Denver Law Review

Volume 5 | Issue 8 Article 6

January 1928

Colorado Supreme Court Decisions

Denver Bar Association Record

Colorado Supreme Court Decisions

latter years. The speaker has long been famed in the central and eastern states as a profound thinker of high literary expression. His auditors may well esteem themselves fortunate in their opportunity. And members attending the annual dinner will enjoy a toast response from him of unusual grace and charm.

The first address of the meeting will be that of President Donald C. McCreery, of Denver, on *The Reign of Law*, with special reference to situations in Colorado where law well may be returned to power.

Henry McAllister, of Denver, speaks on *Suggestions for Reform of Criminal Procedure*. Coming from a former District Attorney whose later civil practice has been so general, this discussion should present new view-points and angles of attention.

Erl H. Ellis, of Denver, in *The Public Purse* will handle the subject of taxation along lines and with proposals both startling and original.

Charles S. Thomas, of Denver, will round out the situation with an address on *The Colorado Constitution*. Senator Thomas' rich and rare experience under our first and only state Constitution should make his recommendations for its new content invaluable.

These speeches will bring on hot challenges of propositions advanced, and the convention bids fair to be a lively one.

The annual dinner is the climax of the entertainment. The toast list has not been disclosed in its entirety, but is promised as rare and racy. The Antlers' menu—but enough!

N.B. Colorado Springs is at its loveliest in September—the weather is perfection—hotel rates then are cut in half—all courts are expected to adjourn over the days of the meeting—the Colorado Springs bar is providing appropriate pleasures for the ladies whom members are urged to have accompany them this year—altogether, can you afford to miss the occasion?

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. 11,874

Radovich v. Radovich

Decided June 25, 1928.

Common Law Marriage — Property Rights.

Facts—Plaintiff and Defendant lived together under Common Law Marriage for about five years. Complaint alleges that parties were husband and wife and that she had obtained his property by falsely pretending great love and affection, and as soon as she obtained it, she excluded him from the house by violence, struck him, threatened to shoot him and refused to live with him.

The answer denied that the parties were husband and wife and alleged that she cohabited with him on his promise to marry her legally. In replication the Plaintiff alleged that he repeatedly requested her to marry him ceremonially.

Held—Complaint stated a cause of action for divorce was started and cause of action for recovery of the property.

Judgment Affirmed.

No. 11,871

M. G. Sanderford, v. The Walker Investment Company, a Corporation.

Decided June 4, 1928—Dept. 2.

Tax Deeds—Validity

Facts—W. claimed land under tax deeds and brought suit to quiet title. S. defended on the grounds that: (1) statutory notice was not given; (2) written request was not signed; (3) W. was grantee of a quit claim deed dated before the taxes became due and was, therefore, under a duty to pay the taxes; (4) W.'s predecessor in interest had sued for rent before these taxes accrued.

Held—The record shows that sufficient notice was given. An unsigned written request may be valid as an oral request. The date on the quit claim deed is not controlling, because it was delivered after the taxes became due. Mere suing for rent does not establish ownership.

Affirmed.

No. 11,858

Seifert v. Gildersleeve

Decided May 14, 1928.

Contracts—Fraud—Patent Rights

Facts—Seifert was the inventor of certain rotary bits, mudder and whirler, for use in drilling oil wells. He entered into a written contract with Gildersleeve, a promoter, for the organization and promotion of a corporation to develop and market the bits. Subsequently a corporation was formed and subsequent to the formation of the corporation, a new contract was made covering the same subject matter, but less favorable to inventor.

Seifert sought to avoid second contract on ground that first contract was still in force and that there was no consideration for second contract and further because the contract gave no right to the corporation to sublet the sole and exclusive rights to make and distribute the invention.

Held—1. The corporation for promoting the patent not having been in existence at the time of the first contract, was not bound by the first contract and the corporation's promises in the second contract constituted good consideration.

2. The assignments by Seifert of the patent to the promoting corporation were of such a full and complete character as to vest in the corporation the entire beneficial interest in both the invention and in the monopoly. The corporation had the right to grant the sole and exclusive license to make and distribute the invention.

Affirmed.

No. 11,770

The Globe National Bank v. George McLean.

Decided June 11, 1928.

Banks and Banking—Construction of Guaranty Contracts

Facts—The City Bank sold all its assets to plaintiff and executed a guaranty contract, which defendant with others signed. Among the notes so guaranteed was a secured note of one Curtis. This was objected to as an asset of plaintiff by the Bank Examiner. Whereupon the objection was met by Curtis conveying the security for this note to the City Bank, whereupon the Globe surrendered said note and entered it up as paid. As part of this transaction, the City Bank gave its note in like amount as the Curtis note, together with the Curtis security, to one Skinner, who in turn gave his own note in like amount to the Globe and deposited the City Bank's check and security as collateral. Defendant, under the contract, guaranteed all of the original notes or extensions thereof and "the payment of all indebtedness represented by said notes". The Skinner note was not paid, and plain-

tiff seeks to hold defendant as guarantor. Judgment for plaintiff, and defendant appeals.

Held—The substance of defendant's agreement was to see that the "indebtedness represented by" the original notes were paid, and the debt now represented by the Skinner note is still in fact the debt represented by the Curtis note, even though Curtis personally has been discharged.

Affirmed—Denison, C. J. and Walker and Butler, J. J. dissent.

No. 10,631

The Holbrook Irrigation District, a Public Corporation, v. The Fort Lyon Canal Company, a corporation.

Decided May 14, 1928.

Water and Water Rights

Facts—The District in 1902, according to map and statement of 1903, started a survey for the "Reservoir Canal", claiming appropriation for storage. In 1906 a map and statement showed survey for the "Irrigation and Storage Canal". In fact, the "Reservoir Canal project was abandoned because of prohibitive expenses and all diversions were through the "Irrigation and Storage Canal", but the company in filings subsequent to 1906 related all diversions back to the original survey on the "Reservoir Canal", and on such basis secured decrees below for priorities as of 1902, not only for storage but for direct irrigation. The District excepted to the decrees, and upon its motion for rehearing and new trial being denied, docketed the case here and filed briefs and abstract. Then, at the *company's* request, the trial court re-opened the case over the District's objection. Slightly modified decrees resulted, to which the District still objected and filed herein a supplemental record and assignment of error, this review being on both the original and supplemental record.

Held—(1) Although a re-opening requires showing of good cause and that petitioner is aggrieved, yet as the District itself had assigned refusal to do so as error, it cannot now object that the allowance of review was error. However, the company by requesting such admitted the denial was error and so must bear costs involved in original record.

(2) The "Reservoir Canal" project, never being more than a theory and admittedly abandoned because of prohibitive expenses, cannot serve as a basis for relation thereto of subsequent appropriations through the "Irrigation and Storage Canal". Priorities, therefore, must rest on the basis of the work of the "Irrigation and Storage Canal", and even there distinction must be made between appropriation for storage and for direct irrigation, as appropriation for one is not appropriation for the other. Decrees below will be modified to conform with the facts of the respective appropriations, eliminating the phantom Reservoir Canal as a factor.

Reversed in part with directions.

No. 11,898

M. J. Galligan v. The Independent Order of Foresters, a Corporation.

Decided May 14, 1928.

Process—Service of Summons

Facts—Defendant moved to set aside judgment, setting up that the only service of summons had been upon one Holmberg, appointed in 1904 as defendant's agent for process under the Act of 1893 (C.L. 1921, Sec. 2322), whereas under the Act of 1911 re fraternal benefit societies (S.L. 1911, page 432) the Commissioner of Insurance was required to be and was designated the only agent for process. Judgment was set aside. Plaintiff stood on the record, and the action being dismissed, he now appeals.

Held—Record and complaint show defendant was in fact a fraternal benefit society, and hence the Act of 1911, requiring designation of the Commissioner of Insurance as agent for process, controls, instead of the earlier general corporation act, and the designation of the commissioner of insurance thereunder operated to revoke the prior agency.

Affirmed with modification that dismissal be without prejudice.

No. 11,932

Radovich v. Douglass

Decided June 11, 1928.

Libel and Slander-Privilege

Facts—Douglass recovered judgment against Radovich on two causes of action, one for libel, and the other for slander. The Defendant contends that the communications were qualifiedly privileged.

Held—Qualified privilege is an affirmative defense to be pleaded by the Defendant, unless the complaint sufficiently pleads facts showing that the publication is privileged.

Judgment Affirmed.

Threats

"Extreme and belligerent expression, unsupported by resolution, is weak and without effect. No man would draw a pistol who dares to shoot. The government that shakes its fist first, and its finger afterwards, falls into contempt." —*Elihu Root.*

NOTE!

As one of the purposes of THE RECORD is to afford a means for free expression by members of the bar on subjects of benefit to the profession, and as the widest range of opinion is desirable in order that the different aspects of these matters may be presented, the editors assume no responsibility for the opinions in signed articles, the fact of their publication indicating only the belief of the editors that the subject treated merits consideration and attention.

Ingersoll's Creed

"My creed is to love justice, to long for the right, to love mercy, to pity the suffering, to assist the weak, to forget wrongs and remember benefits, to utter honest words, to love liberty, to make relentless war against slavery in all its forms, to love wife and child and friend, to make a happy home, to love the beautiful in art, in Nature, to cultivate the mind, to be familiar with the mighty thoughts that genius has expressed, the noble deeds of all the world, to cultivate courage and cheerfulness, to make others happy, to fill life with the splendor of generous acts, to destroy prejudice, to receive new truths with gladness, to cultivate hope, to see the calm beyond the storm, the dawn before the night, to do the best that can be done and then, to be resigned."

CHAS. H. SCOTT
President

EDWARD WHITLEY
Treasurer

THE RECORD ABSTRACT COMPANY

725 Eighteenth Street

DENVER

Complete Abstracts of Title

To all Real Estate in

DENVER
ADAMS
and
ARAPAHOE COUNTIES

TELEPHONES MAIN 1208 AND 1209