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## Recent Trial Court Decisions

Dicta Editorial Board

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WORKMAN'S COMPENSATION.—No. 12,141.—*Central Surety and Insurance Corporation, et al, vs. The Industrial Commission of Colorado and Fugitt.*—Decided October 22, 1928.

*Facts.*—The Industrial Commission awarded Compensation to Fugitt for hernia. Under the Statute in order for an employee to be entitled to compensation for hernia he must clearly prove, first, that its appearance was accompanied by pain, and second, that it was immediately preceded by some accidental strain suffered in the course of the employment.

*Held.*—The facts sufficiently meet the above requirements of the Statute.

*Judgment Affirmed.*

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## RECENT TRIAL COURT DECISIONS

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(EDITORS NOTE.—It is intended in each issue of Dicta to note any interesting decisions of the United States District Court, the Denver District Court, the County Court, and occasionally the Justice Courts.)

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UNITED STATES DISTRICT COURT.—No. 7885.—*Spencer Penrose, vs. United States—J. Foster Symes, Judge.*

*Facts.*—Action to recover additional income tax illegally assessed on 1918 return. Plaintiff in 1918 sold copper stock which he contended he acquired in 1916 and on that basis resulting in a loss. The *certificates* delivered were acquired prior to March 1, 1913, nevertheless, plaintiff insisted he intended to sell *stock* acquired in 1916. A gain resulted if the stock sold in 1918 was acquired prior to March 1, 1913.

*Held.*—(1) Certificates of stock delivered do not identify the shares sold, the intention of plaintiff controls; (2) the fair market value of stocks sold on New York Stock Exchange, dealt in generally and freely, is determined by listed quotations; (3) proof that the grounds in the application for refund filed before Commissioner are the same as the grounds sued upon, is a condition precedent to the jurisdiction of the court.

DENVER DISTRICT COURT.—No. 101,740.—*Blackmer vs. Blackmer.*—*Division 5.*—*Charles C. Sackmann, Judge.*

*Facts.*—Action by husband for divorce. Wife applies for temporary alimony, attorneys fees, and court costs. Hearing on petition and allowance ordered for wife. Subsequently the wife filed supplementary petition for temporary alimony, attorneys fees, etc. Trial court refused to hear evidence on supplementary petition. Upon this ruling by trial court, the wife applies for Writ of Error to Supreme Court. (See *Daniels vs. Daniels*, 9 Colo. 142.)

Pending writ of error, the plaintiff noticed defendant to set case for trial upon the merits. Defendant contends the pending writ of error should stay proceedings in lower court.

*Held.*—The stay, if any, does not issue from the Trial Court, and in the absence of a stay from the Supreme Court, the case will proceed to trial upon the merits.

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DENVER JUSTICE COURT.—No. 49,198.—*Brown-White, Inc., vs. Dawson Bros. Company.*—*Walter E. White, Judge.*

*Facts.*—A non-resident plaintiff sues a resident. Plaintiff posts a cost bond, upon which his attorney appears as surety. Defendant moves to dismiss the action under C. L. 1921, Secs. 6047 and 6048, on the ground no bond has been posted.

*Held.*—In view of C. L. 1921, Sec. 6012, the bond is a nullity and no bond. Action dismissed.

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