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## Recent Trial Court Decisions

Denver Bar Association Record

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## *Recent Trial Court Decisions*

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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 GEORGE F. DUNKLEE

*Facts:* A bank, organized and doing business in the State of Washington, offered by telegram to purchase bonds from a Delaware corporation having its principal place of business in Denver, but which at that time had not filed a copy of its articles and paid the fees required to domesticate itself in Colorado. The offer was accepted by telegram and letters. The bonds were not delivered as agreed. Meanwhile, the Washington bank had contracted to sell and deliver said bonds to its customers at a profit.

Suit was brought against the officers of the Delaware corporation in Denver as copartners doing business in the name of the corporation for loss of profits and interest thereon. After suit was brought, the Delaware corporation domesticated itself in Colorado. Defendant claimed the contract was made in Washington, and being made by telegraph and mail was interstate commerce, and that defend-

ants could in no event be held individually liable, but that the corporation only could be held.

The Court held the contract was made in Colorado; that it was not interstate commerce, and that the defendants could be held individually liable for profits which the plaintiff would have made if the Delaware corporation had carried out its contract, but that no interest on such amount could be allowed as an element of damages.

*Reasoning:* As the telegram from Denver to the Washington bank stated the Delaware corporation "would" confirm the sale of the bonds at a certain price, and the answering telegram asked for such confirmation, which was given by a third telegram from the Denver office, the contract was made in Colorado; that the Colorado statute and general law upheld personal liability of the incorporators, directors, officers and agents of the foreign corporation; that subsequent domestication did not change this individual liability; that the lost profits plaintiff would have received were, therefore, recoverable against the individuals acting for the foreign corporation; and that, as interest is solely a creature of statute, it could not be allowed as an element of damages under the above facts.

*Union Trust Company, vs. George E. Keeler, et al., No. 78104.*

(Contributed by Guy K. Brewster)

### *Denver District Court*

#### DIVISION IV

JUDGE HENRY BRAY

*Facts:* Contract for purchase of realty required seller to furnish abstract showing good and merchantable title. Abstract company certificates

on abstract furnished excepted all rights of way for reservoirs, ditches or public highways. The purchaser refused to accept said abstract and sued for deposit.

Held: For Plaintiff.

Reasoning: Such an abstract does not comply with contract. The purchaser is justified in refusing to accept same and judgment for deposit entered. *Marcus v. Gillespy*, No. 94139.

*County Court of the City and County of Denver*

JUDGE GEORGE W. DUNN

Facts: Forcible Entry and Detainer proceedings commenced in Justice Court. Tried on merits and judgment for plaintiff. Defendant appealed to County Court and appellees' motion for judgment on the pleadings sustained. Writ of error to Supreme Court. Reversed and remanded with directions to proceed with case. Plaintiff moved to dismiss appeal on ground

only one bond was filed in the appeal from the Justice to County Court. Motion objected to by Defendant on ground plaintiff had waived his right to object to the sufficiency of the bonds by entering general appearance.

Held: Appeal Dismissed.

Reasoning: The Statute providing for the filing of appeal bonds in such case is mandatory. The Court had nothing to do but to dismiss the appeal either upon objection of counsel or on its own motion. *Zamp v. Lamon*, No. 69349.

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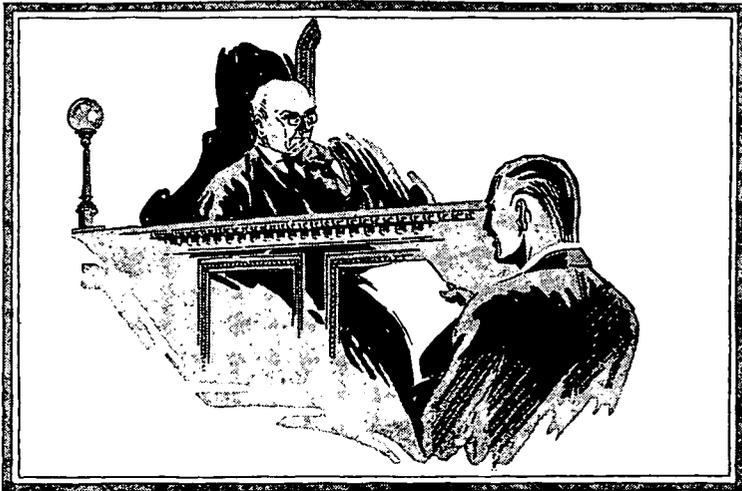
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