

January 1927

Recent Trial Court Decisions

Denver Bar Association Record

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In this connection, the Committee wishes to commend the efforts of Justices Orahod and White in the results which they have obtained in the face of great difficulties. The Clerks and Constables of these Courts have also proven themselves unusually efficient. The Police Court records are well kept.

Your Committee therefore recommends:

1. That the number of Justices should be increased by at least two, together with additional Clerks and Constables.

2. The City Charter should be so amended that the provision regarding Justices and Constables shall be elastic enough to admit of an increase in the number of Justices and Constables by the City Council, without the necessity of further amendments to the Charter.

3. The present salaries which are \$2,000 for the Justices with additional fees and allowance making a total of about \$3,000 a year, should be increased. This should be accompanied by the complete abolition of the fee system.

4. The jury system should be

changed so that the jury panel for the District and County Courts, or a similar method, could be used in Justice Courts whenever required.

5. Adequate quarters should be given the Justice Courts. It is assumed that these will be provided in the new Court House.

6. A clerical system similar to that in the District Court should be established so that proper audits may be made of all accounts and receipts.

7. The Denver Bar Association should take up the recommendations herein urged with the City Council to the end that any steps necessary to bring about the suggested changes may be adopted.

Respectfully submitted,
COMMITTEE ON JUSTICE
AND POLICE COURTS OF
THE DENVER BAR ASSO-
CIATION.

By

LUKE J. KAVANAUGH,
Chairman.

JOSEPH C. SAMPSON
HAROLD H. HEALEY
WAYNE C. WILLIAMS
HENRY BRAY

Recent Trial Court Decisions

(Editor's Note.—It is intended in each issue of the Record to note interesting current decisions of all local Trial Courts, including the United States District Court, State District Courts, the County Court, and the Justice Courts. The co-operation of the members of the Bar is solicited in making this department a success. Any attorney having knowledge of such a decision is requested to phone or mail the title of the case to Victor Arthur Miller, who will digest the decision for this department. The names of the

Courts having no material for the current month will be omitted, due to lack of space.)

Denver District Court

DIVISION II

JUDGE GEORGE F. DUNKLEE

Procedure—Request by Jury for Further Evidence—Discretion of Court

Facts: The trial of a case having proceeded to the point where it had been turned over to the Jury for its determination, the Jury, having delib-

erated for a time, returned and through the foreman requested further testimony upon a specific point, expressing belief that a verdict might be rendered if such testimony were heard but that otherwise there would be a disagreement.

Held: Request of Jury granted and case reopened for the further hearing of testimony of the character requested.

Reasoning: In a case such as put the granting or denying of the Jury's request is a matter within the discretion of the Court. *Sabin vs. Locke*.

In the District Court

DIVISION V JUDGE SACKMANN

Trusts: Succession of Power of Trustees to Successor Trustees:

Deceased by will created trust for benefit of daughter, giving daughter income therefrom but also authorizing trustees if at any time the condition of his daughter shall render such action advisable "to advance her the principal of said trust fund even to the exhaustion thereof".

Trustees were residuary beneficiaries of trust upon death of daughter. Trust provided for selection of successors by surviving trustees "in whom jointly with the original or continuing trustee or trustees the trust estate and the trust powers shall forthwith vest". All of original trustees resigned, the bank was appointed by court and the daughter requested advancement of portion of principal funds, which successor trustee deemed "advisable", but questioned its power as successor to exhaust principal.

Held: Whether such a power of trustees passes to successors in trust depends upon the intention of the testator to be determined from the terms of the will and all the circumstances in connection with its execu-

tion. The case of *Watling vs. Watling*, 15 Fed. (2nd) 792, was followed, the court holding that all the powers of the original trustees descended to the successor in trust.

Justice Court

WALTER E. WHITE, J. P.

Hayes vs. Rice, 39-386/

Plaintiff's and defendant's automobiles collided to their mutual damage, plaintiff approaching from the left. Then and there defendant promised to pay plaintiff's damages in full as soon as they were ascertained. Plaintiff neither gave nor promised defendant anything in exchange for defendant's promise. Thereafter, plaintiff had his car repaired, presented the bill to defendant, demanded payment which was refused, and sued on the promise to pay, plaintiff having no cause of action in tort because negligent himself.

Held: No consideration for defendant's promise. Judgment for defendant.

Wanted

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A lawyer of mature years wants an office association; he has had eighteen years at the Bar; is a member of the Denver and the American Bar Associations; has been admitted to the Bar of the United States Supreme Court; is forty-one years of age; and has an exceptionally wide acquaintance in Denver. In resuming general practice, he needs an office in a good building and wants to avoid the overhead that goes with it. If you are interested, address:

Box 229

Denver Bar Association Record,
502 Symes Building.

Police Court Amendment

President James A. Marsh has appointed a committee composed of Charles H. Pierce, Chairman; Charles R. Enos and Charles J. Kelly, pursuant to the resolution of the Association adopted at its meeting held February 21, 1927.

This resolution called for the appointment of a committee of three to have full charge and control of the publicity features of the Police Court Charter Amendment to be sponsored by this Association. Among the duties of this Committee, will be the selection of speakers to appear before civic organizations to explain the purposes and meaning of said proposed Charter

Amendment and to take such other steps as it may deem advisable in placing before the voters full and complete information as to the same.

The cooperation in this matter of every member of the Association is earnestly solicited. This movement represents a practical effort to remedy a defect in our local Government and the report of the Police Court Committee printed elsewhere in this issue is convincing evidence of the necessity of the adoption of changed methods in Denver's municipal court procedure.

Thomas B. Reed, when admitted to the Bar in California, was asked by Judge Wm. P. Wallace if he thought the Legal Tender Act, recently passed, was constitutional. Reed answered that he thought it was. Wallace thereupon said that another young man answered that question the same morning the other way. "We will recommend you both favorably, as we think that all young men who can answer great constitutional questions offhand ought to be admitted to the Bar."

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For fifteen years connected with widely known financial companies. Formerly with the State Mortgage Corporation, Dallas, Texas.
- W. MABRY KING, *Vice-President*, Sterling, Colorado.
President of the Chamber of Commerce; ex-judge and attorney at law.
- A. J. SHAW, *Treasurer*, Denver, Colorado.
Has been actively engaged with the Chicago Title and Trust Co. since 1886. Resident of Denver for 14 years; title and tax expert.
- W. E. HENDERSON, *Secretary*, Denver, Colorado.
Formerly with the State Banking Department. Years of experience in banking and real estate.
- JOHN H. BUER, *Director*, Sterling, Colorado.
John H. Buer Investment Co., formerly assessor of Logan County for four years.
- R. T. SMITH, *Director*, Fort Collins, Colorado.
President of the Larimer County Abstract Co. Resident of Fort Collins for eighteen years. Title and tax expert.
- JOHN J. DOMKE, Greeley, Colo. Resident of Greeley 15 years.

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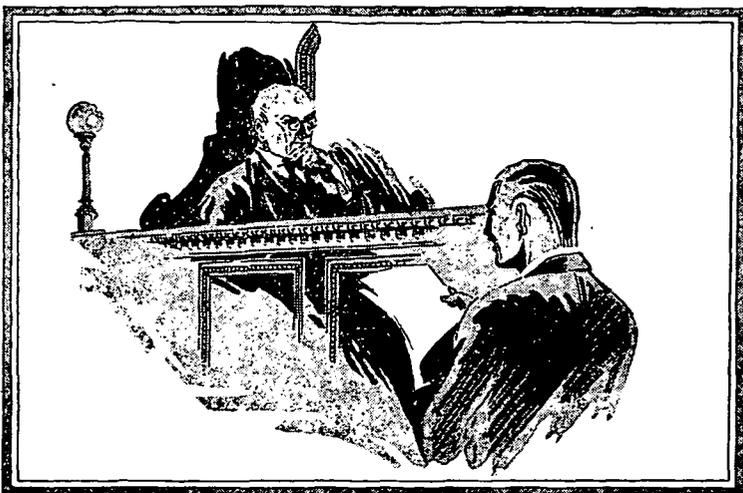
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RECORD

PUBLISHED MONTHLY

VOL. IV

DENVER, APRIL, 1927

No. 4

APRIL LUNCHEON MEETING

Monday, April 4, 1927—12:15

Chamber of Commerce

Hon. Alva B. Adams of Pueblo, Colo., former U. S. Senator, will speak on the subject: "The Sinclair Contempt Case in the Senate and the Courts." He has personal knowledge of his subject.

Special Notice to Members

March 24, 1927.

The members of The Denver Bar Association are hereby respectfully notified as follows:

The Nominating Committee of this Association heretofore appointed by President James A. Marsh has made the following nominations for the ensuing year:

- For President ROBERT L. STEARNS
For First Vice President LUKE J. KAVANAUGH
For Second Vice President JOSEPH C. SAMPSON
For Trustees CHARLES H. HAINES
and STEPHEN R. CURTIS

Pursuant to Section 3, Article 7 of the by-laws, further nominations may be made by filing with the Secretary at least fifteen days before the annual meeting the name or names of additional candidates bearing the written request of at least twenty members of the Association.

Pursuant to the by-laws, the annual meeting of the Association will be held at 6:30 P.M. on April 25, 1927, at a place to be announced later.

Respectfully submitted,

(Signed) ALBERT J. GOULD, JR., Secretary.

Announcement

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