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Recent Trial Court Decisions

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enjoining the defendants from interfering with the property. Demurrer to the Complaint was sustained below.

Held.—The Complaint on its face showed that the plaintiff had an adequate remedy at law, in that the plaintiff, if the proof supported the allegations, could get back its personal property in an action of claim and delivery or common law replevin, and could get back its real estate in the code action to recover possession, which is common law ejectment. The Demurrer was properly sustained.

Judgment Affirmed.

WORKMAN'S COMPENSATION—METHOD OF COMPUTATION—No. 12,280—*The Employers' Mutual Insurance Company vs. The Industrial Commission—Decided May 6, 1929.*

Facts.—Deceased was a coal miner. Industrial Commission awarded his widow compensation based on earnings of deceased for one year preceding his death as a standard in computing his average weekly wage. It was contended that the six months' period should be used instead of one year.

Held.—Coal mining is a seasonable business and computing award on average weekly wages for wages earned during the preceding six months would not be fair in a seasonable industry. The commission was authorized to use one year as a period instead of six months in this class of industry.

Judgment Affirmed.

RECENT TRIAL COURT DECISIONS

(EDITOR'S 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, the Juvenile Court, and occasionally the Justice Courts.)

DENVER DISTRICT COURT—Division 2, No. 104,432—*People of the State of Colorado on the Relation of M. H. Spiegleman and Simon Spiegleman vs. Jay T. Williams, as Chief Building Inspector of the City and County of Denver—J. C. Starkweather, Judge—Decided May 6, 1929.*

Mandamus for building permit.

Facts.—Relators are the owners of lots having a frontage of 94½ feet and an area of 11812.5 square feet in "Residence A District" under the "Zoning Ordinance". They sought to erect a 7-family apartment house thereon. Respondent denied application for building permit for the reason that the lots had an insufficient area to meet the requirements of the "Zoning Ordinance". Relators appealed the decision of respondent to the Board of Adjustment which required the consent of 80% of adjacent landowners, which could not be obtained. The Board of Adjustment therefore denied the application.

The chief defenses relied on were as follows:

1. That the "Zoning Ordinance" was unreasonable, arbitrary and discriminatory having no reasonable relation to public health and morals and general welfare, and therefore unconstitutional and invalid.

2. That as applied by respondent in this case, the particular restrictions in reference to "lot area" and "width of lot" as prescribed in Sections 13 and 14 of the "Zoning Ordinance" were unreasonable, arbitrary and discriminatory, and therefore unconstitutional and void. In this connection evidence was introduced to show

(a) That there were other apartment houses in this particular district being old houses converted into apartments. However, it was admitted that these were constructed before the "Zoning Ordinance" became effective.

(b) That there were other apartment buildings in a "Residence C District" adjoining the "Residence A District" in question.

(c) That unless the lots could be used for an apartment building there would be considerable loss and depreciation of value to relators.

Held.—1. The "Zoning Ordinance" is constitutional and valid.

The presumption is that the provisions of a "Zoning Ordinance" are reasonable. The fact that other apartment houses were constructed before the Ordinance became operative is of no significance. The fact that there are apartments in an adjoining "Residence C District" is of no effect.

Application for a peremptory writ denied.

DENVER DISTRICT COURT—Division 1, No. 94,326—*Jennie R. Becker vs. B. Lutz—Frank McDonough, Sr., Judge—Decided May 13, 1929.*

Facts.—Defendant held a chattel mortgage on part of the furniture in an apartment house. Through replevin he took possession of all the furniture including furniture belonging to the plaintiff not included in his mortgage, and rented all of the apartments together with the contents thereof. Plaintiff demanded the return of the goods belonging to him, but defendant never complied. The plaintiff sues for conversion.

Held.—The defendant by wrongfully exercising dominion over plaintiff's property had converted it. An offer by defendant after the goods were converted to return the goods to plaintiff is no defense. Plaintiff entitled to damages in the sum of the value of the goods at the time of the conversion together with legal interest thereon to the date of the judgment.

AERE PERENNIUS

The following list of attorneys who have been longest in practice in Denver with the dates of their admissions to the Colorado Bar has been prepared by Mr. S. S. Abbott:

George Q. Richmond	March 13, 1871
D. B. Graham	December 21, 1871
Charles S. Thomas	December 23, 1871
H. E. Luthe	May 4, 1872
A. C. Phelps	July 22, 1872
R. D. Thompson	November 13, 1878
J. N. Baxter	April 4, 1879
Gustave C. Bartels	April 12, 1879
J. H. Blood	May 24, 1879
Jacob Fillius	May 24, 1879
George Hodges	September 2, 1879
Harvey Riddell	September 29, 1879
J. P. Brockway	October 1, 1879
John H. Denison	April 14, 1881
John H. Reddin	August 27, 1881
Frederick A. Williams	July 21, 1882