

August 2021

Colorado Supreme Court Decisions

Denver Bar Association Record

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

Colorado Supreme Court Decisions, 5 Denv. B.A. Rec. 15 (1928).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

is acquainted with the practice of the law, tell us what the business world thinks would improve our handling of their business.

Our profession embraces some shy-sters, leeches who prey mostly upon the weak, needy and unfortunate. The strong hand of the law is about to strangle such practices. The battle may be strenuous, it cannot be accomplished without cost, trial and grief, but the final result is not in doubt. Some of the officers of the law are working into the hands of the attorneys who are engaged in illegal practices, and cappers, ambulance chasers, and some bail bond agents and other

such ilk are working with such attorneys. Aggressive means, I believe, will be employed by the State Bar to end these practices and our Association intends to take a most active part in aiding the State Bar in this essential work. The other night I heard it well expressed by an experienced member of our Grievance Committee when he said in effect that the five per cent of the bar engaged in illegal practices brought obloquy and shame upon the whole bar."

From statement by Hubert T. Morrow, Esq., to Los Angeles Bar Assn. following his recent election as its President.

Colorado Supreme Court Decisions

(Editors Note—It is intended in each issue of the Record to print brief abstracts of the decisions of the Supreme Court. These abstracts will be printed only after the time within which a petition for rehearing may be filed has elapsed without such action being taken, or in the event that a petition for rehearing has been filed the abstract will be printed only after the petition has been disposed of).

No. 11,786

Edith Graham, Plaintiff in Error, v. Miles Francis and Bessie Francis, Defendants in Error.

Decided March 5, 1928
Judgment Affirmed

En Banc—Opinion by

MR. JUSTICE ADAMS

Adoption—Next Friend—Construction of Statute

Facts—G. is the mother of an illegitimate child born March 21, 1921. She abandoned the child, consented that it be adopted by F. and F., but later sought to withdraw this consent. In the adoption proceedings in District Court, no next friend was appointed for the child.

Holding—District Court, sitting as a court of chancery, had jurisdiction of

cause and parties. By abandoning child, G. made immaterial her consent or lack of consent to the adoption. The failure to appoint a next friend (C. L. '21, Sec. 5512) cannot be assigned as error by G., because the next friend is required not for her protection but for that of the child, who is the only one who can raise the question.

No. 11,725

Edward B. Hurt, Plaintiff in Error, v. Frank Newmyer, et al, Defendants in Error.

Decided March 5, 1928
Judgment Affirmed

Dept. II—Opinion by

MR. JUSTICE ADAMS

Water Courses—Adverse Possession—Tacking

Facts—H. sued N. and others for damages and injunction to restrain them from using a ditch. Trial court found that N. was owner of the ditch and that he and his predecessors in title had been in possession for more than thirty years.

Holding—This court cannot consider assignments of error which refer to matters outside the record or which are obscure and indefinite. N. was entitled to succeed to all the rights of his predecessors in interest, so that H.'s contention that N.'s rights relate back only to N.'s possession is wrong.

No. 11956

The Board of Commissioners of the Colorado State Soldiers' and Sailors' Home, v. Albert C. Dunlap and Mrs. Luella M. Dunlap.

Decided March 5, 1928

Opinion by JUSTICE CAMPBELL

Certiorari

Facts—D. and D. were inmates of the Colorado State Soldiers' and Sailors' Home. D. and D. had been selling various articles of merchandise in a building on the grounds. The Board of Commissioners in charge of the home, entered an order prohibiting the sale of merchandise on the home grounds by private individuals. A and B. refused to comply, and were discharged from the home. D. and D. applied for a writ of *certiorari* to have the order of discharged vacated. Lower Court issued writ.

Held—Ordinarily writ of *certiorari* runs to a judicial body only and not to an administrative body, and the scope of the writ is limited to jurisdictional questions only.

Reversed:

No. 11947

People of the State of Colorado ex rel R. P. Brookes, v. Harry F. Crysler.

Decided March 5, 1928

Opinion by JUSTICE CAMPBELL

Usurpation of Office—Domicile

Facts—Relator seeks to oust Crysler as councilman for District Three, on grounds of non-residence therein for one year prior to election as required by the city charter under Speer Amend-

ment of 1916. Crysler bought a house inside District Three from his father and removed thereto, with intention to abandon his old residence outside the district and acquire a new and permanent one at the new location. He had just moved in when the father, discovering the apartment he had expected to remove to was not ready, asked to re-occupy the house until the apartment was ready. Crysler consented and returned to his old house, but on the father's removal to his completed apartment, returned to the new house. Judgment for Crysler and relator appeals.

Held—Crysler, on his first removal to the new house, did so with definite intention to abandon the old residence and acquire a new and permanent one at the new house. Such divested the old residence and established the new, and being more than one year prior to the election, he was duly qualified.

Affirmed:

Justice

"Above all things is justice. Success is a good thing; wealth is good, honor is better; but justice excels them all. It is this which raises man above the brute, and brings him into communion with his Maker. To be able to stand impartial in judgment amid circumstances which excite the passions; to maintain your equipose, however, surging the currents around you, is to have reached the highest elevation of the intellect and the affections. To have the power of forgetting, for the time, self, friends, interests, relationship, and to think only of doing right toward another, a stranger; an enemy, perhaps, is to have that which man can share only with the angels, and with Him who is above men and angels."—*From speech by David Dudley Field in the Wm. M. Tweed case—a suit for \$6,000,000, in 1865.*