the public streets. The jury's verdict in her favor for $2150 was upheld by the trial Court and judgment entered against the city.

1. The evidence does not show any prejudice on the part of the jury or that the verdict was excessive or the result of bias or prejudice.

2. The instructions of the Court to the jury were evidently fair.

3. Upon the question of notice to the city of the alleged unsafe and dangerous condition of the street prior to the accident, there was evidence tending to show that the hole had been there for a number of weeks before the accident occurred. It was proper to submit this question to the jury on the question of opportunity to remedy the same.—*Judgment affirmed.*

You Don't Do Business on a Bicycle



You *could* make your business calls on a bicycle, but you don't because you place a proper value on time and convenience.

Your wife *could* cook on an antiquated stove, and get along with out-of-date appliances, but she is too good a judge of the true value of time, beauty, health and convenience to sacrifice them needlessly.

Go with her sometime and see the striking improvements that have been made in the modern gas ranges, electric refrigerators, miscellaneous household appliances and radios.

You will both be well repaid.

Public Service Company of Colorado

TRUST BANKING

for

Corporations and Individuals

Services to Corporations

Trustee under Corporate Mortgages . . . Depositary for Protective Committees . . . Transfer Agent and Registrar for Corporate Stocks . . . Miscellaneous Fiscal Agencies.

Services to Individuals and Families

Executor and Administrator of Estates . . . Trustee under Wills . . . Trustee of Living Trusts and Life Insurance Trusts . . . Safe-keeping of Securities.

Escrows

BUSINESS SERVICE FOR BUSINESS MEN AND WOMEN AND THEIR COUNSEL.

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