Denver Law Review

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Recent Trial Court Decisions

Denver Bar Association Record

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(*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 DUNKLEE

Prohibition—Parties—Public Utilities Commission

Facts: Application to intervene and subsequent general demurrer by intervenors. Defendant the Commission having made a rate ruling adversed to intervenors who, after one rehearing by Commission, were denied writ of error in the Supreme Court, the Commission prepares to entertain a second rehearing. Relator, who prevailed on the previous rate hearing, seeks to prohibit without making the other parties to the rate hearing defendants in the prohibition case. The latter accordingly seek to intervene and attack the complaint as insufficient in law to justify prohibition.

Held: Intervention allowed: Demurrer sustained.

Reasoning: Adverse parties to proceedings sought to be prohibited while not necessary parties, the tribunal being the only necessary party, are nevertheless proper parties and have such interest in the subject matter as to warrant their intervention.

The granting or denying of a second rehearing is procedural and not jurisdictional so that prohibition will not lie to prevent it.

People ex rel Pikes Peak Fuel Co., vs. Public Utilities Commission et al, 95627.

Mechanics' Liens—Municipal Corporations—Pleading

Facts: General demurrer. Denver licensed the erection of a grandstand on real estate owned by the City. A mechanics' lien is sought to be foreclosed against the grandstand only. The complaint alleging in addition to the above facts in general terms that the City claims an interest in the said grandstand but that such interest is junior to the claim.

Held: Demurrer overruled.

Reasoning: General allegation of inferiority of interest is sufficient to put City to proof or disclaimer. Rule of exemption of municipal property utilized for public purpose recognized but general allegation of interest insufficient to plead such ownership nor does allegation of ownership of land warrant such presumption.

Denver Lumber Company vs. Whitney et al, 92512

Justice of the Peace Court

JUSTICE A. T. ORAHOOD

Chattel Mortgage—Priority—Liens—Notice

Facts: One Wilson et ux execute an original and a renewal chattel mort-

gage to plaintiff without releasing original of record, covenanting in both against liens misdescribing address in the second. Defendant is a subsequent warehouse lienor without actual knowledge of the mortgage. Some evidence that plaintiff was notified of storage. Admitted that plaintiff had made no effort to take possession immediately on default. Replevin.

Held: For plaintiff.

Reasoning: Both liens are valid, plaintiff's being prior in time is prior in right. Failure to take possession upon default is not ipso facto negligence. The renewal mortgage did not invalidate the original as against third party. Mere notice would not subject plaintiff to a subsequent lien in the absence of its assent thereto.

Second Industrial Bank vs. Duffy

Motor Vehicles—Execution—Notice

Facts: Replevin of an automobile upon which levy of execution had been had by defendant upon judgment against one Dunning. Plaintiff had allowed Dunning to use the car at times and had retained his license plates subsequent to the due transfer to it by statutory certificate prior to judgment or execution.

Held: For defendant.

Reasoning: Under provisions of Section 5113, C. L. 1921, there was not such an open, notorious and exclusive possession in the plaintiff as to indicate that the ownership of the car has changed. And particularly the fact that the license plates issued to Dunning were permitted to remain on the car was sufficient to establish fraud in law if not in fact. The certificate of title law (Chap. 136, S. L. 1925) not so providing, the records of the Secretary of State or of his agent, the County Clerk and Recorder, are not constructive notice of the transfer and the defendants were not bound thereby.

National Industrial Corporation vs. Soetje et al. No. 53-302

Negotiable instruments—parol evidence—misrepresentation of Law

Facts: Defendant was an indorser of certain promissory notes and the same having been dishonored suit was brought against him. On the trial the defendant sought to show an oral contemporaneous agreement that the indorsee was to take the notes, as to him, without recourse, and that an agent of the indorsee prevailed upon him to omit the words "without recourse" by representing that the use of such words would invalidate the notes.

Held: For the plaintiff.

Reasoning: The contemporaneous agreement if any, was oral, and testimony of it is properly excluded under the parol evidence rule. The representations as to omitting the words "without recourse" were, if made, representations of law and, therefore, not actionable fraud.

The Second Industrial Bank vs. Woodman. No. 52-533

So Both Throw the Plus Away

Red Tie—"The owners want to throw all the onus on the miners."

Blue Tie—"And the miners want to throw all the minus on the owners."

—*Punch*

Cheering Them Up

Friends of Mr. and Mrs. —— —— will be relieved to learn that she and Mr. ——— who live at Miami, Florida, were injured in the recent hurricane.

—*Denver paper.*

Layman Ruggles

Lately the Honorable William Howard Taft, Chief Justice of the U. S. Supreme Court, was moved to write a letter to a man unlettered in the law. In closing this letter, which was made public last week, Judge Taft said, "You could do no more important work for the body social and politic than this. As one in the community I write to thank you."

The gentleman addressed was Charles F. Ruggles, timber and salt man of Manistee, Mich. The reason he was addressed—and Lawyer Elihu Root of Manhattan wrote a letter similar to Judge Taft's—was that both writers had read a declaration of the officers and directors of the American Judicature Society in which it was revealed that Mr. Ruggles was that society's conceiver, founder and patron.

In 1912, Mr. Ruggles employed an editor in his town to make a survey of the country's courts. Scanning this survey, Mr. Ruggles noticed that Chief Justice Harry Olson of the Chicago Municipal Court was a man who kept tab on the work done and undone in Chicago courts, and who had made a practice of assigning judges to the places in which they were most needed at given times. Judge Olson's records and audits showed that the law's delays were thus greatly reduced in Chicago. It was simply a matter of an executive's being responsible for the direction of a judicial force to eliminate idleness here and overwork there.

Mr. Ruggles put off for Chicago and asked Judge Olson to be chairman of a national society to promote this kind of executive direction in other courts. Judge Olson accepted and the American Judicature Society has since—as Lawyer Root said in his letter—served as a model for a vast amount of research. But only last week was it realized in high places that a public spirited layman was responsible. Only last week did Judge Olson declare: "No individual has contributed more toward court reform in the last 50 years than Mr. Ruggles."

—*Reprinted from "Time".*

CHAS. H. SCOTT
President

EDWARD WHITLEY
Treasurer

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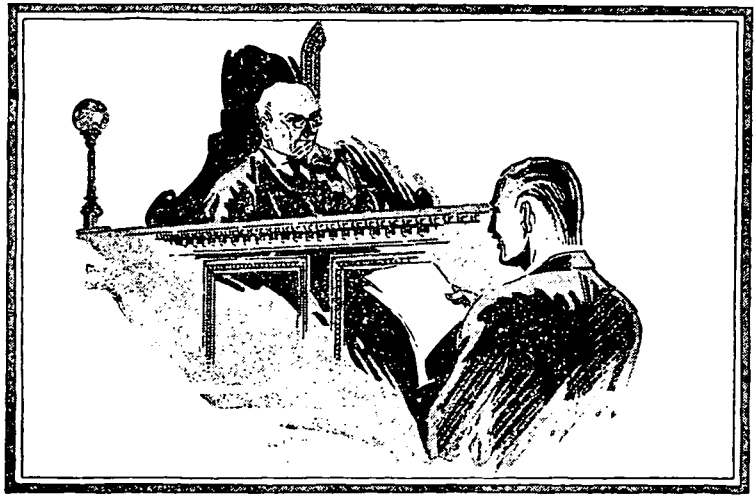

THE ATTORNEY
for
THE ESTATE

IT is the established policy of the undersigned banks that the attorney designating a bank in a fiduciary capacity, shall act as attorney for the estate.

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Leading Articles

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